SENATE—*Wednesday, March 2, 1994*

(Legislative day of Tuesday, February 22, 1994)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable HERB KOHL, a Senator from the State of Wisconsin.

PRAYER

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

Let us pray.

** * * ye shall hear of wars and rumours of wars: see that ye be not troubled: for all these things must come to pass, but the end is not yet. For nation shall rise against nation, and kingdom against kingdom: and there shall be famines, and pestilences, and earthquakes, in divers places.*—Matthew 24:6, 7.

Eternal God, sovereign Lord of history, at this critical time in our Nation and the world, help us to hear these somber words of Jesus. He is not threatening; He is simply stating reality. To the religious leaders of His day He challenged, "* * * O ye hypocrites, ye can discern the face of the sky; but can ye not discern the signs of the times?"—Matthew 16:3.

Patient God, we take seriously the daily weather reports, but we ignore the "signs of the times." We anticipate tomorrow's weather, but we seem indifferent to the giant digression and discontinuity of moral and spiritual decay. We know that liberty without law is a myth, but we also know that law has its limitations when it comes to the fragmentation of society by alienation. Help us realize that self-alienation from God is the root of all alienation—family, society, nations.

Mighty God, restore to us the faith of our fathers which brought this great Nation into existence.

We pray in the name of Him who is Light and Love incarnate. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 2, 1994.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader.

SCHEDULE

Mr. MITCHELL. Mr. President, and Members of the Senate, there will be a period for morning business until 11 o'clock this morning, at which time the Senate will begin consideration of S. 1560, a bill to establish the Social Security Administration as an independent agency. Senator MOYNIHAN, the chairman of the Finance Committee, will manage the legislation.

It is my hope that we can complete action on this bill as soon as possible and in any event prior to concluding business for the week. In addition, it is my hope that we can complete action on certain pending nominations prior to the time when we complete action for the week.

I will discuss the schedule with the distinguished Republican leader, as is my practice, before making any further decision with respect to the schedule and I will, of course, also as is my practice, announce those decisions as soon as made.

Mr. President, I understand that the first portion of morning business is under the control of the distinguished Senator from Wyoming. I see him present on the floor and I, therefore, yield the floor.

The ACTING PRESIDENT pro tempore. The first 30 minutes shall be under the control of the Senator from Wyoming [Mr. SIMPSON].

Mr. SIMPSON. I thank the majority leader and I thank you, Mr. President.

The majority leader, as he indicates does his business with careful coordination with our leader, Senator DOLE. We appreciate that very much. It works very well. It is an element of trust there that is the essence of how one does legislative work. We do not have to agree and we can be as partisan as we want, but we have to have that element of trust and respect. And we are fortunate that Senator MITCHELL and Senator DOLE do, indeed, practice their craft in that way.

(The remarks of Mr. SIMPSON and Mr. DOLE pertaining to the introduction of S. 1884 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

HEALTH CARE

Mr. DOLE. Mr. President, tomorrow afternoon, about 33 out of 44 Republicans will go to Annapolis, MD, where we will discuss health care from tomorrow afternoon through tomorrow evening at around 10 o'clock, and then early Friday morning, from about 7 o'clock until 2 o'clock.

The purpose of the conference—it will be the third conference we have had on health care—is to determine how many areas we can agree on in health care, how many areas Republicans can agree on in the health care area and, if we can, explore our disagreements and find out if there is any way to resolve those disagreements. We are not going there to put together a plan. We are going there to see where we are in the process.

There is no question about it; no single plan has the votes here to pass. We would hope in the final analysis there would be some bipartisan consensus reached that would attract a great many, a majority of Members on each side of the aisle.

In my view, health care is not an issue where you want to win by one vote or two votes or three votes. It ought to be an issue that has overwhelming support.

So that will be the purpose of our conference this next day and a half. We do not expect to come out with total unanimity. This is a very difficult issue. We do expect to have some good discussions, Member-to-Member discussions without staff, without anybody else, to see precisely where we are in the process and where we think we need to be going.

Now, having said that, I think there is no question about it; if you pick up the morning papers the President's plan is in deep trouble. It says, "Health Care Reform Proves To Be Tough Sell." That is in USA Today. Then, in the Washington Post, "President's Health Plan Falters in Poll; 80 Percent Say They Fear Decline in Care Under the President's Plan."

The President's plan is too complicated. We held up a chart in response to the President's State of the Union Message with 207 boxes—a chart prepared by a member of Senator SPECTER's staff—just to indicate that these were new, either new or expanded bureaucracies that are going to be created by the President's health care plan. And we did not list them all.

Even people who may benefit from the President's health care plan are skeptical of the big, big Government

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

turning one-seventh of the total economy over to the Federal Government, $900-some billion in the first year.

Yesterday, we debated and, unfortunately, lost the vote on the balanced budget amendment by four votes.

The President's plan creates three new entitlement programs—they sound great: Long-term care, prescription drugs, and taking care of early retirees for big companies who have made sweetheart deals with labor unions and now they want the Government to bail them out. The total cost of all these programs would be $200 or $300 billion. Nobody knows for certain.

Again, how do we pay for it? Well, we pay for it some by cutting Medicare and Medicaid and taxing cigarettes. Some would say, particularly seniors, that you cannot touch Medicare, you cannot get that much out of Medicare. Others, low-income Americans who rely on Medicaid support, say you cannot take away Medicaid; you ought to be expanding Medicaid.

I guess the point is that the President's program is losing support and will continue to lose support because the American people cannot recall the last thing the Government operated that they thought was satisfactory or that they wanted more of. And this is a big, big program. This is the biggest program we have had around here for 25, 30 years, maybe as big as since we started Social Security.

Many of these programs have been different, though. Social Security, we talked about it for years before it happened. Medicare, we talked about a program. Some called it elder care, some called it Medicare. That went through the mill for several years before it passed.

My view is that Members of Congress in both parties understand there are very serious problems in our health care delivery system. We want to address those problems. But we are a little skeptical about it when everybody is going to get more out of this program but nobody is going to pay more. We are going to save money by giving people more. That is a hard sell.

So the President's support has dwindled and dwindled and dwindled. It is down from 59 to 46 percent in one poll in just the last couple of months, and in the other poll it is down to about the same; 48 percent disapprove, 44 percent approve—and that has been a big drop—8 percent have no opinion.

But it seems to me that they are concerned about big Government, the American people are concerned about rationing. If you have global budgets, if you only spend so much money on health care and you run out of money, you either have to ration, or raise taxes, or find some way to find more money.

I must say, I am a member of the Senate Finance Committee. I have attended every Finance Committee hearing. We are having outstanding witnesses. I do not know their political affiliation. They are not there because they are Democrats, Republicans, or independents. They are there because they are experts in health care.

I think I could say safely that many who supported health care, maybe even the President's plan, are now backing away from it. They are backing away from it because they are beginning to study it more carefully. They are reading these 1,432 pages in the President's plan and they are seeing things that they did not fully understand or they did not fully recognize at the time. And now I think we are finding a number of people who are very skeptical who have gone from a favorable position to a neutral position or a negative position.

Now, the President's plan is dead. I said yesterday it is probably dead. Dead in its present form. I do not think anybody in the House or the Senate who can count would say that we are going to have these new, big bureaucracies in Wisconsin or Kansas or California and you are going to have to buy all your insurance through this big bureaucracy called a health alliance.

It is not going to happen. Mandatory health alliances, like mandates or anything else mandatory, scare a lot of people, and a lot of people in the health care business plus a lot of consumers are going to have employer mandates? I do not think so. I do not think so.

In the State of Kansas, for example, about 90 percent of our employers have 10 or fewer employees. We are a small business State, and many States have about the same percent. We do not have many big employers in our State. We are proud of everybody we have, and we do a good job. But we do not have the big, big business that some industrial States have.

Again, it is not that the small business man or woman does not want to provide health care for everybody, nor that everybody who works for them does not want it. Sometimes they cannot do as much as they might be required to do under the Clinton plan, or any other plan, for that matter. So I do not believe employer mandates will be around when we consider this bill, either.

Price controls: Republicans are experts on price controls because they were last imposed when President Nixon was in the White House. I happened to have been chairman of the Republican Party at the time. I remember that I was in San Diego. I received a call from the White House saying: "We are going to put price controls on." It sounded like a great idea: Put on price controls; nobody pay any more. Then we started making exemptions, exceptions. They took the price controls off and the prices went through the roof. Plus, it discouraged competition. It was bad policy.

So we have learned the hard way that price controls are not really the way to try to regulate anything, whether it is on insurance, whether it is on drugs, whether it is on doctors, or whether it is on hospitals. It does not work. The marketplace will work, and the marketplace is working. In fact, many people are telling us that if Congress does not hurry and get to this health care problem, it is going to solve itself and we will not be able to bring it up because there are changes being made. Insurance companies are making changes, pharmaceutical companies are making changes; doctors, hospitals, providers up and down the line are making changes.

So it seems to me that the President—they have had a whole year to sell this plan to the American people. I heard prominent Democrats say this morning on the radio that we need more time to sell the program. My view is the more time this program is around, the lower it is going to sink in the polls.

This program is not going to pass. It is not going to pass with big Government price controls and mandates. Mandates are taxes. If I mandate anybody in this room that they have to pay x dollars, that is a tax. And small businessmen and small businesswomen understand it is a tax. We pass mandates back to the States. We tell the State they have to do x. That is a tax on the people in those States, because the States have to go out and raise money because we passed a law and we did not send the money.

So for all the reasons I can think of—and I just suggest that the administration spent a great deal of time arguing whether or not we had a crisis or a serious problem. If that is not an utter waste of time. The Democratic National Committee even ran ads saying the Republicans do not think this is a crisis, that we only have a serious problem. If you want to dissipate your energy and get nothing for it, you can engage in those little games. This is a big problem; it ought to be addressed. We ought to stop the theatrics, the politics, and the semantics. "Crisis," "serious problem," look it up in Webster's. I do not know what the difference is. It is not very much.

I am not prepared to say our system is ready to collapse. We have the best health care delivery system in America today. People come here from all over the world to study, for research, for treatment. I do not know how many Americans go to Germany or some other country; maybe a lot. I do not get many requests for information on that. But I know a lot of people come to America. I know that a lot of people in the Midwest go to the Mayo Clinic because they believe it is a good place, and it is a good place. They go to the Kansas University Medical Center. They go to other places because we have a good health care delivery system.

Some people in America have fallen through the cracks. Some people in America are not covered. Everybody in America can receive treatment. But some people do not have coverage. So we ought to make certain they have coverage. We ought to make certain that through vouchers or tax credits, that low-income Americans have a good benefit package for themselves and their families. And we ought to do what we can to make certain that these—I do not know how many millions; I do not believe it is 37 million. That is the figure used. It is probably closer to maybe 12 million. There are children and there are elderly people. We ought to reach out and determine how to do that.

I would just say, finally, when I go to meetings in my State and in other States, people say, "BOB, why are we changing 100 percent of this system when only 15 percent of it is broken?" It is a good question. I asked the President that question in a dinner meeting that he was generous enough to invite us to last week to talk about health care reform. I said, "Mr. President, I get this question when I go out: Why are we trying to change everything when only 15 percent or 20 percent, whatever it is, needs fixing?"

So there has to be a better way; there has to be a better way. Maybe it is a bit too early. I told my colleagues it is too early to try to put together this package. We are still in the hearing process. The Finance Committee, the Labor Committee, and the House committees are going through the hearing process. Let the hearing process run its course. But sooner or later, it is going to be up to us, Members of Congress, Democrats and Republicans, to see if we cannot come together. If not, we will come out here and we will have a big debate. Something will pass, and we will keep our fingers crossed and hope it is not to the detriment of the American people, the people who need health care.

Let me just say one other thing because for months and months, Republicans have been ridiculed, saying that, "Well, the polls show—" In fact, in December, this is what the polls showed: 64 percent of the people thought the Democrats could do a better job on health care; 21 percent thought the Republicans could do a better job. At the end of February, just 3 short months, that number is now that 45 percent think the Democrats could do a better job and 40 percent think Republicans could do a better job.

My point is this: We have not changed our position. We have said from the start that mandatory alliances, employer mandates, and price controls are not going to happen. Not many people agreed with us at the time. But then we had a lot of small business people, farmers, and others all across America—providers, nurses, doctors, whatever—and a lot of consumers who are concerned about maybe losing some of the benefits they have now, start listening to Republicans. And I think the poll demonstrates—I am not a great believer in polls; they can change quickly, too—that as of now, the parties are about even on who can best provide health care.

What does that mean to me? It means we ought to try to get together. It means there ought to be some bipartisanship, Republicans and Democrats. And, if not, the Democrats will have a bill and we will have a bill; we will vote; and the majority party will win. So it seems to me that we have a long way to go.

Mr. President, I ask that the poll numbers in the USA Today article entitled "Health Plan Support Falls" and also the numbers in the Washington Post be printed in the RECORD.

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

[From USA Today, Mar. 2, 1944]

HEALTH PLAN SUPPORT FALLS

The past month, President Clinton has lost support for his health-care plan among baby boomers (ages 30–49) and even among the youngest voters, his strongest backers:

[In percent]

	Jan. 30, 1994	Feb. 28, 1994
Age:		
18 to 29	64	56
30 to 49	56	40
50 to 64	56	46
65 plus	53	47
Liberals stand by Clinton:		
Conservatives	42	29
Moderates	64	51
Liberals	74	72
Parties MOVE Closer		
How Congress should deal with Clinton plan:		
Pass as is	24	20
Pass with changes	55	47
Reject	16	28
Majority still sees health care as a crisis:		
Crisis	57	53
Problem	42	.....
Not a crisis	.....	46

Men, elderly doubt crisis:	
Men	44
Women	60
Ages:	
18 to 29	54
30 to 49	54
50 to 64	59
65 plus	41

Percentage that say a specific political party can best deal with health-care policy:

[In percent]

	Dec. 6, 1993	Feb. 28, 1994
Democrats	64	45
Republicans	21	40

Percent saying "big concern":

	Oct. 10, 1993	Feb. 27, 1994
The quality of your medical care will decline	64	80
You might not have good choices of doctors or hospitals	72	75
The cost of your medical care will increase	70	74
People who need it most won't get adequate medical care	56	72
Some kinds of expensive medical services will not be available to all who need them	69	70
There will be a lot of fraud and abuse under the plan	67	70
Employers would eliminate existing jobs	64	69
The plan will cost too much	66	68
Taxes will have to be increased to pay for the plan	68	62
The plan would create another large and inefficient government bureaucracy	59	62
The plan will pay for legal abortions	43	47

NOTE: The most recent figures are from a Washington Post/ABC News national telephone poll of 1,531 adults conducted Feb. 24–27. Other data are from Washington Post-ABC News polls of approximately the same sample size. Margin of sampling error for all polls is plus or minus 3 percentage points overall. Sampling error is, however, only one of many potential sources of error in these or any public opinion polls. Interviewing was conducted by Chilton Research services of Radnor, Pa.

Mr. DOLE. Mr. President, the final point I make is that the more the American people learn about the Clinton plan, the less they like it.

So those who say we need more time to explain it, I think that is a loser, because every poll demonstrates that the more people find out about it—how big the Government is, how big the mandates are, and about the penalties. For example, you might go to jail if you ask the doctor to perform the operation early. Say you are scheduled for June and the operation is in May; you pay the doctor a little extra, and you can end up in jail, it says. Not so bad, if you go with your doctor. It is a penalty. There are a lot of penalties in this bill.

We have a lot of work to do. I just say to the President and Mrs. Clinton, I will give you credit for getting health care on the agenda. I do not give you credit for the plan you put on the agenda because I think it is a bad plan for America.

But we will have our retreat this next day and a half. We will not come out with a plan. But we will come out, I hope, closer together than we are now. We have a lot of good ideas on our side. We have at least three or four plans on the Republican side. We need to try to come together. Democrats have as many plans. They need to try to come together.

So in the final analysis, the President's plan is slipping away, and it is time for leadership in both parties to see if we cannot deal with this issue this year. If not, we may be doing what we had to do in 1983: We may have to appoint a commission, a commission composed of bipartisan experts to take a look at health care and to give Congress some guidance if we cannot resolve it ourselves.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

THE DISADVANTAGED MINORITY HEALTH IMPROVEMENT ACT OF 1993

Mrs. HUTCHISON. Mr. President, I rise today in support of a provision of a bill that we are going to pass in the Senate by unanimous consent in the next couple of days. I thank Senators KENNEDY, HATCH, and KASSEBAUM for working with me on a very important amendment for my State.

The bill is the Disadvantaged Minority Health Improvement Act of 1993, S. 1569.

The amendment that I rise to support will grant the establishment and operation of border State health and environmental labs along the United States-Mexico border. This provision supports and leverages the important laboratory work our border States are already providing. I commend and thank the managers of the bill for incorporating the provision which is so important to all of the border States.

Currently, all of the border States suffer from a critical shortage of environmental and occupational health monitoring and surveillance and efficient analytical laboratory services to support local and State health and environmental agencies. As population and commerce increases along the border as a result of our commitment to hemispheric free trade, the need for state-of-the-art laboratory capacity will only increase.

I am sure that my colleagues have seen the television reports from San Diego/Tijuana, Brownsville/Matamoros, or El Paso/Juarez spotlighting the deplorable environmental conditions that have developed there. Beyond those television reports are millions of border residence, primarily minority, who are subject to the health risks incumbent to these conditions.

We are already aware of some of these risks, but there are others we may not be aware of simply because there are not enough facilities to analyze them.

Let me give you an example of this problem from my home State of Texas. Recently, as part of a small research project in the Lower Rio Grande Valley of Texas, an EPA staff member obtained samples of fish from nearby waterways, a regular staple of many local diets, and it was determined that the edible tissue of the fish contained an unacceptable amount of the highly toxic chemical PCB. After further analysis, the Texas Department of Health promptly issued an advisory strongly recommending that fish taken from the waterways and reservoirs in the area not be eaten.

Of course, the Texas Department of Health gave these analyses priority status. However, in doing so, it had to set aside other important and urgent work. There simply is more work of that nature in the United States-Mexico border area than there are facilities to do it. There is an intolerable potential cost—the health of the citizens in the border area. So Federal support will mean badly needed improvement in the border States' abilities to respond to the health and environmental risks facing their citizens.

I really appreciate the authors of this bill. I received a call from the Governor of California just this week talking about the terrible burden that his State faces in dealing with illegal immigration. Really, it is a Federal problem, but California and Texas and many of the other border States, as well as northern States like New York and New Jersey and Florida, are dealing with a problem that really is a Federal problem. But they are having to pay for it out of State funds, and it is becoming an onerous burden and is causing taxes to increase in our State at a level that is really not fair.

So I am pleased that this one small step for the health of our border States is being taken by Senators KENNEDY, HATCH, and KASSEBAUM. I think it will go a long way toward improving the health along our border.

I thank you.

TEXAS INDEPENDENCE DAY

Mrs. HUTCHISON. Mr. President, I want to mention that today, March 2, is Texas Independence Day. I want to prolong a tradition that was started by my good friend and colleague, the late Senator John Tower, by reading the letter that Col. William Barret Travis sent from the Alamo during the time that he was holding that fort. Yesterday, when I was debating with Senator SIMON on his side for the balanced budget amendment, Senator SIMON had said that one of the reasons there were so many heroes at the Alamo is because there was no back door. I wanted to set the record straight and say there really was a back door at the Alamo, and it was a voluntary line drawn in the sand by Colonel Travis.

Colonel Travis said to the men at the Alamo that if they wanted to cross the line and fight for the independence of Texas, they could do it. If they did not, they could leave. One hundred eighty-four men walked across the line, or were carried on their stretchers, which was every man in the Alamo at the time. Those brave 184 men held the Alamo for 13 days. They allowed Sam Houston, the general who was assembling forces at the San Jacinto River, to have the time that he needed to do that in order to win the battle of San Jacinto and thereby win independence for Texas.

So I want to read, in memory of today, March 2, Texas Independence Day, this letter written by Colonel Travis, who was the commandant of the Alamo.

To the people of Texas and all Americans in the world—Fellow citizens and Compatriots—I am besieged by a thousand or more of the Mexicans under Santa Anna. I have sustained a continual Bombardment and cannonade for 24 hours and have not lost a man. The enemy has demanded a surrender at discretion, otherwise, the garrison are to be put to the sword, if the fort is taken. I have answered the demand with a cannon shot, and our flag still waves proudly from the walls. I shall never surrender or retreat. Then, I call on you in the name of Liberty, of patriotism and everything dear to the American character to come to our aid with all dispatch. The enemy is receiving reinforcements daily and will no doubt increase to three or four thousand in four or five days. If this call is neglected, I am determined to sustain myself as long as possible and die like a soldier who never forgets what is due his own honor and that of his country. VICTORY or DEATH.

P.S. The Lord is on our side. When the enemy appeared in sight we had not three bushels of corn. We have since found in deserted houses 80 to 90 bushels and got into the walls 20 or 30 head of Beeves.

WILLIAM B. TRAVIS.

The Alamo,
2/24/1836.

It was because of those brave 184 men defending the Alamo for 13 days against 6,000 troops that we were able to win the battle of San Jacinto and have the Texas independence that we all cherish, and Sam Houston became the first President of the Republic of Texas.

Thank you, Mr. President.

Mr. MURKOWSKI addressed the Chair.

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

EXTENSION OF MORNING BUSINESS

Mr. MURKOWSKI. I understand that morning business will end at 11 a.m. I ask unanimous consent that morning business be extended to allow me to make a statement.

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

IMMIGRATION HORROR STORIES

Mr. MURKOWSKI. Mr. President, the Senator from Wyoming [Mr. SIMPSON] introduced the Comprehensive Immigration and Asylum Reform Act of 1994 this morning, and made a lengthy statement with regard to the appropriateness and timeliness of that legislation which would address fraud and other inconsistencies in our immigration laws.

I am very pleased to see that the Senator who has worked so hard in this area and who is so knowledgeable on this subject has seen fit to lay his legislation down.

My statement this morning concerns the horror stories associated with some of the policies covering immigration. I think it is fair to say that a majority of my colleagues would agree that the

legislative intent clearly is not being carried out with regard to the enforcement of regulatory mandates.

Let me share with you this morning, Mr. President, the story of a constituent of mine who was fined $15,000 last Tuesday for violating the immigration laws by routinely asking new employees for identification to prove that they were authorized to work in the United States. We are all aware of the concerns associated with illegal immigrants coming into this country to work. By law, the burden is on the employer to address this concern by requiring employees to provide identification.

This company agreed to pay a civil penalty and change its practices in response to a lawsuit that was filed by the Justice Department's Office of Special Counsel for Immigration Related Unfair Employment Practices.

The suit accused the company in my State of asking new employees for a picture identification card and Social Security card to prove that they were authorized to work in this country.

I am sure the President would agree this morning that those two documents would be what a reasonable businessman would consider adequate identification to verify employment eligibility. But the Immigration Reform and Control Act of 1986 says that while employers must examine documents presented by new employees to verify eligibility for employment the employers cannot specify which of the various legally acceptable documents an employee must present.

Now, Justice Department Special Counsel, Mr. William Ho-Gonzalez, is quoted as saying that, "This case points out how even well-intentioned employers may run afoul of the law if they do not pay sufficient attention to the requirements of the employment authorization verification program." Furthermore, the spokesperson for the Justice Department said, "Taking short cuts in this area will invariably lead to trouble."

Mind you, the law requires employers to verify the identity and employment eligibility of anyone they hire, and the documents that this company requested would allow them to make this verification. But the Justice Department took the position that the law was technically violated because the company specifically asked for these documents.

Ironically, even though the Internal Revenue Service requires employees to have a Social Security number to be paid, the Justice Department took the position that a job application that requests an employee to show a Social Security card violated the immigration laws.

Mr. President, this particular employer is seasonal, employs many immigrant workers, and obviously is very conscious of the law against hiring illegal aliens.

I am told that the reason the Government was able to extract this $15,000 payment was that the law under which they would prosecute mandates a fine. Mandates a fine, Mr. President, for each employment application, each one. It does not matter whether the violation was intentional or unintentional, nor does it matter to the Justice Department whether harm was done. Thus, the Government is given an inordinate amount of leverage and employers are placed at an extreme economic disadvantage.

Mr. President, let me share a few more horrible details of this story. The Justice Department admitted that there was no evidence of discrimination or of anyone who was denied employment in violation of the law. So, no one was hurt. Furthermore, the INS reviewed the company employee files and documents on at least three occasions during the past 3 years, and during that time they did not object to the company's job application.

The company voluntarily and immediately changed its application once the Justice Department's interpretation was known, but the Justice Department went ahead and filed a lawsuit anyway—despite the fact that it could not identify a single victim of the process or the practice.

The Justice Department's position in the litigation was that each application the company handed out constituted a separate violation for which it could be fined from $100 to $1,000. The Justice Department told the company that their exposure was at least $350,000. The company settled because the Justice Department refused to dismiss the lawsuit unless the company paid a $15,000 civil fine.

The company paid the amount simply to avoid the expense of further litigation which would have amounted to a lawyer's full employment act. Again, there was no ruling that the company violated any discrimination law. There were no individuals harmed by the company's job application form. The fact that Mr. Ho-Gonzalez chose to publicize this settlement proves the entire exercise was undertaken for just one purpose—to send a message to all those employers out there, and I hope they are listening and watching, that the Justice Department is indeed focusing its resources on unwary employers.

So, Mr. President, I would encourage my colleagues, as we look at immigration reforms such as Senator SIMPSON's bill, to recognize the absurd effect of some of the laws that are passed here, and the inconsistent manner in which the laws are enforced. I think the story that I have related today is a classic case of where the legislative intent, which was to say that we wanted to make sure that illegal aliens are not being hired, was twisted to the point that the Justice Department has taken the unintended step of suggesting that an employer that asks for reasonable identification to satisfy himself that he is not dealing with an illegal alien will be prosecuted.

I find this an extraordinary extension of logic, but that is not unusual around here.

I thank the Chair. I wish the President a good day, and I yield the floor.

The PRESIDING OFFICER (Mr. CAMPBELL). The Senator from New York [Mr. MOYNIHAN], is recognized.

Mr. MOYNIHAN. Mr. President, before the distinguished Senator from Alaska leaves the floor, may I say I listened with attention to his remarks and they are very convincing.

There ought to be a rule. There are rules but they ought to be followed for purposes of enforcement of the law and not harassment of individual employers.

Mr. MURKOWSKI. I thank my friend from New York for his comments and observation. I totally agree.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the hour of 11 a.m. having passed, morning business is now closed.

SOCIAL SECURITY ADMINISTRATION INDEPENDENT AGENCY ACT

The PRESIDING OFFICER. The Senate will now proceed to the consideration of S. 1560, which the clerk will report.

The bill clerk read as follows:

A bill (S. 1560) to establish the Social Security Administration as an independent agency, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, my distinguished friend and colleague, the former chairman of the Committee on Finance, and I have the honor to bring to the Senate floor for the first time a bill which has on three occasions been reported from the Committee on Finance, I believe on one occasion when Senator PACKWOOD was chairman, and once again today. This bill was reported on a voice vote with one Senator declaring his opposition but otherwise is effectively a unanimous measure.

It has three times passed the U.S. House of Representatives by what you might legitimately call overwhelming majorities as, for example, in 1986 when the vote was 401 to 0.

The bill is very much in the manner of the moment, called reinventing Government, that our good friend and former colleague, now Vice President GORE, has been involved with. That no-

tion of reinventing suggests going back to earlier good arrangements and that is what we propose here.

The Social Security Administration began as an independent agency in the executive branch. The 1935 legislation created it as such. It had three Commissioners, one a managing Commissioner. It got off to a very good start, almost too good.

This is perhaps a more complicated idea than I am able to handle, but I sometimes think it got off to too good a start. It became the model agency. The great civil servants of the New Deal era came to work in Social Security and they stayed forever, and they are still here. They are here to this day, some of them. I think of the two Bobs as they are called, Bob Ball, who early on became an employee of the Social Security agency, and who rose to be the Administrator under President Kennedy, President Johnson, and President Nixon and is still very active in the councils that deliberate issues like this.

And Robert J. Myers, who, as a young graduate student from the University of Wisconsin, came to Washington to work on the Committee on Economic Security Staff. That committee was headed by Francis Perkins. The head of the professional staff was Edwin J. Witte, a great professor of economics in the Wisconsin tradition. Bob Myers went on to be chief actuary.

When we found that the trust funds were in at least temporary difficulty in the early 1980's, President Reagan established a National Commission on Social Security Reform. The executive director of that Commission was none other than Robert J. Myers. Alan Greenspan, the now distinguished Chairman of the Federal Reserve Board, was chairman. I was a member. I was one of the Senators appointed, along with Bill Armstrong, our revered late friend John Heinz, Lane Kirkland, and BOB DOLE, the Republican leader.

Not incidentally, I make the point that the report of that Commission, whose recommendations Senator DOLE and I brought to the floor here in the Senate in 1983, and which passed overwhelmingly, that report called for an independent agency.

Now, why are we doing this? Two reasons. One is that the agency began to lose some of its distinctive energy and style in administration when it fell into a sequence of other agencies and departments, eventually Cabinet Departments, that had other missions. And it began to get further and further out of focus.

It was not something the Secretary of Health, Education, and Welfare came to work in the morning thinking about. It is not something the Secretary of the Health and Human Services comes to work in the morning thinking about. At least in the Department of Health, Education, and Welfare, created under President Eisenhower, the word "welfare" was there; the idea of social welfare. That was removed in a change where education became a separate department under President Carter.

The Department of Health and Human Services basically has become a department of health. Typically doctors, medical doctors, have been the Cabinet officers, and a fine thing, too. A Department of Health is very much in order. But in the process, the largest component of the Department has gotten lost.

If you get the Congressional Directory for 1993—and I will point this out to my friend, Senator PACKWOOD—where we get to the Secretary of Health and Human Services, on page 803, it says: Office of the Secretary, Secretary of Health and Human Services, Donna E. Shalala. Then, 278 names later, you get to the Social Security Administration—"Administrator—vacant"—278 names between the Secretary, who is an incumbent, and Social Security Administrator—vacant. The job went more than a year vacant.

In my now more than 18 years in the Senate, there have been 12 administrators. From a period when you had long, stable administration and people who knew their work and understood their assignment, knew how they had begun, you have come to a time when you get one administrator, another administrator, another administrator, no administrator, no administrator, another administrator. Nobody is minding the store.

After the 1983 report, in 1984, Congress commissioned a study of the best form of governance for the Social Security Administration. Elmer Staats, the former Comptroller General, headed the study. He made a powerful case, a superb report, with respect to an independent agency.

The Social Security Administration has independent functions, Mr. President. It is the trustee of the Social Security trust funds. It is responsible for the integrity of the system. The head of that agency has to be able to look the President in the eye and say, "Mr. President, no, I will not do that. If you wish, sir, I will resign, if you wish, ma'am, I will resign, but I will not do that. And when I resign it will be noticed."

Mr. President, I might ask my friend, the former chairman of the committee, if the incumbent administrator of the Social Security Administration resigns, who would know it?

Mr. PACKWOOD. You and I.

Mr. MOYNIHAN. We might get a notice somewhere in the mail.

Mr. PACKWOOD. We would see it in the Federal Register somewhere.

Mr. MOYNIHAN. Would the Senator care to estimate the last time an administrator of the Social Security Administration had a meeting with the President in the Oval Office on the business of the Social Security Administration? Twenty years?

Mr. PACKWOOD. 1939?

Mr. MOYNIHAN. 1939.

Excepting that Lyndon Johnson would have known who Bob Ball was because Wilbur Cohen would have brought him.

But a long time ago, too long.

One of the results is that a majority of nonretired adults in the United States today do not believe they will get their Social Security. Nothing tells them that.

But we still use that little pasteboard card that we began in the 1930's. I joined the Social Security system 51 years ago and I got that little card. We have enacted a statute saying, turn it into a good card, a card with a hologram, a piece of plastic. The statute specified a tamperproof card. But the agency gave us back the same little piece of cardboard as before, only with invisible hairs in the cardboard itself so that it is instantly detectable in an FBI lab.

There is the card, the same 1935 card.

Where is our health card? I have a health card right here.

When President Clinton came to the House to deliver his joint message to Congress, his State of the Union, he held up a health card. And it is a dandy.

My golly, it has your name in gold plate, it is plastic, there is a ZIP Code, they can put it through and know exactly who you are.

It is very important, incidentally, to American citizens of, say, Mexican descent, to have in their hand a piece of plastic which an employer can readily use: Good morning, Mr. Lopez—there is Mr. Lopez right there—here is your card. We know who you are. And they know who you are in Washington. Not this pathetic thing.

Fifty—fifty-one years now—never a day late or a dollar short; yet the majority of the American people—nonretired adults—do not think they are going to get their benefits.

I will grant, it does not really make that much difference what 20-year-olds think in these matters. And 30-year-olds—well, it is a transition. But when 40-year-old Americans with families and college coming up think, I am never going to get Social Security, we have failed to persuade them of something very important to them.

We could give them an annual report. I have been 51 years in the system, save for my present work. I would never have any evidence that the Social Security Administration ever got my name right, spelled it right, recorded my address—entered any contributions I made—never.

It is not hard to do. The stamp is the largest single cost. They can send out, once a year, a report. This is mine. It

goes back to 1937. In the period 1937 to 1950, my taxable earnings were $1,615, and I paid $16 in tax. But the tax rate was very, very small then.

They do not, as a matter of fact, have me credited with 3 years of Navy time. I could ask them to fix it up. They would be happy to learn about it.

This report tells you what you will get at retirement age, in round terms. It tells you exactly what your survivor's benefit would be, what your child would receive if you died, what your spouse would receive if you died.

These are the papers that, as I say, you throw away in your twenty's and lose in your thirty's. In your forty's you find a desk drawer to put them in, and you would take them out once in awhile and look at them. I find, for example, if I wait until 70 to receive benefits, my monthly benefit will be $1,470—not bad.

Important to note: One of the reasons we want to have this information out is that rather suddenly we have reached a point where the Social Security retirement benefits just about give you back what you put in. It is a form of Federal savings. It is not the bonanza it was for that wonderful lady in Vermont—Ida May Fuller—who contributed about $27 and retired in 1940. I can remember from my youth, the annual photograph of the gentleman from the Social Security Administration presenting Ida May with her first check of the year. She did very well off her $27. Most of us will get back what we put in, and it is a good form of saving.

People need to know that. It is their money being held in trust. It is not general revenue. We have a surplus in place. We put it in place in the 1977 Social Security amendments, as Senator PACKWOOD will recall. The surplus accumulated from the year 1977 to the year 2015 would buy the stock exchange. But not a penny has been put aside. And the only way it can be put aside is to have a balanced budget and reduce the privately held public debt, thereby increasing private savings. We have not done that.

There are going to be a lot of people around here asking, "Why have you not done it," with greater vehemence. One of the ways in which we could restore a sense of confidence, imbue a sense of confidence—would be to send this earnings statement out to everybody. I authored a statute that will require the Social Security Administration to start doing it in 1995. But it had to be put in statute, and it applies only to people over 60. They are good people up in Baltimore, but with no direction.

I will give an example and then I will yield, with the patience of my friend from Oregon, if he can just give me another 5 minutes.

One of the things we learned when the new administration began—is something which we should have known. I have been the chairman of the Subcommittee on Social Security. I should have known it and I did not. But the Social Security Administration should have known it with a great deal more sense of urgency than I: The system for payment of Social Security taxes, Federal Insurance Contribution Act, FICA, for domestic servants, was not working. We had set an amount of $50 a quarter back in the 1950's and never increased it for inflation, with the result that Social Security taxes were owed on the babysitter. That is something you do not want to do.

Babysitting is sort of a right of passage for young women in our society. It is a good one. The first time you are asked next door to look after the two kids while the parents go off for a movie: Put her to bed at 10 o'clock; here is where we are if you need us. It is a nice, trusting relationship. You learn responsibility. You get a little money. That is fine.

But there is another category of adult worker, cleaning women. Women, sir—I do not wish to give any offense—women who clean other people's toilets and are day laborers. We looked up and we found that, because of the very complex quarterly returns that had to be filled out, as if you were running a machine tool plant and had an accountant—and I know there are many professional couples who just hire an accountant to do it for them now—only a quarter of these women—they are not all women—but only a quarter of these persons were getting the Social Security contributions made on their behalf that were due them under the law.

Did anybody in the Social Security Administration ever come to us and say this is a problem, we have to solve this? We have a good solution in the Committee on Finance. I think my colleague agrees on that. Senator PACKWOOD and I have agreed on it, I think. We have worked it out. But we never heard from them.

Then, without any sense of recrimination, our administration came to office, the present one, and very early on in the nomination of an Attorney General, this issue arose. The Attorney General had to withdraw at the beginning of 1993. At the end of 1993, Admiral Inman, expected to be nominated as Secretary of Defense, had this problem. In an announcement explaining why he was leaving, he spoke at some length about it, and said he was going to be in touch with us. He had been speaking with the head of the National Organization of Women about it.

The whole year went by and we never got a note from the administration about what they wanted to do about this problem. Frances Perkins would have been in to see the President to say: "These are day laborers. They are women. What they need is 40 quarters of coverage."

Anyone who is paid $620 a year would have taxes owed on their behalf and we would have them paid on the 1040. Easily done. We have never heard a word.

Now, Mr. President, why have we not heard from them? For one thing, the job of the Administrator was vacant until November. Somebody might have thought this is kind of a serious thing; we better get that job filled. But it was not.

And so we are here. An independent agency will address these issues and address the issue of confidence. If the majority of nonretired American adults do not think they will get Social Security, why, Mr. President, do we think they will believe this health care will always be there? What are they saying to us? I think they are saying something we ought to pay attention to and address.

I can say, in closing, what Senator PACKWOOD will, I am sure, say as well; that there is no significant organization that we are aware of concerned with these matters in the Nation that does not support this measure: The American Association of Retired Persons, the largest membership organization in America, at least 35 million members, including my wife; the AFL–CIO; the National Council of Senior Citizens all have supported this. The House has repeatedly passed the measure, and we hope to do so today.

Mr. President, my good friend has been patient with me, and I yield the floor.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon [Mr. PACKWOOD] is recognized.

Mr. PACKWOOD. Mr. President, I am delighted to join my good friend, the chairman of the Finance Committee, in supporting all of the measures for all of the reasons he said, but I will touch just a moment on why the public has a sense of uneasiness about Social Security, and perhaps the creation of an independent Social Security agency can alleviate that sense of fear a bit.

The chairman of the committee indicated that, at the moment, we are collecting more in taxes than we pay out. That was a deliberate choice, because the Chair will recall that around 1979, 1980, and 1981, we had high rates of inflation. The Social Security benefits were tied to the cost of living, and they were going up with that high rate of inflation—10, 12, 13, 14 percent.

But the tax base, the revenues to produce the money to pay the Social Security benefits, was not indexed to any kind of cost of living. So we finally got to the place, in the early 1980's, where we had a surplus of barely, as I recall, 2 to 3 months. If the revenue ceased to come in, we could pay benefits for 2 or 3 months, and that is it—gone. In fact, even with a bad recession and the revenues falling, we were very near to a touch-and-go situation.

So we changed the system to make it more like a private insurance actuarial

system in which we said we will collect more money now and set it aside so that we will have the money to pay off the baby boom when it starts to retire. You have this immense population group moving through the 30 to 40 to 50 age group, and they were the ones born from 1945 to 1965. Let us assume they retire at 65. They will start to retire in about the year 2010. The first of them will be 65 then.

Over the next 20 years, from 2010 to 2030, you have an immense group of retirees, and the extra money we are collecting now is designed to be held to pay them off when they retire. A prudent insurance company does the same thing. You buy an insurance policy from Metropolitan Life, Prudential, or any other insurance company, and they take a look at the demographics of all the policyholders they have. They figure how many are age 20, 30, or 40; how much they are going to need in the year 2010, 2020, 2030 to pay off their beneficiaries. We decided to do the same thing they did.

It is important to understand, however, that there is not a separate pot of money for each Social Security recipient. All of the money comes in and it goes, in essence, to the U.S. Treasury. As I recall, the Social Security actuaries once estimated that it is about $70 billion more we collect than we pay out. In comes $70 billion more from my wages, your wages, everybody's wages—your employer pays half, you pay half, we collect it and we pay out the benefits, and we have $70 billion left over. We take that $70 billion—the Social Security Administration is entitled to it—in essence, Treasury takes it and it gives to the Social Security Administration a bond, an IOU: The U.S. Government owes you, the Social Security Administration, $70 billion.

This process continues for about the next 15 to 20 years—more money coming in than going out. Then, depending upon the estimates, what we call optimistic or intermediate or pessimistic estimates, more money starts to flow out of the fund than comes into it. Let us just pick a year. Let us pick about 2012 or 2013. We start to pay out more benefits than we take in.

At that stage, the Social Security Administration, depending upon the assumptions—I hate to be cavalier in talking in terms of trillions—but the Social Security Administration will hold anywhere from $3 trillion to $6 trillion or $7 trillion in bonds of the U.S. Government—IOU's.

I want to emphasize, this is no different than what an insurance company does. Insurance companies invest heavily.

Mr. MOYNIHAN. It is $4.5 trillion.

Mr. PACKWOOD. The chairman says it is $4.5 trillion; $4.5 trillion in IOU's. Insurance companies do the same thing except they do not invest solely in Government bonds. They have a lot of Government bonds, and they may invest in some real estate. They try to spread their portfolio in such a way that they cannot get hurt too much because they know they have benefits to pay out, whereas we prohibit the Social Security Administration from investing in anything but Government bonds.

On occasion, the suggestion has been raised that we should let Social Security cut loose and invest in things other than Government bonds where they might get a better return, because Government bonds are a very secure investment and, therefore, the percentage of return on them is lower than a riskier investment.

I hate to think, however, what the situation would have been in about 1977 or 1978 had we said to the Social Security Administration, "Go ahead and invest in what you want," and they had invested in Texas real estate. We would have been bailing out Social Security from about 1981 on perpetually, and there would have been a tendency to say, "Why, if we can get a 10- or 12-percent return instead of the Government bond 8 percent return, let us invest in real estate."

So we prohibit them from investing in anything but Government bonds. When we take in this extra $70 billion, we give the Social Security Administration a bond, an IOU. We take the $70 billion and we spend it. We spend it on education; we spend it on welfare; we spend it on defense. We spend it on all the things Government spends money on.

The fear I think the people have is that when, 20 years hence, the Social Security Administrator takes his or her IOU to the Treasury and says, "Madam Treasurer, will you please give me some money so I can pay the benefits?" The Treasurer will say, "Give you money? We spent that money 20 years ago. We don't have any money."

That scenario is only true if the U.S. Government reneges on its promise to redeem the bonds. We have never failed to redeem bonds in the 200-plus-year history of this country. And if we were to fail to redeem the Social Security bonds, it is not just Social Security; it is the bonds that Metropolitan Life has, Prudential has, General Motors holds. It means the country has gone bankrupt if we fail to redeem the bonds.

But I think that is the fear of Social Security recipients. They think their money is being spent now and they have nothing in exchange for security. Indeed, what they do have is still what the world regards as the single best security in the world—U.S. Government bonds. They sell at a better premium than any other Government bonds and are regarded as more secure, practically, than gold or anything else.

If the creation of this administration as an independent administration—and I think it should be—will help make the public aware that, indeed, the Social Security Administration is not holding IOU's you cannot fine and levy on, but is, indeed, holding a Government bond, they will feel a bit more secure.

I am frank to say, when the year 2015 or 2012 comes, if we are still running a $200 billion deficit, we are going to be running bigger deficits because we will have to pay off the Social Security bonds. I understand that.

But all I can say is this country has never reneged on redeeming a bond in its 200 years.

Mr. MOYNIHAN. Will my friend yield——

Mr. PACKWOOD. Yes.

Mr. MOYNIHAN. Just for a question to which I know he knows the answer but just to put it in the RECORD at this point. As my friend knows, the bonds that Treasury issues to the Social Security Administration have a special provision; they can never sell below par, as the Senator well knows.

Mr. PACKWOOD. That is correct. They cannot sell below par. They cannot be sold below what they were sold for. That is a good protection because there are bonds, a fair number of bonds, in the market that go up and down. You sometimes have to sell your bond at less than what we call par value, but that is the marketplace. You have a $1,000 bond. You want to sell it. You can only get $900 for it. That is not true of Social Security bonds. So the Government has promised to redeem them at least at what they call par value.

So I support this, Mr. President. I think it is a good provision. I think it will heighten the awareness of the Social Security Administration and let people know that even though the money they are now paying in is spent for things they probably like—education, environment, Forest Service, Coast Guard—indeed, their money is safe so long as the Government is safe. And if the Government is not safe, it is not just Social Security that is in trouble; it is everybody that has any investment in any State in this country.

I thank the Chair and I hope we will pass the bill.

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

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. 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. MOYNIHAN. Mr. President, Washington is a place that pays a lot of attention to polls. And not every poll is of great interest. But I might say that as I was speaking earlier, and as

Senator PACKWOOD was speaking, I noted that the very able young professional persons who are here in the Senate as Senate staff employees were listening in a manner that they do not always listen. Maybe because the hour is early enough for them to be attentive, but I think the subject is of interest.

So I just took an unscientific, informal poll of five persons, each of whom has graduated from college, I do not doubt; most of whom have law degrees; they are parliamentarians; they are people we depend absolutely on for the working of this institution. If they did not get things right, we would not have any record about what we had done.

I can report the results of my survey. Of the five samples, I asked, "Do you think you will get your Social Security? Two said no; two said not all of it; and one trusting young citizen said yes. But that is not reassuring.

Mr. PACKWOOD. Can we have name, rank, and Social Security number of those four who are not trusting?

Mr. MOYNIHAN. If they will give it to me, I will get them a copy of their chart. So you will know at least that you will continue to get your retirement; you will know that you are covered for disability benefits. Not everyone knows that. You do know that, those of you who are married, it is altogether likely that in the event you should die your spouse will receive benefits; your children will receive benefits.

Still you do not trust us. After 18 years in which I have been on this floor asking you to trust the Social Security Administration, it has not sunk it; not you. As a matter of fact, the two senior most Members are the ones that absolutely believe they will not receive their Social Security.

I simply make the point that they are attentive. I think they respect the public confidence. And we ought to be attentive.

With that, Mr. President, I see the Senator from Maine has risen, if he wishes to proceed, to offer an amendment.

Mr. COHEN. I thank my friend for yielding.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COHEN. Mr. President, I might inform my friends that I have a technical bill on the way over to the floor. I would like to begin speaking about the measure that I intend to offer, and perhaps that will save some time rather than going into an extended quorum call.

Mr. President, we have a program that is designed to deal with a serious problem in this country; namely, that of drug and alcohol addiction.

There are two programs under the Social Security Administration's jurisdiction. One is the Supplemental Security Income Program, which is designed to assist the very poorest poor that we have in this country, and the second is the Social Security Disability Insurance Program. Under these programs, those individuals who are in fact disabled by virtue of an addiction to either drugs or alcohol are required to do two things. They are required to seek treatment. That is one of the conditions that we impose in order to assure the taxpayers that the money is going for the purpose of which it was intended. Second, in order to ensure the safeguarding of taxpayer dollars, the SSI Program requires that the benefits are paid to a responsible third party. Obviously, the person who is addicted is not a responsible individual, and we require payments to go to a representative payee.

A recent investigation conducted by my minority staff on the Senate Special Committee on Aging and the GAO found that the SSI and SSDI programs are out of control and are, in effect, subsidizing drug and alcohol abuse, with little enforcement of treatment requirements. Out of the estimated 250,000 addicts on the rolls through either heroin, alcohol, or other drugs, however, only 78,000 are required to seek treatment. Of that 78,000, only approximately 9 percent seek treatment. So the calculations are that out of the total of 250,000 that we know are addicted, only about 3 percent get any kind of treatment at all. Similarly, only a portion of the estimated 250,000 drug addicts and alcoholics now on the disability rolls have their checks go to a representative payee.

So we have a situation in which money is going directly to individuals who are addicted. They are, in fact, using the money to further their addiction. They are going out and buying drugs with the money supplied by the taxpayers. They are buying alcohol to achieve the same end. And the taxpayer throws his or her hands up in despair.

Mr. President, $1.1 billion basically is going directly to fuel addiction. What this amounts to is revenue sharing for addicts. The public, I think, is justifiably concerned. When they find, for example, that these third-party payees who are getting the money from the individuals can even be tavern owners, the public is outraged. For example, we know of a case in Denver where a liquor store owner is getting $160,000 a year to, in effect, run a tab for the recipients, the beneficiaries, who end up spending their benefits on booze and drinking away taxpayers' money.

The amendment that I am proposing, cosponsored by Senators DOLE and KASSEBAUM, and others, would go far in correcting this problem. This amendment would insist that whether one is receiving payments through the SSI Program or the Disability Insurance Program, if they are impaired as a result of drug or alcohol addiction, that they must seek treatment as a condition of receiving, and continuing to receive, those benefits.

This amendment also prohibits retroactive lump sum payments from being paid directly to an individual who receives benefits in whole or in part due to substance abuse. Today we have retroactive payments being given to people who are addicted to drugs or alcohol in amounts as high as $15,000 to $20,000. That $15,000 and $20,000 payment then is made directly to that individual or a third party, who in turn gives the money over to the addict. They go out and either buy more drugs—and we have had cases of people who bought large amounts of drugs with their lump sum benefits and died from overdoses. One individual took his lump sum and bought a van and two cars, each of which he demolished, and then ended up in a hospital addicted again.

Mr. President, the nature of the problem is escalating. We have seen, for example, a 150-percent increase in those going onto the disability rolls on the basis of drug addiction and alcoholism from 1989–1992. We added 22,634 to the rolls in 1989; we added another roughly 29,000 in 1990; an additional 38,000 in 1991; then 58,000 in 1992. It is going up exponentially.

There is a reason I assume. Some of that may be because more and more people are becoming addicted but also more and more people are becoming aware of the program. For example, the word on the street among addicts and alcoholics is that the SSI and SSDI programs are easy sources of cash. In a recent example, one person called my office and said her brother was getting out of prison. He found out about the SSI program, and he is going immediately to apply on the basis of drug addiction. Coming out of prison he was addicted and he was "thrilled to learn" that SSI would pay him for his addiction, and he had no intention of going to treatment.

We have more people becoming aware of this. The word is out that this is an easy way to get some sort of sustenance during the course of a month. So more and more people are applying for it.

The purpose of this amendment is not to see treatment stopped. We want to see treatment really enhanced, increased, and force those individuals who have a problem to get the kind of treatment that they need.

But right now, as I pointed out, they are getting the money without the treatment. They are getting it in lump-sum payments, and I think the program's objectives are being completely ignored.

The situation gets even worse. I recently offered an amendment which was accepted unanimously when the emergency supplemental appropriations bill came to the floor. That had to do with a situation that came down

as a result of a Ninth Circuit Court of Appeals' opinion. We had an individual who was on disability. He is an addict, addicted to heroin. He would, in the course of a day, help three other addicts acquire significant amounts of heroin. He, of course, would be compensated by getting several grams of heroin for himself, or about $150 a day. So while he is receiving disability payments, he is also engaged in a little bit of dealing to further his own habit of $150 a day. It went to court. The ninth circuit ruled that that individual was not engaged in substantial gainful activity; that he was not engaged in substantial gainful activity because his work really only took about 20 to 30 minutes a day. "No heavy lifting involved" is essentially what they are saying. He was not initiating the telephone calls. The individuals were calling him saying, "Can you help us out by buying heroin for us, and we will give you a little piece of the action," so to speak. In this case, the court essentially ruled that SSA would continue his disability payments, while he nurtured his habit through this illegal activity.

The amendment we passed, which was dropped in conference, and which is also part of the amendment I am offering here today, specifies that any proceeds derived from criminal activity to support substance abuse will constitute substantial gainful activity. The amendment we are offering today also requires everyone who receives SSI or disability insurance payments based on substance abuse must, as a condition of receiving those payments, seek treatment. The Social Security Administration must establish agencies for each State to refer and monitor the treatment of substance abusers receiving SSI or SSDI benefits. As of the beginning of this year, only 18 States had this sort of monitoring agency within their State. We have almost half of our States without any sort of authorized monitoring center. So we do not know how the money is being spent or whether there is treatment being given.

So we would require the Social Security Administration to in fact do what we all want; namely, provide for the monitoring of the treatment of these individuals receiving the money. In addition, the amendment prohibits benefits and retroactive payments to be paid directly to those who are addicted. They must be paid to the representative payee, who under our amendment would be required to be an institution, agency, or treatment center.

In addition, our amendment provides a cutoff period of 3 years of benefits for individuals receiving SSI or SSDI on the basis of substance abuse. Senator KASSEBAUM and her staff determined that most professionals believe a substance abuser will be treated within that 3-year period. Those who are not should not be able to receive a lifetime of benefits from SSI or SSDI, unless there is another qualifying basis for disability.

I have one other chart to illustrate the negative effects of paying cash benefits directly to addicts. It shows the correlation between attending treatment and getting lump sum cash benefits. A study of those receiving methadone as a substitute for their heroin addiction showed that before they receive their disability check, the average time someone would miss their treatment would be roughly five times before they got their disability checks. As soon as they received their checks, absenteeism went up to 18 days. Obviously, they were taking the check and going out and buying heroin, since individuals who are receiving methadone treatment become violently ill if they miss their treatment. When the money runs out, they go back into methadone treatment. So there is a direct connection between our system of paying out money and not insisting upon the treatment itself.

So these are the issues we are trying to address, and I want to make sure everybody understands we are not trying to discourage treatment or take away money from those who need treatment. We want to make sure the money is not going into a needle or into a bottle and that the people who need the treatment get it and that the taxpayer feels satisfied that this program is being monitored, and operates efficiently and responsibly. That is not the case today.

So I offer this amendment.

AMENDMENT NO. 1474

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine [Mr. COHEN], for himself, Mr. DOLE, Mrs. KASSEBAUM, Mr. DOMENICI, Mr. THURMOND, Mr. GRASSLEY, Mr. NICKLES, Mr. LIEBERMAN, Mr. DANFORTH, Mr. LUGAR, Mr. KOHL, Mr. WARNER, Mr. CHAFEE, Mr. BENNETT, Mr. STEVENS, Mr. MATHEWS, Mr. HOLLINGS, Mr. COCHRAN, and Mrs. FEINSTEIN, proposes an amendment numbered 1474.

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

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

The amendment is as follows:

At the appropriate place insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Social Security Disability and Rehabilitation Act of 1994".

SEC. 2. REFORM OF MONTHLY INSURANCE BENEFITS BASED ON DISABILITY INVOLVING SUBSTANCE ABUSE.

(a) SOCIAL SECURITY DISABILITY INSURANCE.—

(1) IN GENERAL.—Section 223 of the Social Security Act (42 U.S.C. 423) is amended by adding at the end the following new subsection:

"Limitation on Payment of Benefits by Reason of Substance Abuse

"(j)(1)(A) Notwithstanding any other provision of this title, no individual whose disability is based in whole or in part on a medical determination that the individual is a drug addict or alcoholic shall be entitled to benefits under this title based on such disability with respect to any month, unless such individual—

"(i) is undergoing, or on a waiting list for, any medical or psychological treatment that may be appropriate for such individual's condition as a drug addict or alcoholic (as the case may be) and for the stage of such individual's rehabilitation at an institution or facility approved for purposes of this paragraph by the Secretary (so long as access to such treatment is reasonably available, as determined by the Secretary), and

"(ii) demonstrates in such manner as the Secretary requires, including at a continuing disability review not later than one year after such determination, that such individual is complying with the terms, conditions, and requirements of such treatment and with the requirements imposed by the Secretary under subparagraph (B).

"(B) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in subparagraph (A), in order to assure such compliance and to determine the extent to which the imposition of such requirements is contributing to the achievement of the purposes of this title. The Secretary may retain jurisdiction in the case of a hearing before the Secretary under this title to the extent the Secretary determines necessary to carry out the preceding sentence. The Secretary shall annually submit to the Congress a full and complete report on the Secretary's activities under this paragraph.

"(C) The representative payee and the referral and monitoring agency for any individual described in subparagraph (A) shall report to the Secretary any noncompliance with the terms, conditions, and requirements of the treatment described in subparagraph (A) and with the requirements imposed by the Secretary under subparagraph (B).

"(D)(i) If the Secretary finds that an individual is not complying with the terms, conditions, and requirements of the treatment described in subparagraph (A), or with the requirements imposed by the Secretary under subparagraph (B), or both, the Secretary, in lieu of termination, may suspend such individual's benefits under this title until compliance has been reestablished, including compliance with any additional requirements determined to be necessary by the Secretary.

"(ii) Any period of suspension under clause (i) shall be taken into account in determining any 24-month period described in subparagraph (E) and shall not be taken into account in determining the 36-month period described in such subparagraph.

"(E)(i) Except as provided in clause (ii), no individual described in subparagraph (A) shall be entitled to benefits under this title for any month following the 24-month period beginning with the determination of the disability described in such subparagraph.

"(ii) If at the end of the 24-month period described in clause (i), the individual furnishes evidence in accordance with subsection (d)(5) that the individual continues to be under a disability based in whole or in

part on a medical determination that the individual is a drug addict or alcoholic, such individual shall continue to be entitled to benefits under this title based on such disability.

"(iii) Subject to clause (iv), if such an individual continues to be entitled to such benefits for an additional 24-month period following a determination under clause (ii), clauses (i) and (ii) shall apply with regard to any further entitlement to such benefits following the end of such additional period.

"(iv) In no event shall such an individual be entitled to benefits under this title for more than a total of 36 months, unless upon the termination of the 36th month such individual furnishes evidence in accordance with subsection (d)(5) that the individual is under a disability which is not related in part to a medical determination that the individual is a drug addict or alcoholic.

"(2)(A) Any benefits under this title payable to any individual referred to in paragraph (1), including any benefits payable in a lump sum amount, shall be payable only pursuant to a certification of such payment to a qualified organization acting as a representative payee of such individual pursuant to section 205(j).

"(B) For purposes of subparagraph (A) and section 205(j)(4), the term 'qualified organization'—

"(i) shall have the meaning given such term by section 205(j)(4)(B), and

"(ii) shall mean an agency or instrumentality of a State or a political subdivision of a State.

"(3) Monthly insurance benefits under this title which would be payable to any individual (other than the disabled individual to whom benefits are not payable by reason of this subsection) on the basis of the wages and self-employment income of such a disabled individual but for the provisions of paragraph (1), shall be payable as though such disabled individual were receiving such benefits which are not payable under this subsection."

(2) CONFORMING AMENDMENTS.—

(A) Section 205(j)(1) of such Act (42 U.S.C. 405(j)(1)) is amended by inserting ", or in the case of any individual referred to in section 223(j)(1)(A)" after "thereby".

(B) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking "legally incompetent or under the age of 15" and inserting "legally incompetent, under the age of 15, or a drug addict or alcoholic referred to in section 223(j)(1)(A)".

(b) SUPPLEMENTAL SECURITY INCOME.—Paragraph (3) of section 1611(e) of the Social Security Act (42 U.S.C. 1382(e)) is amended to read as follows:

"(3)(A)(i) No person who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1614(a)(3)) shall be an eligible individual or eligible spouse for purposes of this title with respect to any month if such individual's disability is based in whole or in part on a medical determination that the individual is a drug addict or alcoholic, unless such individual—

"(I) is undergoing, or on a waiting list for, any medical or psychological treatment that may be appropriate for such individual's condition as a drug addict or alcoholic (as the case may be) and for the stage of such individual's rehabilitation at an institution or facility approved for purposes of this paragraph by the Secretary (so long as access to such treatment is reasonably available, as determined by the Secretary), and

"(II) demonstrates in such manner as the Secretary requires, including at a continuing disability review not later than one year after such determination, that such individual is complying with the terms, conditions, and requirements of such treatment and with the requirements imposed by the Secretary under clause (ii).

"(ii) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in clause (i), in order to assure such compliance and to determine the extent to which the imposition of such requirements is contributing to the achievement of the purposes of this title. The Secretary may retain jurisdiction in the case of a hearing before the Secretary under this title to the extent the Secretary determines necessary to carry out the preceding sentence. The Secretary shall annually submit to the Congress a full and complete report on the Secretary's activities under this subparagraph.

"(iii) The representative payee and the referral and monitoring agency for any individual described in clause (i) shall report to the Secretary any noncompliance with the terms, conditions, and requirements of the treatment described in clause (i) and with the requirements imposed by the Secretary under clause (ii).

"(iv)(I) If the Secretary finds that an individual is not complying with the terms, conditions, and requirements of the treatment described in clause (i), or with the requirements imposed by the Secretary under clause (ii), or both, the Secretary, in lieu of termination, may suspend such individual's benefits under this title until compliance has been reestablished, including compliance with any additional requirements determined to be necessary by the Secretary.

"(II) Any period of suspension under subclause (I) shall be taken into account in determining any 24-month period described in clause (v) and shall not be taken into account in determining the 36-month period described in such clause.

"(v)(I) Except as provided in subclause (II), no individual described in clause (i) shall be entitled to benefits under this title for any month following the 24-month period beginning with the determination of the disability described in such clause.

"(II) If at the end of the 24-month period described in subclause (I), the individual furnishes evidence in accordance with section 223(d)(5) that the individual continues to be under a disability based in whole on a medical determination that the individual is a drug addict or alcoholic, such individual shall be entitled to benefits under this title based on such disability for no more than an additional 36 months.

"(III) Subject to subclause (IV), if such an individual continues to be entitled to such benefits for an additional 24-month period following a determination under subclause (II), subclauses (I) and (II) shall apply with regard to any further entitlement to such benefits following the end of such additional period.

"(IV) In no event shall such an individual be entitled to benefits under this title for more than a total of 36 months, unless upon the termination of the 36th month such individual furnishes evidence in accordance with section 223(d)(5) that the individual is under a disability which is not related in part to a medical determination that the individual is a drug addict or alcoholic.

"(B)(i) Any benefits under this title payable to any individual referred to in subparagraph (A), including any benefits payable in a lump sum amount, shall be payable only pursuant to a certification of such payment to a qualified organization acting as a representative payee of such individual pursuant to section 1631(a)(2)(A)(ii).

"(ii) For purposes of clause (i) and section 1631(a)(2)(D), the term 'qualified organization'—

"(I) shall have the meaning given such term by section 1631(a)(2)(D)(ii), and

"(II) shall mean an agency or instrumentality of a State or a political subdivision of a State."

(c) EFFECTIVE DATES; AUTHORIZATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to benefits payable for determinations of disability made 90 or more days after the date of the enactment of this Act.

(2) CURRENT DETERMINATIONS.—

(A) IN GENERAL.—With respect to any individual described in subparagraph (B), the Secretary of Health and Human Services shall provide during the 3-year period beginning after the date of the enactment of this Act for the application of the amendments made by this section to such individual with the time periods described in such amendments to begin upon such application.

(B) INDIVIDUAL DESCRIBED.—An individual is described in this subparagraph if such individual is entitled to benefits under title II or XVI of the Social Security Act based on a disability determined before the date described in paragraph (1) to be based in whole or in part on a medical determination that the individual is a drug addict or alcoholic.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of the provisions of, and the amendments made by, this section.

SEC. 3. PRIORITY OF TREATMENT.

The Secretary of Health and Human Services, through the Administrator of the Substance Abuse and Mental Health Services Administration, shall assure that every individual receiving disability benefits under title II or XVI of the Social Security Act based in whole or in part on a medical determination that the individual is a drug addict or alcoholic be given high priority for treatment through entities supported by the various States through any substance abuse block grant authorized under law.

SEC. 4. ESTABLISHMENT OF REFERRAL MONITORING AGENCIES REQUIRED IN ALL STATES.

The Secretary of Health and Human Services shall, within 1 year of the date of the enactment of this Act, provide for the establishment of referral and monitoring agencies for each State for the purpose of carrying out the treatment requirements under sections 223(j)(1) and 1611(e)(3)(A) of the Social Security Act (42 U.S.C. 423(j)(1) and 1382(e)(3)(A)).

SEC. 5. PROCEEDS FROM CERTAIN CRIMINAL ACTIVITIES CONSTITUTE SUBSTANTIAL GAINFUL EMPLOYMENT.

(a) SOCIAL SECURITY DISABILITY INSURANCE.—Section 223(d)(4) of the Social Security Act (42 U.S.C. 423(d)(4)) is amended by inserting the following after the first sentence: "If an individual engages in a criminal activity to support substance abuse, any proceeds derived from such activity shall demonstrate such individual's ability to engage in substantial gainful activity.".

(b) SUPPLEMENTAL SECURITY INCOME.—Section 1614(a)(3)(D) of the Social Security Act

(42 U.S.C. 1382(a)(3)(D)) is amended by inserting the following after the first sentence: "If an individual engages in a criminal activity to support substance abuse, any proceeds derived from such activity shall demonstrate such individual's ability to engage in substantial gainful activity.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disability determinations conducted on or after the date of the enactment of this Act.

SEC. 6. CONSISTENT PENALTY PROVISIONS FOR SSDI AND SSI PROGRAMS.

(a) FELONY PENALTIES FOR FRAUD.—

(1) IN GENERAL.—Subsection (a) of section 1631 of the Social Security Act (42 U.S.C. 1383a) is amended by striking "shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both" and inserting "shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both".

(2) REPRESENTATIVE PAYEES.—

(A) SSDI.—Subsections (b) and (c) of section 208 of such Act (42 U.S.C. 408) are amended to read as follows:

"(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse or an entity described in section 223(j)(2)(B)(ii)), shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both.

"(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"(3) Any person or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).

"(c) For the purpose of subsection (a)(7), the terms 'social security number' and 'social security account number' mean such numbers as are assigned by the Secretary under section 205(c)(2) whether or not, in actual use, such numbers are called social security numbers."

(B) SSI.—Subsection (b)(1) of section 1632 of such Act (42 U.S.C. 1383a) is amended by striking "(other than such person's spouse)" and all that follows through the period and inserting "(other than such person's spouse or an entity described in section 1611(e)(3)(B)(ii)(II)), shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both."

(b) CIVIL ADMINISTRATIVE PENALTIES.—

(1) SSDI.—Section 208 of the Social Security Act (42 U.S.C. 408) is amended by adding at the end the following new subsections:

"(e) For administrative penalties for false claims and statements with respect to which an individual or other entity knows or has reason to know such falsity, see chapter 38 of title 31, United States Code.

"(f) In the case of the second or subsequent imposition of an administrative or criminal penalty on any person or other entity under this section, the Secretary may exclude such person or entity from participation in any program under this title and titles V, XVI, XVIII, and XX, and may direct that such person or entity be excluded from any State health care program (as defined in section 1128(h)) and any other Federal program as provided by law."

(2) SSI.—

(A) IN GENERAL.—Section 1632 of such Act (42 U.S.C. 1383a) is amended by adding at the end the following new subsections:

"(c) For administrative penalties for false claims and statements with respect to which an individual or other entity knows or has reason to know such falsity, see chapter 38 of title 31, United States Code.

"(d) In the case of the second or subsequent imposition of an administrative or criminal penalty on any person or other entity under this section, the Secretary may exclude such person or entity from participation in any program under this title and titles II, V, XVIII, and XX, and may direct that such person or entity be excluded from any State health care program (as defined in section 1128(h)) and any other Federal program as provided by law."

(B) CONFORMING AMENDMENT.—The heading for section 1632 of such Act (42 U.S.C. 1383a) is amended by striking "FOR FRAUD".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective on or after the date of the enactment of this Act.

Mr. MOYNIHAN. Mr. President, I rise to say that on this side of the aisle and on that side of the aisle we are happy to accept this amendment. But if I could be indulged just a moment to ask the Senator from Maine a question. Sir, you had to get the General Accounting Office to tell you about this, did you not?

Mr. COHEN. Yes, but not only the GAO. As a result of the minority staff investigation on the Senate Aging Committee, we conducted a year-long investigation, and we asked for the assistance of the GAO as well.

Mr. MOYNIHAN. May I ask you this. I am not a lawyer, but I do know you are not supposed to ask a question to which you do not know the answer. Did the Social Security Administration come to you with this question?

Mr. COHEN. The Administration did not directly, no.

Mr. MOYNIHAN. Did not. This is a problem. Hamilton said, "energy in the executive." They have had trouble with the disability program since the fifties, during Eisenhower. Martha Derthick, from the University of Virginia, has written about this very carefully. It is not that they do not cope with their problems; it is that they do not share them. It would be all right to come here and say, "We have a problem and we need to know what to do about it."

Mr. COHEN. The people responsible for bringing it to our attention initially were the administrative law judges, the ones hearing the cases, who were saying, "You should know we have people coming in who are addicted, who are continuing their addiction by engaging in illegal activity."

Mr. MOYNIHAN. I am not surprised. The administrative law judges have been appalled by the long waits for disability, and then a $20,000 check finally comes out. In the southern district of New York, at one point, I tell my friend Senator PACKWOOD, who is a proud graduate of New York University, when Rudolph Guiliani was the U.S. attorney for the southern district of New York, he ceased to defend the U.S. Government in disability payments. He would not do it. He thought it was indefensible. When a U.S. attorney says, "I will not defend the Government in court," that indicates something. Well, there is a problem of executive energy, autonomy, and a sense that this is our problem; we have to do it.

I think the Senator from Maine has done a service to us. I have to say to him, in the candor that we share on the floor, that the House will have a view on this, and I hope it is a positive one. They have a structure which is more complicated than ours. But for my part, I am happy to accept it.

Mr. COHEN. I might say to the Senator that as a result of raising this issue to this level of notice and notoriety that I have received a call from the Commissioner of the Social Security Administration, who is coming in to see me at 3 o'clock this afternoon to discuss what the Social Security Administration is doing, or proposes to do, and the nature of the problems confronting the administration itself.

Mr. MOYNIHAN. Good.

Mr. PACKWOOD. Mr. President, let me congratulate the alacrity of the Senator from Maine. This is the type of thing he does consistently. He pinpoints a problem and brings it to us, and it is identified. I am delighted to accept the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. MCCAIN. Mr. President, I express my appreciation to the Senator from Maine for bringing this information to light. The Senator from Maine did a lot of work on this issue of which most Americans were not aware of this situation. Due to his efforts, many Americans are now, and they are appalled and outraged that moneys should be going to liquor stores to pay for the habits of alcoholics. That is not the intent of the law nor the intent of the American people.

The Senator from Maine has, I think, brought to this legislation an amendment that is much needed. I have no doubt that the other body will approve of this, and I think we will not only save the taxpayers dollars but perhaps, in the long run, we will help some of these very unfortunate people.

So I express my strong support for the amendment of the Senator from Maine. I think it is typical of his concern for many of our citizens who are less well off than we are. I think this is a much-needed remedy that will be welcomed even by the recipients, who may be deprived of it in some way. Per-

haps we can spend these dollars in the much-needed treatment area that these very unfortunate people need so badly.

I yield the floor.

Mr. COHEN. I thank my friend for his kind comments. I point out also that there has been historically—and I know the Senator from New York is aware of this—a distinction between the SSI program and the disability insurance program. The reasoning or rationale behind it, as I understand it, is that those who are on SSI may not have contributed enough into the Social Security trust fund as such, or at all.

Mr. MOYNIHAN. Or at all.

Mr. COHEN. Yet they are entitled to receive these payments because they are very poor and cannot work.

So the law was set up to say that those individuals who have not contributed enough into the system are the ones who must get treatment for their addictions. The others do not have to get treatment because the theory was, "Well, they are paying into Social Security and it is their money coming out."

Mr. MOYNIHAN. Or disabled.

Mr. COHEN. Exactly.

As both the Senator from New York and the Senator from Oregon pointed out, you get much more out of the Social Security trust fund than you put in over the years, assuming you live long enough. During that period of time you generally do very well in terms of the amount of contribution versus the amount of receipt.

That is no longer the case, however, in the disability insurance fund. My understanding is that by next year that fund will be depleted and that it will require an infusion from the Social Security trust fund.

So now we no longer have the argument saying, "Well, I have contributed to it and there is no reason that the Government should insist I receive treatment for my addiction."

What I seek to do in this amendment is to make sure that anyone who receives disability payments or payments because of a disability for drugs or alcohol has to receive treatment as the condition of receiving SSI or SSDI benefits.

Mr. MOYNIHAN. Mr. President, could I confirm precisely what the Senator from Maine has said.

The disability benefit program was put in place under President Eisenhower with a payroll contribution and a trust fund. That trust fund will be exhausted next year, and we will have to move some of the surplus from the old age and survivors insurance over. These are decimal points we move back and forth from time to time.

There is no problem of the trust funds as a whole. They are in good shape. The disability payments grew at a fast rate in the sixties when it became known about, and obviously there has been another spurt.

I can say the methadone example is a perfectly good one. Methadone is a treatment developed by Vincent Dole and Marie Nyswander at Rockefeller University. It uses a pain killer developed in Germany in World War II when opiants were not available. While it ends a craving for opium, there is no pleasure in it, you might say.

Obviously, when you have money, you slip off, and such like.

The SSI, supplemental security income, was the one in 1970. In 1969 President Nixon proposed the family assistance plan that would take all of those aspects of Social Security which were not covered by the trust fund, aid to families with dependent children, aid to permanently and totally disabled, aid to the blind, and old age assistance—these are meant to be transitional programs until Social Security covered everybody—it took them and covered them. We included everything but the children.

That is the American pattern we have to watch. You surely have to watch that.

But those moneys come from general revenue. There is no trust fund.

Again, this is an administrative issue, a health issue, and a fiscal issue that needs to be addressed.

I congratulate the Senator from Maine for his doing so and, as we have said, Senator PACKWOOD and I are happy to accept the measure.

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

Mr. COHEN. Mr. President, I would like very much to claim the entire credit for this particular legislation. It is not mine to claim, however.

I want to publicly acknowledge the enormous amount of work that Mary Gerwin, minority staff director of the Senate Special Committee on Aging, Stacey Hughes conducted, because these two members of my staff are the ones who really conducted the investigation for a period of a year and brought it to my attention. I am just up here articulating the basic work they have done. I would also like to thank Priscilla Hanley and my entire Aging Committee staff, as well as Marty Sieg-Ross and Sally Satel of Senator KASSEBAUM's staff, for their contributions to the investigation and this legislation.

Mr. MOYNIHAN. And the Senator got the charts on time.

Mr. COHEN. They got me the charts on time. I ask unanimous consent that a summary of my amendment be placed in the RECORD at this time.

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

AMENDMENT

Discontinues cash disability and SSI benefits to substance abusers, and provides the benefits to institutions, agencies or other payees to manage the money for the addict/alcoholic.

Prohibits cash lump sum payments to substance abusers. These amounts would be paid to a representative payee (government agency, etc.)

Extends to the SSDI program the statutory requirements for SSI recipients that addicts and alcoholics have a representative payee and receive treatment as conditions for receiving benefits.

Requires a good faith compliance with treatment requirements. If non-compliance, there would be tough enforcement of termination of benefits.

Prohibits SSI and SSDI benefits to persons who use proceeds from criminal activity—such as drug dealing—to support their addictions.

Requires SSA to approve agencies in every state to refer and monitor addicts in treatment and requires better standards for monitoring treatment.

Reforms the SSI review process for drug addicts and alcoholics to stress rehabilitation:

Mandatory review for compliance with treatment at the end of the first year—suspension of benefits for non-compliance;

Mandatory resubmission of evidence by individual to prove continuing disability as a drug addict and alcoholic upon completion of 2 years in program; Individuals who are considered to still be disabled will be eligible for 1 more year of treatment;

Maximum of 3 years (cumulative) of eligibility for SSI and SSDI benefits for drug addicts and alcoholics unless there is another qualifying basis for disability.

Gives priority to SSI and SSDI disability drug addicts and alcoholics in federally funded treatment programs.

Toughens penalties for fraud against the SSI and SSDI programs by making willful false statements made to fraudulently receive benefits a felony; provides civil fines for lesser offenses and gives authority to the Secretary of HHS to exclude repeat offenders (both recipients and those who help them get benefits fraudulently) from disability and Medicaid/Medicare.

The PRESIDING OFFICER. Is there any further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1474) was agreed to.

Mr. COHEN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona [Mr. MCCAIN].

AMENDMENT NO. 1475

(Purpose: To amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age)

Mr. MCCAIN. Mr. President, I have an amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 1475.

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

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

The amendment is as follows:

At the appropriate place in the bill, add the following:

TITLE —SOCIAL SECURITY EARNINGS TEST

SECTION . SHORT TITLE.

This title may be cited as the "Older Americans' Freedom to Work Act of 1994."

SEC. . ELIMINATION OF EARNINGS TEST FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.

Section 203 of the Social Security Act is amended—

(1) in paragraph (1) of subsection (c) and paragraphs (1)(A) and (2) of subsection (d), by striking "the age of seventy" and inserting "retirement age (as defined in section 216(l))";

(2) in subsection (f)(1)(B), by striking "was age seventy or over" and inserting "retirement age (as defined in section 216(l))";

(3) in subsection (f)(3), by striking "33⅓ percent" and inserting "50 percent of such individual's earnings for such year in excess of the product of the exempt amount as determined under paragraph (8)," and by striking "age 70" and inserting "retirement age (as defined in section 216(l))";

(4) in subsection (h)(1)(A), by striking "age 70" each place it appears and inserting "retirement age (as defined in section 216(l))"; and

(5) in subsection (j), by striking "Age Seventy" in the heading and inserting "Retirement Age", and by striking "seventy years of age" and inserting "having attained retirement age (as defined in section 216(l))";

SEC. . CONFORMING AMENDMENTS ELIMINATING THE SPECIAL EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.

"(a) UNIFORM EXEMPT AMOUNT.—Section 203(f)(8)(A) of the Social Security Act is amended by striking "the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable" and inserting "a new exempt amount which shall be applicable".

(b) CONFORMING AMENDMENTS.—Section 203(f)(8)(B) of such Act is amended—

(1) in the matter preceding clause (i), by striking "Except" and all that follows through "whichever" and inserting "The exempt amount which is applicable for each month of a particular taxable year shall be whichever";

(2) in clause (i), by striking "corresponding"; and

(3) in the last sentence, by striking "an exempt amount" and inserting "exempt amount".

(c) REPEAL OF BASIS FOR COMPUTATION OF SPECIAL EXEMPT AMOUNT.—Section 203(f)(8)(D) of such Act is repealed.

SEC. . ADDITIONAL CONFORMING AMENDMENTS.

(a) ELIMINATION OF REDUNDANT REFERENCES TO RETIREMENT AGE.—Section 203 of the Social Security Act is amended—

(1) in the last sentence of subsection (c), by striking "nor shall any deduction" and all that follows and inserting "nor shall any deduction be made under this subsection from any widow's or widower's insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60."; and

(2) in subsection (f)(1), by striking clause (D) and inserting the following: "(D) for which such individual is entitled to widow's or widower's insurance benefits if such individual became so entitled prior to attaining age 60, or".

(b) CONFORMING AMENDMENT TO PROVISIONS FOR DETERMINING AMOUNT OF INCREASE ON ACCOUNT OF DELAYED RETIREMENT.—Section 202(w)(2)(B)(ii) of such Act is amended—

(1) by striking "either"; and

(2) by striking "or suffered deductions under section 203(b) or 203(c) in amounts equal to the amount of such benefit".

(c) CONTINUED APPLICATION OF RULE GOVERNING ENTITLEMENT OF BLIND BENEFICIARIES.—The second sentence of section 223(d)(4) of such Act is amended by inserting after "subparagraph (D) thereof" where it first appears the following: "(or would be applicable to such individuals but for the amendments made by the Older Americans' Freedom to Work Act of 1994)".

SEC. . EFFECTIVE DATE.

The amendments made by this Act shall apply only with respect to taxable years beginning after December 31, 1994.

Mr. MCCAIN. Mr. President, before I go into my description of the amendment, perhaps I could engage in a discussion with the distinguished managers of the bill to let them know that I would be glad to have a time agreement on this amendment.

If this amendment fails, which I have reason to believe that it will, then I would have another amendment on which I would also have a time agreement. And I have a third amendment that I believe is going to be worked out.

So I would say to my friends, the distinguished managers of the bill, I would be glad to agree to any time agreement that they would so choose. In the meantime, I will begin my remarks to save time.

Mr. President, I offer an amendment. which I have offered before, and I will bring again before this body until this terrible social injustice is rectified.

There is a social injustice in this country today. It directly penalizes senior citizens who want to work. It is unfair. It is nearly criminal, because what it does is deprive senior citizens who are forced to go back into the workforce in their retirement years, of needed money they have worked for. They are penalized in the most heavy, onerous, and unfair fashion, to the tune for every $3 earned by a retiree over an approximately $11,000 limit they lose $1 in Social Security benefits. Mr. President, that puts them in the highest tax bracket in America.

The interesting thing about this situation which needs to be rectified is, if an individual happens to be wealthy, has investments, has a trust fund, has stocks, whatever kind of liquid assets, and is not out there in the labor force, they are not subject to this onerous Social Security earnings test.

Mr. PACKWOOD. Mr. President, could I interrupt my friend a moment to see if we can get a time agreement that he is agreeable to. Is 30 minutes on a side agreeable?

Mr. MCCAIN. It certainly is.

Mr. President, I ask unanimous consent that there be 30 minutes on each side of this amendment followed by——

Mr. MOYNIHAN. The same arrangement on the next?

Mr. MCCAIN. On the two amendments. I take it that my friends are considering my third amendment. Would that be agreeable concerning the notification on Social Security?

Mr. PACKWOOD. I think so. I have not seen that amendment.

Mr. MCCAIN. The Senator's staff has.

Mr. MOYNIHAN. We will get to that in time.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. PACKWOOD. This was the first two amendments; right?

The PRESIDING OFFICER. That is correct.

Mr. MOYNIHAN. This would preclude second-degree amendments and only vote on the Senator's amendment?

The PRESIDING OFFICER. The Senator from Arizona made that part of his request, to preclude second-degree amendment?

Mr. MCCAIN. I do.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. MCCAIN. For the purpose of the RECORD, I would ask the President to repeat the unanimous consent.

The PRESIDING OFFICER. The Senator from Arizona has proposed 1 hour equally divided on both amendments, and no second-degree amendment.

Mr. MOYNIHAN. No. The Senator from Arizona is to have 30 minutes. The time is equally divided.

Mr. PACKWOOD. Each side.

Mr. MCCAIN. I say to my friends it is not real important, but 30 minutes to each side on the first one. I think 15 minutes on each side is certainly agreeable to the second, because it will be a matter of little debate.

Mr. President, I ask unanimous consent to amend the unanimous-consent request that the second amendment be 15 minutes on each side.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. Just a moment.

Mr. MOYNIHAN. Just a second. We need to know the subject of the second amendment.

Mr. MCCAIN. The second amendment, I say to my colleagues, would be that the U.S. Congress would then be placed—if my first amendment goes down—the U.S. Congress would be placed under the exact same rules concerning the earnings test.

Mr. MOYNIHAN. We will have to see that amendment. We will not have a time agreement on that amendment now.

Mr. MCCAIN. That is fine with me.

The PRESIDING OFFICER. The Chair understands the unanimous-con-

sent request pending for the first amendment, a 1-hour time agreement, equally divided, 30 minutes for each side, and the amendment will not be subject to a second-degree amendment.

Is there objection?

Without objection, it is so ordered.

Mr. MCCAIN. Thank you, Mr. President.

In regard to the second amendment, I say to my friend, I will be glad to argue all day and all night that the Congress of the United States should be placed under the same laws concerning their retirement as American citizens are. If anyone disagrees with that, I would be more than happy to spend considerable amounts of time explaining why there is such discontent and anger on the part of the American people with Congress because we seem to pass laws that apply to them and not to us. That is also the case of the Social Security earnings test.

If a Member of Congress is retired at age 65 and receives a Government-operated congressional pension, there is no earnings test placed on any outside limit of his or her income, but there is one for Social Security recipients. And, of course, that is patently unfair. I may be introducing this amendment as a bill soon.

But back to the first amendment, Mr. President. This amendment repeals the Social Security earnings test. As I said, it is unfair to penalize American citizens who, in their retirement years, are either forced or choose to return to the work force. They are then placed in one of the highest tax brackets there is. These people are knowledgeable. They are talented. They are people who can contribute enormous amount to American society and our productivity.

The U.S. Labor Department has warned of shortages in the labor market. Employers are having difficulty in hiring experienced, dependable workers. By the end of the decade, 1.5 million fewer workers between the ages of 16 and 24 will have entered the work force. At the same time, 5 million older Americans will be retiring.

Mr. President, we all know that this earnings limit was created during the Depression in order to force older workers out of the labor force and create job opportunities for younger workers. Obviously, this situation no longer exists and it is time to sunset this Depression-era policy.

I would also like to say to the Senator from New York, who is the chairman of the committee that would oversee this issue, that he said the last time I brought this up that he would have hearings. I hope he will do so. I have not seen any schedule for such a hearing in the Finance Committee.

I hope the Senator also understands that I am willing to compromise and phase out this earnings test, if necessary, if that would be somehow beneficial. But the fact is, it is wrong. The distinguished chairman knows it is wrong. Every American knows it is wrong, and it has to be fixed.

Mr. President, I also comment that it is not just my idea that this is wrong. I would like to just give some very brief quotes from various leading newspapers around this country, all of which agree with my position.

The Chicago Tribune said:

The skill and expertise of the elderly could be used to train future workers, while bringing in more tax dollars and helping America stay competitive in the 21st century.

The Los Angeles Times says:

As the senior population expands and the younger population shrinks in the decades ahead, there will be an increasing need to encourage older workers to stay on the job to maintain the Nation's productivity.

The Baltimore Sun says:

The Social Security landscape is littered with a great irony: While the program was built on the strength of the work ethic, its earnings test actually provides a disincentive to work. * * * One consequence of this skewed policy is the emergence of a gray, underground economy—a cadre of senior citizens forced to work for extremely low wages or with no benefits in exchange for being paid under the table.

The Dallas Morning News says:

Both individual citizens and society as a whole would benefit from a repeal of the law that limits what Social Security recipients may earn before their benefits are reduced.

The San Diego Tribune says:

The benefit-reaction law made some economic sense when Social Security was established in the 1930's and the Government wanted to encourage the elderly to leave the labor force and open up jobs for younger workers. But with declining birth rates and the Nation's need for more, not fewer, experienced workers, the measure is bad for the Nation as well as its older workers.

The Wall Street Journal said:

The punitive taxation of the earnings limit sends the message to seniors that their country doesn't want them to work, or that they are fools if they do.

The New York Times says:

It is not wrong to encourage willing older adults to remain in the work force.

The Orange County Register says:

Indeed, repealing the tax might actually increase revenues. More people would be working, paying more taxes of all kinds, including the Social Security tax. If our Government bureaucrats want us to keep paying their salaries, the least they can do is to make it possible to work in the first place.

The Houston Post says:

Equity and common sense demand that this disincentive to work be scrapped.

The Cincinnati Enquirer says:

No American should be discouraged from working, as long as he wants to and is physically able to do so.

The Indianapolis Star:

On the face of it, the game appears rigged in favor of those who stop working at 65 and against those who keep working, in favor of well-to-do retirees against middle- and low-income retirees who need a part time job to help with expenses.

From Forbes:

Moreover, people are living longer; the economy is hurt when artificial barriers block the full use of our most productive asset, people.

The Detroit News says:

Work is important to many of the elderly, who are living together. They shouldn't be faced with a confiscatory tax for remaining productive.

And it goes on and on and on.

Mr. President, I remember a few years ago when this body decided that we would be able to squeeze additional revenues by passing a tax on luxury boats. The same people who will tell this body that repeal of the earnings test means a decrease in revenues are the same people who told the Congress and the Finance Committee that if we passed a tax on luxury boats, we would see an increase in revenues.

Mr. President, we all know what happened. What happened was we forgot to pass a law that said that rich people had to buy boats, and so rich people did not buy boats. In fact, they went overseas if they wanted to buy a boat, and the boat industry collapsed, and 19,000 Americans lost their jobs. There was a dramatic decrease in revenues and taxes to the coffers of the United States due to this unwise tax, despite the prediction by the same people who will tell you that repeal of the earnings tax will cause a decrease in revenues to the Federal coffers.

So after we saw what happened in the collapse of the boat industry in America, we repealed that tax. And I applaud my colleagues for doing so.

The same flawed logic that drove us to raise the luxury boat tax will be the same flawed logic that will be used today in an argument against repeal of the earnings test. It will be that we will see a decrease in revenue, totally discounting the fact that there are tens of thousands, hundreds of thousands of seniors out there today who want to work. But they do not want to work when the fruits of their labors will be confiscated by the Government.

How in the world can anybody believe that this amendment will result in a decrease of Federal revenues, when all they have to do is go out into any senior's community in America today and discover that many seniors want to work.

Again, I want to point out, this earnings test does not affect rich retirees. This does not affect people who have huge portfolios of stocks and bonds and other means that provide them with a continuous stream of finances. This affects the poor and the middle-income retirees.

And I would suggest, along with my second amendment that I would apply the test to Congress, that at least maybe we ought to include the very wealthy, as well as those middle- and low-income people who are suffering under this incredible burden.

The Department of Health and Human Services has stated that beyond

the year 2000, the estimated annual net cost of the proposal continues to decline, reaching zero around the year 2021. Thereafter, the annual full financial effect of the proposal is estimated to be a net savings to the program. Even using their flawed logic, by somewhere around the year 2021, we will stop seeing declines.

The important fact is that we do not take into consideration, one, the social inequities of this law; but, second of all, the fact that when people work, they pay taxes. People pay taxes, including Social Security taxes.

So I urge my colleagues to consult with their constituents who are senior citizens, whose representation organizations overwhelmingly have supported the repeal of this tax. They do so on the basis of fairness, but they also do so with a certain knowledge that there will be incentives for people to enter the work force.

We all know the demographic changes that are taking place in America. There is an aging population. The baby boomers are getting older.

They will be leaving the work force. How we can possibly, in good conscience, lose that kind of talent and that kind of ability?

I remember a meeting I had with the president of Disney. The president of Disney, at the conclusion of our meeting on another matter, came up and said, "Senator, I want to tell you I support strongly the repeal of the earnings tax."

I said, "Why? Every time I go to Disney World, I see young people dressed up like Cinderella and Goofy, but I do not see senior citizens."

He said, "The reason why you do not see senior citizens is because they have no incentive to work at Disney World or Disneyland. But we have found that those who will work are our best workers, our best workers that relate to the young people who come to Disney World."

I have had several experiences like that with major employers in America who say let these people work. Let them work. We need them. We have not enough trained and talented and knowledgeable labor in our country. We have not a large enough pool to draw from. We want to draw from these people. They can do the job, they want to do the job, and they contribute an enormous amount to the advancement of our businesses and our profitability.

The American Farm Bureau, the American Federation of Small Business, the American Health Care Association, Citizens for a Sound Economy, Days Inn of America, National Association of Temporary Services, National Council of Chain Restaurants, National Restaurant Association, National Small Business United, National Society of Public Accountants—by the way the National Society of Public Accountants strongly disputes the premise that there will be a reduction in revenues into the Federal coffers. In fact, the National Society of Public Accountants feel exactly the opposite.

The National Tax Limitation Foundation, National Technical Services Association, Retired Police Association, Sears Roebuck, Walgreens, and the U.S. Chamber of Commerce all support the repeal of this unfair tax.

The National Association of Retired Federal Employees, National Committee to Preserve Social Security and Medicare which, by the way, both of those organizations have been enormously helpful to me, as well as the Seniors Coalition, Seniors Cooperative Work Network, United Seniors of Washington, Air Force Association, Association of Military Surgeons, Association of the Army, Enlisted Association of the National Guard, Fleet Reserve, Jewish War Veterans, Marine Corps League, Retired Enlisted Association—on and on goes the list and they all believe the earnings test is wrong.

Every organization that is composed—with the exception, I must say, Mr. President, of the American Association of Retired Persons who has refused to take a stand on this issue, as they did on the catastrophic health insurance issue—literally every major seniors association strongly supports this legislation.

It is time. I have been fighting this tax for years now. I would be more than ready to accept some kind of compromise. I would be more than happy to accept commitments.

The fact is, nothing has been done by this Congress about a terrible social injustice. I intend to bring this issue up before the Senate of the United States until something is done about it because it is against my duties, it is against my oath to not try to correct an injustice when I see it.

If you do not believe it is an injustice, visit with some of those people, visit with the couple I did in Sun City who has experienced severe medical bills and must now go out and work; individuals who had been retired for 10 years.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who seeks recognition? The Chair recognizes the Senator from Oregon.

Mr. PACKWOOD. Mr. President, I feel some ambivalence toward my friend from Arizona. As he knows, I have cosponsored this before. Logic is totally on his side. Money is not. I know there is a disagreement in estimates. There is no question the bill has to lose some money. Whether it loses $26.4 billion over 5 years as is estimated, or whether there will be a sufficient change of behavior so it loses less than that because people go to work and they pay taxes—I do not know. There is no question it loses some money.

But logic and fairness is on the side of the Senator from Arizona. We do not say to somebody who has a private pension from an insurance company "You have worked all your life. You retire when you are 65." The insurance company says "We will pay you $1,000 a month. And, by the way, if you go to work after you have retired at Disney or McDonald's, we are going to reduce your insurance company pension a bit." We do not do that. And there is no reason why we should do it with Social Security.

So, as I say, I come with some ambivalence. I know there is a loss of money and we will have to make up the money. But equity is on the side of the Senator from Arizona.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, not for the first time do I rise on the Senate floor to agree with the distinguished Senator from Arizona on this matter. In October 1993, we had the same issue before us. He is right. The earnings test for a person 65 to 69 is an obsolete arrangement that we associate with the Depression. It has never changed.

It, in fact, does no disservice, in actuarial terms, to the persons who are affected because at age 70, or whatever, if you retire, having had benefits reduced because of earnings, you get a higher retirement benefit. From the actuary's point of view, it is all a wash after a while.

As I say, I have here my benefits statement. If I were to retire, or more specifically, if the people of New York were to retire me in January 1994, at age 66 and 10 months, I would receive $1,259. I now get no benefits because I have a salary that uses them all up. At age 70, my retirement benefit would be $1,470 per month and no reduction whatever for whatever earnings there might be. Even so, the earnings test is not understood and it does not seem right.

When there is something about the social insurance system that is not understood and does not seem right, we ought to change it. We can change it at no cost to the system over time. You have to make changes slowly in a system of this kind.

The National Commission on Social Security reform made a report in January 1983. We proposed that the retirement age be increased to 66 and then to 67 years. But we go to 66 in the year 2005, and 67 around the year 2015. So everybody is on notice; no surprise.

I do also want to report, and this is something that takes more attention, a majority of persons in the Social Security system retire at age 62, and by age 65, two-thirds have, in fact, retired. But that leaves one-third still working, of which some part is affected by this and it makes no sense to them.

Here on the floor of the Senate, in 1993, October 27, I said to my friend from Arizona I would be happy to have hearings on this, and we will. At that time we were just about finishing up the first session, and recently we have been holding a series of hearings on health care.

But by May of this year, I want to say to the Senator from Arizona, there will be a full hearing on this as long as he wants, within endurance, because the number of people who would want to come and say they agree with him is a very long list, and it would include the Senator from New York, and I think it would include my colleague, the former chairman, the Senator from Oregon.

I say also, which is to the point of the bill we are working on today, I would hope that we would see a revised Social Security Administration that would take on these subjects and give us views of its own. For instance, have a survey of 100,000 persons, the kind of thing the Bureau of Labor Statistics does well; find out who is over 65, working, and is really feeling the effects of that retirement test. The lawyer does not feel it, the doctor does not feel it, a university professor does not feel it. Someone who is working at Disneyland might feel it very well or might be working if it were not for it.

What about some numbers? I said of the Social Security Administration, "We get no thoughts. The agency has been brain dead, in a policy sense, for 15 years. In 17 years, we have had 12 Commissioners or acting Commissioners. The job has just been empty for 1 year."

The questions the Senator asks, Mr. President, deserve an answer and they deserve a Social Security Administration that will answer them.

Are there people out there who think this arrangement is unjust? Well, good, let us find out and see if we cannot fix it. We have not heard a word from the Social Security Administration. Not a word. But it is an issue of public policy: How do you make people who want to work feel the system is fair?

With respect to another problem, I can report with some pleasure. The notch is an issue which causes a lot of people trouble. We established in 1992, by statute, a commission to look into it in the usual manner—appointments from the House side, Senate side and Presidential side. I have spent 1 year asking the administration, please appoint members so we can get on with this subject. There are 7 million people out there who think the Social Security Administration is cheating them. Well, they need an answer. We think not, but let an independent commission give a hearing on it.

By the most wonderful of happenstance, Mr. President, I have just received a message that the administration will make its appointments this very day. I cannot tell you what wonders coincidence will do, and very good appointments, too: Alan Campbell will be the Chair. He is professor of public policy at Wharton. He has been dean of the Maxwell School. Scottie Campbell is a fine student of public administration; an old friend; Lindy Boggs, the incomparable Lindy Boggs who the Chair knows very well and we all love and admire; Gwendolyn King, who was a good commissioner while she was in that job; and Robert Froehlke, who is president and CEO of IDS Mutual Funds, a very commendable financial firm in Minneapolis. Good. It took a year and this bill coming to the floor.

I want to say that I am obliged, when the time comes, to raise a point of order that is simply a budgetary point of order.

Mr. MCCAIN. Will the Senator yield to me for comment?

Mr. MOYNIHAN. Yes, of course. I yield the floor.

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

Mr. MCCAIN. Mr. President, I say to the Senator from New York, with his very generous commitment on the part of him and Senator PACKWOOD that a hearing will be held on this issue, with their expressed belief that this is an unfair situation and their willingness to attempt to work this out, I do not believe that a recorded vote will be necessary at this time.

I believe that I can withdraw the amendment, of course seeking unanimous consent to do so, and then look forward to a hearing on this issue, S. 28, in the month of May. I appreciate the generosity of both Senator PACKWOOD and Senator MOYNIHAN because I know how very busy their committee is.

Also, Mr. President, a slight caveat. Obviously, as I mentioned many times, I will not give up on the issue, but I do have some optimism that we can work this out. I think that the comment of the Senator from New York that there may have to be some gradualization to this, I certainly agree with. I look forward to trying to shape some kind of compromise that can give not only the present generation of retired seniors some hope, but future people who will face this same dilemma and challenge.

Mr. President, if it is agreeable to the Senator from New York and the Senator from Oregon, I will ask unanimous consent to withdraw my amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none. The amendment is withdrawn.

The amendment (No. 1475) was withdrawn.

Mr. PACKWOOD. Mr. President, is the Senator going to withdraw the second amendment, also?

Mr. MCCAIN. Yes. I have not yet sent the second amendment to the desk.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. May I just thank the Senator, because we can solve this, and if he keeps at it we will. I just hope that when May comes we have the head of an independent Social Security Administration saying we are going to take this on, do it. We want people to feel good about this system. It is one of our real achievements, and we do not want people going around: "Why are they doing this? Why aren't they paying me?" No, sir. The Senator shall have this hearing, and we will get this thing done. I thank the Senator very much for bringing it up.

Mr. MCCAIN. I thank the Senator from New York deeply for his concern and effort on this matter.

I thank the Chair. I thank the Senator.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, I would like to engage in a brief colloquy with the Senator from Oregon on the issue of the notification of all Americans who contribute to the Social Security trust fund and are eligible for Social Security upon retirement.

My concern was the cynicism of many Americans concerning the financial sanity of the Social Security trust fund and their ability to receive those benefits at retirement time, plus a great deal of confusion as to how much money they have contributed, how much they can expect to get back, et cetera, et cetera.

The thrust of the amendment I was going to propose basically required the Social Security Administration to provide that information. The Senator from Oregon has illuminated me on that issue, and I think that what is planned may be satisfactory—and, in fact, may prove to be very helpful—to all members of the work force.

I yield the floor.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. I might just read into the RECORD—it is right on point with what the Senator from Arizona is

suggesting—what is about to be started.

The Social Security Administration is going to send out an individual's work life—and I will explain that in a minute—in three stages. The trial stage starts next month, April of 1994, and in the trial stage, they will send out a work history statement to 600,000 randomly selected individuals aged 25 or older, and they are using the 600,000 mailing to gauge how many questions and responses they get, problems that may come up when they implement this process fully.

Based upon that, by October 1994, they will be able to compile a report with their findings to be used when they begin the implementing stage, and that starts very soon. The implementing stage will start next February.

During what we call the implementing stage, a one-time work history statement will be sent out to everybody who is 60 years or older, whether or not they have started Social Security or not. Everybody who is age 60 or over will get a statement, very similar to what the chairman read earlier today, about how long have you worked; how much did you pay in; when you paid it in.

Then, starting in the year 2000, they will send out an annual work history to everyone age 25 or older. So I think we are going to accomplish what the Senator from Arizona wants, and they are on the verge of starting it now.

Mr. MCCAIN. Mr. President, I thank my friend from Oregon. I think that is entirely satisfactory, and I certainly hope that the Social Security Administration is able to fulfill that commitment.

I will just make one additional comment. The Senator from New York mentioned that finally members of the notch commission have been appointed. I think that is a very important step. I am sorry it took so long. But there still is an enormous amount of misinformation, dissatisfaction, and anger on the part of the so-called notch baby population, and I believe that the old adage about a little sunlight being a good disinfectant is certainly operative here. We need to have people understand exactly what the notch situation is all about, how it came into being, and what remedies there are for it, if any. There are millions of senior citizens out there today who are convinced that they have been deprived of their benefits.

Now, I am not saying they are right; I am not saying they are wrong; but there is a huge number. The Presiding Officer knows, from his constituency who visit my State quite often especially at this time of year, there is great discontent and dissatisfaction about the notch. And I believe this notch commission, particularly with the quality of individuals who have been appointed, will perform a valuable service. I am hopeful their conclusions and recommendations will have great validity and will help us wind our way through an incredibly difficult issue which has plagued this body for many years now, and will for many more years unless it is resolved.

I am not often a believer in commissions, but on this particular issue I think we needed a commission of qualified experts who will provide us with the information and guidance that we need.

Mr. President, I thank my friend from Oregon again and I yield the floor.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. I am doing this from memory, so if I state it wrong in the RECORD, do not hold me to it, but this is the best I recall about the notch. I understand the problem, and we all get it when we go home.

In 1972, we changed Social Security and went to a readjustment basis. As a matter of fact, very few people know this.

When we went to the cost-of-living adjustment, we did it in the hopes of holding Social Security costs down because we were getting amendments in the Chamber to increase Social Security above the cost of living, and we thought this would be a restraint on the growth. And it became a one-upmanship: "I offer an amendment to increase it 5 percent." "I move to amend that and increase it to 10 percent." So we went to the cost-of-living adjustment as a restraint on Social Security.

But in 1972, we made a mistake in the adjustment, and we actually overcompensated, so that people who retired got more than the cost-of-living adjustment.

We realized that mistake in 1977, and those are the 5 notch years, and they basically apply to people who were born between 1917 and 1922. And, of course, the Government hates to take away from anybody anything we have given them. So when we passed a law in 1977 correcting the mistake we made in 1972, we did not attempt to undo the mistake for that 5-year period. So, if you were born prior to 1917, you got this overcompensated amount. It was a mistake. But we did not take it away.

Then we said, for those born 1917 to 1922, we would have a transition, and they actually get less than people who were born prior to 1917. But then after that 5-year period, the people that come after the notch years actually get less than the people in the notch years. So you have three categories.

Let us use an example. Before 1916, you get $500 a month. If you are born in 1917 to 1922, you get $450 a month. If you are born after 1922, you get $400 a month. Well, the people in the 5 years during the notch compare themselves to the people born prior to them who get $500, not to the people who were born after them who get $400.

But that is the mistake we made, and if we were to correct it, if we were to give everybody a correction for the mistake and say, we made a mistake; now, instead of correcting it, we are going to apply the mistake to everybody, it is very, very expensive, and, indeed, it is—you hate to use the word "unfair," but it would compensate everybody for increases greater than the cost-of-living adjustment.

So I understand why the people in the notch think they are being treated unfairly. They are being treated differently. But they are being treated better than the people that come behind them.

I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MOYNIHAN. Mr. President, we have had a good debate, the first of its kind on the Senate floor concerning an independent agency for the Social Security Administration. We have had not a word of opposition heard, just as in our Finance Committee, as my friend Senator PACKWOOD will agree, the vote was essentially unanimous with one Senator wishing to be recorded in opposition.

The Senator from Arizona came to the floor with some amendments, very germane amendments in the field of Social Security on a matter about which he feels very strongly, about which I feel and Senator PACKWOOD feels should be looked into, but that should not really be carried by this particular bill to establish an independent Social Security Administration.

We have reached a very amicable agreement. He withdrew his amendments and we are going to follow up with him in a new independent agency, which we will want to do. And part of the debate that created that independent agency is the debate that said we are going to deal with this question of earnings limitations.

But now, I feel that we have about concluded. No one is on the floor. I am going to propose, if it is agreeable to my colleague and friend, that there be no more amendments. But we are not binding anybody.

It would be my view that we should have no more amendments and should proceed to third reading very shortly.

Is that the view of the Senator from Oregon?

Mr. PACKWOOD. Are you asking unanimous consent for that?

Mr. MOYNIHAN. I understand there is a Senator coming, but I would like it to be on record.

Mr. PACKWOOD. I agree.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislation clerk proceeded to call the roll.

Mr. MOYNIHAN. 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. RIEGLE. Mr. President, I rise today to once again offer my support for this legislation to make the Social Security Administration an independent agency.

The Social Security Program has the confidence and support of the American public. In a period of increasing doubts and cynicism about government it is absolutely paramount that those of us here in Washington do everything we can to maintain the credibility of this vital program.

A brief look at the work of the Social Security Administration points out how important this bill is. The Social Security Administration includes over half the staff and 60 percent of the expenditures of the Department of Health and Human Services. This program serves over 42 million people. When this administration is not unfairly targeted in budget cuts it does its job well under ever increasing work loads.

I support this bill because over the next several years Social Security could become an all to convenient target for those who want to balance the budget on the backs of senior citizens and disabled Americans. If anyone questions the chance of that happening, I would only have to point to the budget actions of the early 1980's. Despite an ever increasing number of retirees, increasing numbers of people on SSI, and increasing numbers of disabled children, the programs under the Social Security Administration experienced a reduction of staffing from approximately 80,000 to 63,000 people. As a result we see problems in some areas such as disability reviews, the treatment of those individuals with an addiction and last, but certainly not least, for our elderly in need of basic information.

This legislation will place the Social Security Administration above politics and above interference. Under the bill, a system is set up that allows bipartisan leadership. In turn, that leadership can run the program in the most efficient and effective way possible. Recommendations will be made that will keep staffing at the necessary levels. We will not have to worry whether or not the telephones are getting answered. And perhaps most important—the citizens of this country will know that the program that was established under Franklin Roosevelt nearly 60 years ago will continue to serve them in good faith.

I want to thank the senior Senator from New York for his sponsorship of this legislation and for guiding it out of the Finance Committee and onto the floor. I am pleased to be a cosponsor and pleased that we can reassure the senior citizens of this country that Social Security is a trust established many decades ago and that we are serious about honoring that trust and commitment.

Ms. MIKULSKI. Mr. President, I rise today to give my enthusiastic support to this legislation which will establish the Social Security Administration as an independent agency. I have long been a supporter of this effort. And I am glad to see its time has finally come.

As an independent agency, the Social Security Administration would have three advantages over the current structure: greater stature within the executive branch; greater control over procurement and personnel practices; and as an independent agency, a stronger voice in its policy decisions.

An independent agency would also allow the agency head a more direct link to the President. He or she would be better able to present its needs during policy deliberations within the administration.

Since 1935, the Social Security Administration has grown to be the largest domestic program of the Federal Government. It represents over 20 percent of Federal spending. And it is the ninth largest agency in the Federal Government with an annual budget of over $300 billion.

I take a very special interest in SSA.

The Social Security Administration's employees make up more than 50 percent of the Department of Health and Human Services. It employs 64,000 people—13,400 are at the headquarters in Maryland alone. This means that one out of every five Social Security employees works in Maryland.

SSA has a special mission of caring for and helping people. It is the jewel in the crown of our domestic programs. Americans who have worked hard and played by the rules, look to the Social Security Administration as the agency which will reward their years of productivity.

As the Senator from Maryland and the chair of the Aging Subcommittee of the Labor Committee, I have many reasons to support this bill.

The agency is paying benefits to 42 million recipients and maintains earning records for 132 million workers, 73.4 percent of these are elderly. One out of every four households receives a check from Social Security each month.

American workers and retirees have a compact with the Social Security Administration. When I speak to employed people, both young and old, they are concerned about the long-run security of their retirement benefits. They want to know that the system is sound and the benefits they earned will be available. They would have more confidence in a program which could separate the Social Security policymaking from the economic and budgetary decisions affecting the rest of Government.

As we move toward reinventing government, it is important that we streamline our organizations and remove unnecessary levels of additional administration between SSA and the President.

It is important to note that my support for an independent Social Security Administration is in no way a reflection on the current Secretary. I am a great admirer of hers.

But I supported Senator MOYNIHAN'S effort prior to her appointment and I support it now. We need a separate agency to meet the needs of our aging and disabled population in the 21st century.

A strong independent agency, autonomous agency, is the only way this can be done.

Mrs. FEINSTEIN. Mr. President, I rise today in support of S. 1560, the Social Security Administration Independence Act. In so doing, I would first like to acknowledge the efforts of the distinguished Senator from New York, and chairman of the Senate Finance Committee. Senator MOYNIHAN has been the patient sponsor of this legislation which has been approved, three times now, by the Finance Committee. His stewardship has brought this legislation to us today, and I am pleased to be able to provide my support.

In 1980, the National Commission on Social Security recommended that the Social Security Administration should be restored to its original status as an independent agency. And in 1983, the National Commission on Social Security Reform made the same recommendation. In 1984, the Congressional Panel on Social Security Organization made recommendations for establishing an independent agency.

Now, 10 years later, thanks in no small part to the dogged determination of the Senator from New York, those recommendations have reached fruition in the form of this legislation.

The Social Security Administration has the second largest budget in the Federal Government. It keeps records on the earnings of 120 million American workers, and provides benefits to 42 million beneficiaries.

I believe the time has come to elevate this agency, to a position which is comparable to other Cabinet-level Federal agencies, by restoring it to its original status as an independent agency accountable directly to the President of the United States.

There was a time the Social Security Administration, which was created in the 1930's as part of the New Deal initiated by President Franklin Delano Roosevelt, was considered the model Federal agency.

It was a time when the American spirit had been challenged, first by a great war on distant continents, and then by the Great Depression. It was a time when the triumphs of the 20th century were dampened by the despair of dust-bowls and depression. And it was a time when the cities of our Nation saw breadlines and soup kitchens.

With the New Deal, a pledge was made by a government to its people. And the creation of the Social Security Administration represented the foundation of that pledge. That pledge was, if you work hard all of your life, and if you pay your taxes, when the time comes for you to retire, this Government will see to it that you will be guaranteed a modicum of security in your golden years—even if times are hard.

Well—times are hard now. They're certainly hard in my State, and they're hard for our Nation. In California, the times are the worst since the Great Depression. Once again we see people, on our Nation's streets, who have no home.

As a society, we have become accustomed to observing, on a daily basis, human suffering of once unthinkable proportions. In our cities, we step around people lying in urine-soaked doorways. At night, we see people huddled in loading docks, over subway grates, or under freeway overpasses. For them, hope has all but diminished.

Their daily lives consist of finding their next meal and locating shelter for the night, all the while guarding their sole remaining possessions which are stuffed into plastic bags carefully hung around the sides of the shopping carts which are their homes. Many of those people are our Nation's senior citizens, or veterans who are heroes of foreign wars.

These people have lost their spirit. They have lost confidence that the Government, of the greatest nation in the world, can fix the problem or provide them with the so-called safety net. Many people are fearful that they too could become homeless, and that the Social Security check which provides them with the bare essentials of life is somehow in jeopardy.

And the people who sometimes fear the most, are the very people from the generation with whom that pact was made back in the 1930's—our Nation's senior citizens. They did work hard. They did pay their taxes. They did live and serve through foreign wars. They saved their money, and now they fear that the promise made to them may not be kept.

That is why this bill is important. This Nation does keep its promises. It can and will meet its obligations. And our senior citizens can go to sleep at night knowing that the Government, they have supported all of their working lives, will not turn its back on them.

Clearly, the Social Security trust fund is solid, and that is the case for the next three decades. Restoration of the Social Security Administration to its original status as an independent agency, I believe, will ensure that it remains solid. I also believe this act will help in the restoration of the confidence of our Nation's senior citizens.

Mr. SASSER. Mr. President, I rise today in support of S. 1560, which would make the Social Security Administration an independent agency. I believe this legislation elevates this important Federal agency to its proper status and acknowledges the importance of the Social Security Program to the working people of this country.

Social Security is one of the most successful Federal programs ever enacted. It touches the lives of virtually every American. As many as 42 million people currently receive benefits, and millions more are paying into the system so that they will receive benefits when they retire or if they become disabled. Social Security has helped to significantly enhance the financial status of people in their retirement years or when they can no longer work. For these reasons, the program enjoys tremendous public support.

But there is also concern about the future of the program. Changing demographic conditions, including the impending retirement of the huge baby boom generation starting in the next decade, threatens to put strains on the system. In 1983, we took important steps to make sure that Social Security will be on a strong financial footing well into the next century. We have an obligation to the millions of people who rely on this program to make sure this system is administered as effectively as possible in order to strengthen public confidence.

I am also concerned about the quality of service provided by the Social Security Administration, particularly the growing backlogs in disability determinations and reviews, and long processing times. The President has acknowledged this problem in his budget and has included an increase of $327 million over 1994 levels to improve customer service and continue to upgrade automation at the Social Security Administration. Despite this effort, however, backlogs and processing times are projected to continue to increase. I believe more needs to be done in this area.

Making the Social Security Administration an independent agency, as recommended in the 1983 Report of the National Commission on Social Security, sends a strong message to the retirees, disabled people, and workers who have contributed to the system that we are committed to improving services to beneficiaries and that we intend to make sure that Social Security is sound and strong well into the future. I look forward to working with the Clinton administration to bring about these goals.

Mr. BRYAN. Mr. President, every time I go home to Nevada and talk with seniors, the same old fear is poignantly voiced. Whether it is the elderly widow, the person just facing retirement, or the baby-boomer planning for retirement, the fear-filled question is the same—"Can I really depend on my Social Security benefits to be there?"

Each of us here answers that question with a "yes," but polls indicate people continue to believe their Social Security benefits are at risk. Our one-on-one meetings with people prove the polls right—their fear is real.

The elderly widow whose only income is her Social Security benefit faces a daily trial of making ends meet with limited means. She should not also face daily worry about whether those benefits will continue to be there for her for the rest of her life.

People still working and planning for their retirement believe they cannot depend on Social Security. They see the Social Security deduction taken out of their pay checks, and yet they too worry. When their retirement date comes, they believe Social Security benefits are not going to be there for them.

As a cosponsor of the Social Security Administration Independence Act, I wanted to allay these fears, and hopefully put them to rest.

This legislation acknowledges first and foremost the importance of the Social Security system. This is the system that has grown from its initial payment of benefits in 1940 to a program today providing social insurance for over 41 million Americans when they retire, become disabled, or die.

Under this bill, Social Security is pulled out of the Department of Health and Human Services, and made an independent agency.

Creation of an independent Social Security agency will protect the integrity of the Social Security trust funds. It will improve the delivery of Social Security services. It will restore the public's confidence in the Social Security System. It will once again show that our Government can serve its citizens. It will mean seniors can rest assured that Social Security will really always be there for them.

This independent Social Security agency will be headed by the Commissioner appointed by the President and confirmed by the Senate. The Commissioner will be assisted by the five-member Board of Trustees of the Old Age, Survivors and Disability Insurance Trust Funds.

A part-time, seven-member bipartisan Social Security advisory board, serving staggered terms, will advise the Commissioner and evaluate policy options the independent agency seeks to implement. It will recommend how the Agency can best ensure the solvency of the Social Security system, and economic security for those dependent upon the system.

As an independent agency with an appointed Commissioner, the commitment to accurate, prompt, and courteous service to the public that used to characterize the Social Security System will be renewed. This independence should help assure strong and effective leadership for a system millions literally depend upon.

Is the Social Security System really safe? Passage of this important legislation will help ensure the answer continues to be an unequivocal "yes."

Mr. HATFIELD. Mr. President, the idea of making the Social Security Administration an independent agency dates back to the early 1970's when Social Security's impact on fiscal policy was made more visible through the inclusion of the program in the Federal budget. In the early 1980's, when the Social Security Administration was brought up in congressional budget discussions, the call for independence became more pronounced. Those calling for independence said that because of the self-financing nature of the program and the compact it has with the Nation's workers to pay earned benefits, independence would insulate Social Security from everyday fiscal policy decisions.

Currently, the Social Security Administration is responsible for paying benefits to over 42 million recipients and maintaining earnings records for 132 million workers. With approximately 64,000 hard working and dedicated employees, a network of 1,300 field offices, and an annual budget of over $300 billion, the Social Security Administration is the largest agency within the Department of Health and Human Services and the ninth largest within the entire Federal Government. The sheer magnitude as well as the promise this agency must fulfill to our Nation's seniors compels us to give it the stature it has deserved for far too long.

Mr. President, I firmly believe that we, as Members of Congress, have no greater duty to American seniors and our working men and women that to protect and strengthen the Social Security system. And let me say this: In the past, we have witnessed attempts to administer the SSA in a manner that raises questions as to whether some officials in our Government have forgotten this responsibility.

For example, in recent years, funding requests for administrative purposes to process disability applications at SSA were woefully inadequate. As the ranking member on the Appropriations Committee, I sought to increase funds for disability claims processing to alleviate the backlog of disability claims and decrease the waiting time for individuals applying for benefits. I did this because the administrations' requests were inadequate to allow efficient processing of first time claims in and timely review of backlog cases. Although SSA had been and still is somewhat overwhelmed by the number of disability applications, my committee has provided funding to reduce the backlog.

Being independent will not only improve the actual administration of the program and increase public confidence in the system itself, but also help assure strong and effective leadership for the program and agency. Furthermore, the bill will create a bipartisan, seven-member advisory board which will analyze the Nation's retirement and disability systems and make recommendations with respect to how the programs under SSA can most effectively assure economic security for all Americans. Its creation will assist the Administration in avoiding policy errors and, I believe, enable an independent SSA to be guided by its traditional objective of providing the highest quality service to the public.

The creation of an independent agency will not only increase its statute among other agencies and lead to more coherence among top management, it will also lead to a better run organization. Independence will increase the ability of the SSA to obtain and retain the most experienced and capable leadership for the agency, and more importantly, allow the administrator to seek the President's ear directly. In my mind 42 million people deserve nothing less than the President's ear.

Mr. President, over the years I have been a proud cosponsor of this important legislation and would like to congratulate and thank Senator MOYNIHAN for moving this bill through the Senate.

Mr. GORTON. Mr. President, I am pleased to support S. 1560, the Social Security Administration Independence Act.

Very briefly, this bill will remove the Social Security Administration from under the Department of Health and Human Services and make it an independent agency. The new, independent Social Security Administration will continue to administer the OASDI and SSI Programs, and will be run by a Commissioner, who is appointed by the President and confirmed by the Senate. In addition, S. 1560 creates a Social Security advisory board, made up of seven members, to evaluate policy alternatives, conduct research on issues and advise the Commissioner.

This effort is not a new one. Similar bills have been before Congress in the past. But the most recent legislative proposal, considered during the 102d session, was not brought to the Senate floor after it was passed by the House due to time constraints. I am pleased that now the Senate has taken up this matter.

Independence for the Social Security Administration is a productive move and gives the system the stature it deserves. It sends a positive message that its functions are considered extremely important and will increase public confidence in the Social Security system. Independence will help clear up some of the administrative and service quality problems that have plagued the Administration by creating strong and consistent leadership. It will also mean that Social Security will not have to compete with the rest of the Department of Health and Human Services for valuable, but rare, Federal resources.

And, most important to this Senator, independence highlights the separate, unique nature of Social Security and the sacred contract between the Government and the people that it represents. Former Social Security Commissioner Robert Ball states it best when he said, in testimony before the House Ways and Means Committee, that independence "would give emphasis to the fact that in this program the Government is acting as a trustee for those who have built up rights under the system."

Mr. President, I have been listening to the seniors in my home State of Washington on this issue. As I travel around the State listening to the local concerns and the views of the citizens, people tell me that the Social Security Administration needs to become an independent agency. They talk about how important the services are that the Social Security Agency provides. They say that independence for the Administration will increase the confidence of retirees and today's workers in the system and ensure quality services for benefit recipients.

I listened to the seniors in my State and agree. They have presented well reasoned and rational arguments why this is a good idea. I am happy to support it.

Mr. GRAHAM. Mr. President, far too many individuals do not contemplate the financial, health, and social implications and consequences of their retirement years. The majority of Americans do not plan comprehensively for their retirement; they do not consider the potential outcomes of typical decisions made at or before retirement, such as: relocating, utilizing Medicare and supplemental insurance, living solely on Social Security and/or a pension, and experiencing extended periods of leisure time.

Research shows that Americans only become aware of these issues as a reaction to their changed circumstances, when it is too late to alter major lifestyle decisions. Many people spend

more time and effort planning a 2-week vacation than planning the 20-plus years they could spend in retirement.

As the U.S. population ages, persons will live an increasingly greater percentage of their lives as retirees. According to the National Center for Health Statistics, the average life expectancy for a 65-year-old in 1950 was 13.9 additional years, while, in 1990, the average 65-year-old could expect to live 17 more years. In this 40-year period, the life expectancy has increased 3.1 years.

As most retirees rely on Federal programs, such as Medicare and Social Security for health insurance and retirement income, lack of health and retirement planning has substantial long-term costs for the Federal Government. Furthermore, the lack of retirement planning can impact the quality of life. Persons who anticipate retirement-related changes can plan socially and financially, and avoid relocating without access to social, community and health services.

Retirees who do not evaluate retirement-related decisions could experience social dislocation and unanticipated financial and health needs, causing despair and dependence on Government health and social services' programs. It is a sad commentary that one of the highest incidents of suicide in our country is among people who have recently retired—those who are unable to deal with the new life into which retirement has ushered them. Economic issues, health issues, and the issue of relocation could be dealt with more effectively if retirement planning was more accessible. Organizations such as the American Association of Retired Persons [AARP] already conduct retirement seminars. Many employers, including the Federal Government, provide some retirement services.

The Social Security Administration is in the midst of fulfilling a congressional mandate to distribute annually, a personal earnings and benefits estimate statement, which includes estimated benefits should the individual retire at 62, 65, or 70 years of age. The agency begins its pilot program in April 1994, and will continue to phase-in the program so that, by the year 2000, all working Americans will receive an estimate statement. I believe it would be appropriate for the Social Security Administration to expand this project to inform future beneficiaries that retirement planning assistance is often provided through local area agencies on aging, other non-government entities, or through the workplace.

In addition, the Social Security Administration is clearly in a good position to evaluate existing retirement planning services, to observe any gaps, and to determine how the Federal Government can best help to facilitate this planning. Certainly no other agency should have a greater interest in encouraging Americans to engage in retirement planning.

Retirement can mean embarking on an exciting and vital phase of life—to those who are prepared. A successful retirement is largely dependent on a process of identifying future needs, developing a plan for meeting them, and acting on these plans. In summary, through public education efforts, outreach, and direct counseling, Americans can prepare for fulfilling and active retirement years. We should encourage the Social Security Administration to pursue the issue of improving retirement planning for all Americans.

Mr. President, beginning in April this year, the Social Security Administration will begin its pilot program to distribute personal earnings and benefits estimate statements to 600,000 workers. Under law, all workers must receive a statement by the year 2000. The Social Security Administration is preparing to implement this program to meet this schedule. In developing and implementing this program, the Social Security Administration has a unique opportunity to further investigate the Federal Government's role in assisting Americans to better prepare for their retirement years. Knowing the Senator from New York has a shared interest in promoting retirement security, would he agree that the Social Security Administration should review and report to Congress on existing and available retirement planning services?

Mr. MOYNIHAN. Yes, I would agree with the Senator from Florida. The Social Security Administration is in a unique position to undertake such a study of retirement planning services. This study would certainly be consistent with the mission of the Social Security Program.

Mr. GRAHAM. In addition, the SSA personal earnings and benefits estimate statement should be expanded to include recommendations that workers adequately consider their retirement needs and to provide future retirees with the information to facilitate more comprehensive retirement planning.

Mr. MOYNIHAN. Certainly. The Senator from Florida has made a valuable suggestion.

Mr. MCCAIN. Mr. President, I strongly support S. 1560 and feel it is an important measure that will help protect the Social Security Administration's fiscal integrity and program effectiveness. I would like to offer a few brief comments regarding what I hope will not be a result of this legislation to make the Social Security Administration an independent government agency. I am concerned that the newly independent agency may lead to a request for massive new construction or leasing projects for the Social Security Administration.

As many Members of this body are well aware, the creation of a new government agency or elevation of an existing one can lead to requests for new headquarters or expanded agency offices. Already over-burdened taxpayers are then further saddled with the cost of paying for tens of millions of dollars' worth of bricks, mortar, equipment, and furnishings to satisfy the newly empowered agency's desire for more and more new office space.

Let me clearly state that Federal agencies are often not to blame for such spending—its the Congress' fault. Year in and year out, many Members of the Senate and the House of Representatives make a profession out of directing the Federal Government to build new buildings that aren't really necessary, or require agencies to change locations for the sheer sake of bringing home some more pork for their State or congressional district.

This dubious practice is often obscured with stentorian speeches about the need to endlessly accelerate public investment in our economy, and the purported merits of a new home-state project. What it really is is an inexcusable, multibillion-dollar waste of taxpayer dollars. I have introduced numerous bills, amendments, and come to the floor of the Senate literally dozens of times in an effort to defeat wasteful and unnecessary construction projects, as well as their closely related cousins—unauthorized, unrequested, but much-beloved demonstration projects.

In his highly touted and comprehensive National Performance Review of the operation of the Federal Government, Vice President GORE criticized these practices and recommended a moratorium on Federal funding for new building construction. The Vice President also noted that 1993 was a record year for line-item requests in congressional appropriation bills, a distinction that I'm sorry to say probably won't last very long. I strongly support this recommendation and have cosponsored legislation in the Senate to do just that. It is estimated that temporarily halting new Federal construction programs could save taxpayers in excess of $1 billion this year, without causing difficulties to vital programs of the Federal Government. With many large and medium-sized cities across the country experiencing commercial office space vacancy rates of over 25 percent, using scarce taxpayer dollars for low-priority Federal construction projects is an especially unjustifiable abuse.

I have strenuously worked to stem the seemingly inexhaustible appetite of the Congress to misuse taxpayer dollars in this manner, and this includes unnecessary or excessively costly projects that directly affect my State of Arizona. An overwhelming majority of the American people support an end to the egregious practice of pork barrel spending, and I will continue to fight this good fight whenever such projects

are brought into the light of open congressional consideration.

Mr. President, as the ranking minority member on the Senate's subcommittee that has oversight responsibilities for the General Services Administration [GSA], I am dedicated to ensuring that the GSA is extremely cost-conscious when it comes to evaluating agency requests for new construction or leases. To responsibly provide the resources that are needed by Federal agencies to serve the public, and to protect taxpayer dollars from being misused, it is vital for the Congress and the administration to abide by the established process that the GSA follows to evaluate requests for new office space. This procedure is thorough if it is followed and respected by the relevant authorizing and appropriating committees in the Congress. The problem is that this process is too often ignored by Members in their zeal to secure line-item appropriations for undeserving constituencies that may bring pressure to bear on them.

The GSA is required to conduct an economic analysis of all agency requests for new office space, and then submit their findings to the Office of Management and Budget. The recommendations of GSA and OMB are presented to the authorizing committees in each body for their approval. The determination of the authorizing committees is then given final consideration by the Appropriations Committees.

I call on my colleagues to abide by this process as a means of cutting down on wasteful Federal spending, and to guarantee that any major new construction projects or leases that are ultimately funded by the taxpayers are forced to survive a rigorous evaluation process. Our obligation to taxpayers in times of a $4 trillion debt demands nothing less.

I hope my concerns regarding the passage of this legislation pertaining to future requests of the Social Security Administration are unfounded. The Social Security Administration has benefited from expanded building space acquisition in the recent past, and I hope that the eventual enactment of this legislation does not serve as an impetus for the Social Security Administration or Members of Congress to seek funding for unnecessary building space that results in added costs to the taxpayer.

Mr. MOYNIHAN. Mr. President, I ask for a third reading of the bill.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 1560), as amended, was passed, as follows:

S. 1560

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

SECTION 1. SHORT TITLE; AMENDMENT OF SOCIAL SECURITY ACT; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Social Security Administration Independence Act of 1994".

(b) AMENDMENT OF SOCIAL SECURITY ACT.—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of, a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; amendment of Social Security Act; table of contents.

TITLE I—ESTABLISHMENT OF NEW INDEPENDENT AGENCY

Sec. 101. Establishment of Social Security Administration as a separate, independent agency.
Sec. 102. Commissioner and Deputy Commissioner of Social Security.
Sec. 103. Social Security Advisory Board.
Sec. 104. Personnel; budgetary matters; seal of office.
Sec. 105. Transfers to the new Social Security Administration.
Sec. 106. Transitional rules.
Sec. 107. Effective dates.

TITLE II—CONFORMING AMENDMENTS

Sec. 201. Amendments to titles II and XVI of the Social Security Act.
Sec. 202. Other amendments.
Sec. 203. Rules of construction.
Sec. 204. Effective dates.

TITLE III—SOCIAL SECURITY DISABILITY AND REHABILITATION

Sec. 301. Short title.
Sec. 302. Reform of monthly insurance benefits based on disability involving substance abuse.
Sec. 303. Priority of treatment.
Sec. 304. Establishment of referral monitoring agencies required in all States.
Sec. 305. Proceeds from certain criminal activities constitute substantial gainful employment.
Sec. 306. Consistent penalty provisions for SSDI and SSI programs.

TITLE I—ESTABLISHMENT OF NEW INDEPENDENT AGENCY

SEC. 101. ESTABLISHMENT OF SOCIAL SECURITY ADMINISTRATION AS A SEPARATE, INDEPENDENT AGENCY.

Section 701 (42 U.S.C. 901) is amended to read as follows:

"SOCIAL SECURITY ADMINISTRATION

"SEC. 701. There is hereby established, as an independent agency in the executive branch of the Government, a Social Security Administration (hereafter in this title referred to as the 'Administration'). It shall be the duty of the Administration to administer the old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI.".

SEC. 102. COMMISSIONER AND DEPUTY COMMISSIONER OF SOCIAL SECURITY.

Section 702 (42 U.S.C. 902) is amended to read as follows:

"COMMISSIONER AND DEPUTY COMMISSIONER

"Commissioner of Social Security

"SEC. 702. (a)(1) There shall be in the Administration a Commissioner of Social Security (hereafter in this title referred to as the 'Commissioner') who shall be appointed by the President, with the advice and consent of the Senate.

"(2) The Commissioner shall be compensated at the rate provided for level I of the Executive Schedule.

"(3) The Commissioner shall be appointed for a term of 4 years coincident with the term of the President, or until the appointment of a qualified successor.

"(4) The Commissioner shall be responsible for the exercise of all powers and the discharge of all duties of the Administration, and shall have authority and control over all personnel and activities thereof.

"(5) The Commissioner may prescribe such rules and regulations as the Commissioner determines necessary or appropriate to carry out the functions of the Administration. The regulations prescribed by the Commissioner shall be subject to the rulemaking procedures established under section 553 of title 5, United States Code.

"(6) The Commissioner may establish, alter, consolidate, or discontinue such organizational units or components within the Administration as the Commissioner considers necessary or appropriate, except that this paragraph shall not apply with respect to any unit, component, or provision provided for by this Act.

"(7) The Commissioner may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees of the Administration as the Commissioner may find necessary. Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Commissioner.

"(8) The Commissioner and the Secretary of Health and Human Services (hereafter in this title referred to as the 'Secretary') shall consult, on an ongoing basis, to ensure—

"(A) the coordination of the programs administered by the Commissioner, as described in section 701, with the programs administered by the Secretary under titles XVIII and XIX of this Act; and

"(B) that adequate information concerning benefits under such titles XVIII and XIX shall be available to the public.

"Deputy Commissioner of Social Security

"(b)(1) There shall be in the Administration a Deputy Commissioner of Social Security (hereafter in this title referred to as the 'Deputy Commissioner') who shall be appointed by the President, with the advice and consent of the Senate.

"(2) The Deputy Commissioner shall be appointed for a term of 4 years coincident with the term of the Commissioner, or until the appointment of a qualified successor.

"(3) The Deputy Commissioner shall be compensated at the rate provided for level II of the Executive Schedule.

"(4) The Deputy Commissioner shall perform such duties and exercise such powers as the Commissioner shall from time to time assign or delegate. The Deputy Commissioner shall be Acting Commissioner of the Administration during the absence or disability of the Commissioner and, unless the President designates another officer of the Government as Acting Commissioner, in the event of a vacancy in the office of the Commissioner.".

SEC. 103. SOCIAL SECURITY ADVISORY BOARD.

Section 703 (42 U.S.C. 903) is amended to read as follows:

"SOCIAL SECURITY ADVISORY BOARD

"Establishment of Board

"SEC. 703. (a) There shall be established a Social Security Advisory Board (hereinafter referred to as the 'Board').

"Functions of the Board

"(b) The Board shall advise the Commissioner on policies related to the old-age, survivors, and disability insurance program under title II and the supplemental security income program under title XVI. Specific functions of the Board shall include—

"(1) analyzing the Nation's retirement and disability systems and making recommendations with respect to how the old-age, survivors, and disability insurance program and the supplemental security income program, supported by other public and private systems, can most effectively assure economic security;

"(2) studying and making recommendations relating to the coordination of programs that provide health security with programs described in paragraph (1);

"(3) making recommendations to the President and to the Congress with respect to policies that will ensure the solvency of the old-age, survivors, and disability insurance program, both in the short-term and the long-term;

"(4) making recommendations to the President of candidates to consider in selecting nominees for the position of Commissioner and Deputy Commissioner;

"(5) reviewing and assessing the quality of service that the Administration provides to the public;

"(6) reviewing and making recommendations with respect to policies and regulations regarding the old-age, survivors, and disability insurance program and the supplemental security income program;

"(7) increasing public understanding of the social security system;

"(8) in consultation with the Commissioner, reviewing the development and implementation of a long-range research and program evaluation plan for the Administration;

"(9) reviewing and assessing any major studies of social security as may come to the attention of the Board; and

"(10) conducting such other reviews and assessments that the Board determines to be appropriate.

"Structure and Membership of the Board

"(c) The Board shall be composed of 7 members who shall be appointed as follows:

"(1) 3 members shall be appointed by the President, with the advice and consent of the Senate. Not more than 2 of such members shall be from the same political party.

"(2) 2 members (each member from a different political party) shall be appointed by the President pro tempore of the Senate with the advice of the Chairman and the Ranking Minority Member of the Senate Committee on Finance.

"(3) 2 members (each member from a different political party) shall be appointed by the Speaker of the House of Representatives, with the advice of the Chairman and the Ranking Minority Member of the House Committee on Ways and Means.

"Terms of Appointment

"(d) Each member of the Board shall serve for a term of 6 years, except that—

"(1) a member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed, shall be appointed for the remainder of such term; and

"(2) the terms of service of the members initially appointed under this section shall expire as follows:

"(A) The terms of service of the members initially appointed by the President shall expire as designated by the President at the time of nomination, 1 each at the end of—

"(i) 2 years;

"(ii) 4 years; and

"(iii) 6 years.

"(B) The terms of service of members initially appointed by the President pro tempore of the Senate shall expire as designated by the President pro tempore of the Senate at the time of nomination, 1 each at the end of—

"(i) 4 years; and

"(ii) 6 years.

"(C) The terms of service of members initially appointed by the Speaker of the House of Representatives shall expire as designated by the Speaker of the House of Representatives at the time of nomination, 1 each at the end of—

"(i) 3 years; and

"(ii) 5 years.

"Chairman

"(e) A member of the Board shall be designated by the President to serve as Chairman for a term of 4 years, coincident with the term of the President, or until the designation of a successor.

"Compensation

"(f) Members of the Board shall be compensated as follows:

"(1) Members shall be paid at a rate equal to 25 percent of the rate for level III of the Executive Schedule.

"(2) For days when the Board or any authorized subcommittee of the Board meets, members who attend meetings on such days (including travel time) shall receive additional compensation in an amount equal to the daily equivalent of the rate for level III of the Executive Schedule.

"(3) While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

"(4) Service on the Board shall not be treated as Federal service or employment for purposes of receiving any benefits under chapters 83, 84, and 87 of title 5, United States Code.

"(5) A member of the Board may elect coverage of a health benefits plan under chapter 89 of title 5, United States Code. Such a member electing coverage shall have the applicable employee contributions under section 8906 of such title withheld from pay for service as a member of the Board. The Administration shall pay the applicable Government contributions under such section 8906 for such member. The Office of Personnel Management shall promulgate regulations to apply the provisions of chapter 89 of such title to Board members electing coverage as provided under this paragraph.

"Meetings

"(g) The Board shall meet not less than 6 times each year to consider a specific agenda of issues, as determined by the Chairman in consultation with the other members of the Board.

"Federal Advisory Committee Act

"(h) The Board shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

"Personnel

"(i)(1) The Board shall, without regard to title 5, United States Code, appoint a Staff Director who shall be paid at a rate equivalent to a rate for the Senior Executive Service.

"(2) The Board is authorized, without regard to title 5, United States Code, to appoint and fix the compensation of such additional personnel as the Board determines to be necessary to carry out the functions of the Board.

"(3) In fixing the compensation of additional personnel under paragraph (2), the Board shall not authorize that any individual appointed under such paragraph be compensated at a rate that is greater than the rate of compensation of the Staff Director described in paragraph (1).

"Authorization of Appropriation

"(j) There are authorized to be made available for expenditure, out of the Federal Disability Insurance Trust Fund, the Federal Old Age and Survivors Insurance Trust Fund, and the general fund in the Treasury, such sums as the Congress may deem appropriate to carry out the purposes of this section.".

SEC. 104. PERSONNEL; BUDGETARY MATTERS; SEAL OF OFFICE.

Section 704 is amended to read as follows:

"ADMINISTRATIVE DUTIES OF THE COMMISSIONER

"Personnel

"SEC. 704. (a)(1) The Commissioner shall appoint such additional officers and employees as the Commissioner considers necessary to carry out the functions of the Administration under this Act. Except as otherwise provided in any other provision of law, such officers and employees shall be appointed, and their compensation shall be fixed, in accordance with title 5, United States Code.

"(2) The Commissioner may procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

"(3) Notwithstanding any requirements of section 3133 of title 5, United States Code, the Director of the Office of Personnel Management shall authorize for the Administration a total number of Senior Executive Service positions which is substantially greater than the number of such positions authorized in the Social Security Administration in the Department of Health and Human Services as of immediately before the date of the enactment of the Social Security Administration Independence Act of 1994 to the extent that the greater number of such authorized positions is specified in the comprehensive work force plan as established and revised by the Commissioner under subsection (b)(1). The total number of such positions authorized for the Administration shall not at any time be less than the number of such authorized positions as of immediately before such date.

"Budgetary Matters

"(b)(1) Appropriations requests for staffing and personnel of the Administration shall be based upon a comprehensive work force plan, which shall be established and revised from time to time by the Commissioner.

"(2) Appropriations for administrative expenses of the Administration are authorized to be provided on a biennial basis.

"(3) Funds appropriated for the Administration to be available on a contingency basis shall be apportioned upon the occurrence of the stipulated contingency, as determined by the Commissioner and reported to the Congress.

"Employment Restriction

"(c) The number of positions in the Administration which may be excepted from the competitive service, on a temporary or permanent basis, because of the confidential or policy-determining character of such positions, may not exceed at any time the equivalent of 10 full-time positions.

"Seal of Office

"(d) The Commissioner shall cause a seal of office to be made for the Administration of such design as the Commissioner shall approve. Judicial notice shall be taken of such seal.".

SEC. 105. TRANSFERS TO THE NEW SOCIAL SECURITY ADMINISTRATION.

(a) FUNCTIONS.—There are transferred to the Social Security Administration all functions carried out by the Secretary of Health and Human Services with respect to the programs and activities the administration of which is vested in the Social Security Administration by reason of this title and the amendments made thereby. The Commissioner of Social Security shall allocate such functions in accordance with sections 701, 702, 703, and 704 of the Social Security Act (as amended by this title).

(b) PERSONNEL, ASSETS, ETC.—(1) There are transferred from the Department of Health and Human Services to the Social Security Administration, for appropriate allocation by the Commissioner of Social Security in the Social Security Administration—

(A) the personnel employed in connection with the functions transferred by this title and the amendments made thereby; and

(B) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, or used in connection with such functions, arising from such functions, or available, or to be made available, in connection with such functions.

(2) Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(3) Any individual who is an employee of the Department and who was not employed on the date of the enactment of this title, in connection with functions transferred by this title to the Administration, but who was so employed on the day before the date established pursuant to section 107(a), may be transferred from the Department of Health and Human Services to the Social Security Administration by the Commissioner under subparagraph (A) of paragraph (1), after consultation with the Secretary of Health and Human Services, if the Commissioner determines such transfer to be appropriate.

(4) Any individual who is an employee of the Department and who was employed on the date of the enactment of this title, solely in connection with functions transferred by this title to the Administration, and who was so employed on the day before the date established pursuant to section 107(a), shall be transferred from the Department of Health and Human Services to the Social Security Administration.

(c) ABOLISHMENT OF OFFICE OF COMMISSIONER IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—Effective upon the appointment of a Commissioner of Social Security pursuant to section 702 of the Social Security Act (as amended by this title)—

(1) the position of Commissioner of Social Security in the Department of Health and Human Services is abolished; and

(2) section 5315 of title 5, United States Code, is amended by striking the following:

"Commissioner of Social Security, Department of Health and Human Services.".

SEC. 106. TRANSITIONAL RULES.

(a) TRANSITION DIRECTOR.—(1) Within 30 days after the date of the enactment of this Act, a transition director shall be appointed by the President, who shall be selected on the basis of experience and knowledge of the operation of the Government.

(2) The transition director shall conduct activities necessary to ensure the transition of the Social Security Administration to the status of an independent agency in the executive branch of the Government. In conducting such activities before the appointment of the Commissioner of Social Security, the transition director shall consult regularly with the Director of the Office of Management and Budget. Upon such appointment, the transition director shall conduct such activities at the direction of the Commissioner of Social Security.

(3) The transition director shall be compensated at the rate provided for level IV of the Executive Schedule.

(4) Expenditures to carry out the purposes of this subsection shall be made out of the Federal Old Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

(b) INTERIM AUTHORITY FOR APPOINTMENT AND COMPENSATION.—

(1) APPOINTMENT OF COMMISSIONER.—Within 60 days of the date of the enactment of this title, the Commissioner of Social Security shall be appointed by the President pursuant to section 702 of the Social Security Act (as amended by this title). If the appointment is made pursuant to such section before the date established pursuant to section 107(a), the Commissioner of Social Security shall also perform the duties assigned to the Commissioner of Social Security in the Department of Health and Human Services.

(2) OTHER APPOINTMENTS.—At any time on or after the date of the enactment of this title any of the other officers provided for in sections 702 and 703 of the Social Security Act (as amended by this title) may be nominated and appointed, as provided in such sections.

(3) COMPENSATION.—Funds available to any official or component of the Department of Health and Human Services, functions of which are transferred to the Commissioner of Social Security or the Social Security Administration by this title, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

(c) CONTINUATION OF ORDERS, DETERMINATIONS, RULES, REGULATIONS, ETC.—All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements (and ongoing negotiations relating to such collective bargaining agreements), recognitions of labor organizations, certificates, licenses, and privileges—

(1) which have been issued, made, promulgated, granted, or allowed to become effective, in the exercise of functions (A) which were exercised by the Secretary of Health and Human Services (or the Secretary's delegate), and (B) which relate to functions which, by reason of this title, the amendments made thereby, and regulations prescribed thereunder, are vested in the Commissioner of Social Security; and

(2) which are in effect immediately before the date established pursuant to section 107(a),

shall (to the extent that they relate to functions described in paragraph (1)(B)) continue in effect according to their terms until modified, terminated, suspended, set aside, or repealed by such Commissioner, except that any collective bargaining agreement shall remain in effect until the date of termination specified in such agreement.

(d) CONTINUATION OF PROCEEDINGS.—The provisions of this title (including the amendments made thereby) shall not affect any proceeding pending before the Secretary of Health and Human Services immediately before the date established pursuant to section 107(a), with respect to functions vested (by reason of this title, the amendments made thereby, and regulations prescribed thereunder) in the Commissioner of Social Security, except that such proceedings, to the extent that such proceedings relate to such functions, shall continue before such Commissioner. Orders shall be issued under any such proceeding, appeals taken therefrom, and payments shall be made pursuant to such orders, in like manner as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or repealed by such Commissioner, by a court of competent jurisdiction, or by operation of law.

(e) CONTINUATION OF SUITS.—Except as provided in this subsection—

(1) the provisions of this title shall not affect suits commenced before the date established pursuant to section 107(a); and

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this title had not been enacted.

No cause of action, and no suit, action, or other proceeding commenced by or against any officer in such officer's official capacity as an officer of the Department of Health and Human Services, shall abate by reason of the enactment of this title. Causes of action, suits, actions, or other proceedings may be asserted by or against the United States and the Social Security Administration, or such official of such Administration as may be appropriate, and, in any litigation pending immediately before the date established pursuant to section 107(a), the court may at any time, on the court's own motion or that of a party, enter an order which will give effect to the provisions of this subsection (including, where appropriate, an order for substitution of parties).

(f) CONTINUATION OF PENALTIES.—This title shall not have the effect of releasing or extinguishing any criminal prosecution, penalty, forfeiture, or liability incurred as a result of any function which (by reason of this title, the amendments made thereby, and regulations prescribed thereunder) is vested in the Commissioner of Social Security.

(g) JUDICIAL REVIEW.—Orders and actions of the Commissioner of Social Security in the exercise of functions vested in such Commissioner under this title (and the amendments made thereby) shall be subject to judicial review to the same extent and in the same manner as if such orders had been made and such actions had been taken by the Secretary of Health and Human Services in the exercise of such functions immediately before the date established pursuant to section 107(a). Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function so vested in such Commissioner shall continue to apply to the exercise of such function by such Commissioner.

(h) EXERCISE OF FUNCTIONS.—In the exercise of the functions vested in the Commissioner of Social Security under this title, the

amendments made thereby, and regulations prescribed thereunder, such Commissioner shall have the same authority as that vested in the Secretary of Health and Human Services with respect to the exercise of such functions immediately preceding the vesting of such functions in such Commissioner, and actions of such Commissioner shall have the same force and effect as when exercised by such Secretary.

(i) REPORT.—Within 120 days of the date of the enactment of this title, the transition director and the Commissioner of Social Security shall report to the Congress on the status of the transition to an independent Social Security Administration, and on any significant internal restructuring or management improvements that are proposed to be undertaken.

SEC. 107. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this title, and the amendments made by such title shall take effect on the earlier of—

(1) the date which is 180 days after the date of the enactment of this Act, or

(2) a date designated by the President.

(b) TRANSITIONAL RULES.—Section 106 shall take effect on the date of the enactment of this title.

TITLE II—CONFORMING AMENDMENTS

SEC. 201. AMENDMENTS TO TITLES II AND XVI OF THE SOCIAL SECURITY ACT.

(a) IN GENERAL.—Title II (42 U.S.C. 401 et seq.) (other than section 201, section 218(d), section 231(c), section 226, and section 226A) and title XVI (42 U.S.C. 1382 et seq.) (other than sections 1614(f)(2)(B) and 1616(e)(3)) are each amended—

(1) by striking, wherever it appears therein, "Secretary of Health and Human Services" and inserting "Commissioner of Social Security";

(2) by striking, wherever it appears therein, "Department of Health and Human Services" and inserting "Social Security Administration";

(3) by striking, wherever it appears therein, "Department" (but only if it is not immediately succeeded by the words "of Health and Human Services", and only if it is used in reference to the Department of Health and Human Services) and inserting "Administration";

(4) by striking, wherever it appears therein, each of the following words (but, in the case of any such word only if such word refers to the Secretary of Health and Human Services): "Secretary", "Secretary's", "his", "him", "he", "her", and "she", and inserting (in the case of the word "Secretary") "Commissioner of Social Security", (in the case of the word "Secretary's") "Commissioner's", (in the case of the word "his") "the Commissioner's", (in the case of the word "him") "the Commissioner", (in the case of the word "her") "the Commissioner" or "the Commissioner's", as may be appropriate, and (in the case of the words "she" or "he") "the Commissioner"; and

(5) by striking, wherever it appears therein, "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986".

(b) AMENDMENTS TO SECTION 201.—(1)(A) Sections 201(a)(3), 201(a)(4), 201(b)(1), and 201(b)(2) (42 U.S.C. 401(a)(3), 401(a)(4), 401(b)(1), and 401(b)(2), respectively) are each amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Commissioner of Social Security"; and

(B) Sections 201(a)(3) and 201(b)(1) (42 U.S.C. 401(a)(3) and 401(b)(1), respectively) are each amended by striking "such Secretary" and inserting "such Commissioner".

(2) Section 201(c) (42 U.S.C. 401(c)) is amended—

(A) in the first sentence, by striking "shall be composed of" and all that follows down through "ex officio" and inserting the following: "shall be composed of the Commissioner of Social Security, the Secretary of the Treasury, and the Secretary of Health and Human Services, all ex officio"; and

(B) in the fifth sentence, by striking "The Commissioner of Social Security" and inserting "The Deputy Commissioner of Social Security".

(3) Section 201(g)(1)(A) (42 U.S.C. 401(g)(1)(A)) is amended—

(A) in clause (i), by striking "by him and the Secretary of Health and Human Services" and inserting "by him, the Commissioner of Social Security, and the Secretary of Health and Human Services", and by striking "by the Department of Health and Human Services and the Treasury Department" and inserting "by the Social Security Administration, the Department of Health and Human Services, and the Department of the Treasury";

(B) in clause (ii), by striking "method prescribed by the Board of Trustees under paragraph (4)" and inserting "applicable method prescribed under paragraph (4)", by striking "the Secretary of Health and Human Services" and inserting "the Commissioner of Social Security and the Secretary of Health and Human Services", and by striking "the Department of Health and Human Services" and inserting "the Social Security Administration and the Department of Health and Human Services"; and

(C) by striking the last sentence and inserting the following: "There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title and title XVI for which the Commissioner of Social Security is responsible, the costs of title XVIII for which the Secretary of Health and Human Services is responsible, and the costs of carrying out the functions of the Social Security Administration, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) of the first sentence of this subparagraph.".

(4) Section 201(g)(1) (42 U.S.C. 401(g)(1)) is further amended by striking subparagraph (B) and inserting the following new subparagraphs:

"(B) After the close of each fiscal year—

"(i) the Commissioner of Social Security shall determine (I) the portion of the costs, incurred during such fiscal year, of administration of this title and title XVI and of carrying out the functions of the Social Security Administration, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury, (II) the portion of such costs which should have been borne by the Federal Old-Age and Survivors Insurance Trust Fund, and (III) the portion of such costs which should have been borne by the Federal Disability Insurance Trust Fund, and

"(ii) the Secretary of Health and Human Services shall determine (I) the portion of the costs, incurred during such fiscal year, of administration of title XVIII which should have been borne by the general fund in the Treasury, (II) the portion of such costs which should have been borne by the Federal Hospital Insurance Trust Fund, and (III) the portion of such costs which should have been borne by the Federal Supplementary Medical Insurance Trust Fund,

except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 232 shall be made pursuant to the applicable method prescribed under paragraph (4) of this subsection.

"(C) After the determinations under subparagraph (B) have been made for any fiscal year, the Commissioner of Social Security and the Secretary of Health and Human Services shall jointly certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to ensure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, for (i) the part of the administration of this title and title XVI for which the Commissioner of Social Security is responsible, (ii) the part of the administration of this title and title XVIII for which the Secretary of Health and Human Services is responsible, and (iii) carrying out the functions of the Social Security Administration, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee shall transfer any such amounts in accordance with any certification so made.".

(5) Section 201(g)(2) (42 U.S.C. 401(g)(2)) is amended, in the second sentence, by striking "established and maintained by the Secretary of Health and Human Services" and inserting "maintained by the Commissioner of Social Security", and by striking "Secretary shall furnish" and inserting "Commissioner of Social Security shall furnish".

(6) Section 201(g)(4) (42 U.S.C. 401(g)(4)) is amended to read as follows:

"(4) The Commissioner of Social Security shall utilize the method prescribed pursuant to this paragraph, as in effect immediately before the date of the enactment of the Social Security Administration Independence Act of 1994 for determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Social Security Administration, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds consider such action advisable, such Boards may modify the method of determining such costs.".

(7) Section 201(i)(1) (42 U.S.C. 401(i)(1)) is amended to read as follows:

"(i)(1) The Managing Trustee may accept on behalf of the United States money gifts and bequests made unconditionally to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund or to the Social Security Administration, the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.".

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(8) Subsections (j) and (k) of section 201 (42 U.S.C. 401) are each amended by striking "Secretary" each place it appears and inserting "Commissioner of Social Security".

(9) Section 201(l)(3)(B)(iii)(II) (42 U.S.C. 401(l)(3)(B)(iii)(II)) is amended by striking "Secretary" and inserting "Commissioner of Social Security".

(10) Section 201(m)(3) (42 U.S.C. 401(m)(3)) is amended by striking "Secretary of Health and Human Services" and inserting "Commissioner of Social Security".

(11) Section 201 (42 U.S.C. 401) is amended by striking "Internal Revenue Code of 1954" each place it appears and inserting "Internal Revenue Code of 1986".

(c) AMENDMENTS TO SECTION 218.—Section 218(d) (42 U.S.C. 418(d)) is amended by striking "Secretary" each place it appears in paragraphs (3) and (7) and inserting "Commissioner of Social Security".

(d) AMENDMENT TO SECTION 231.—Section 231(c) (42 U.S.C. 431(c)) is amended by striking "Secretary determines" and inserting "Commissioner of Social Security and the Secretary jointly determine".

SEC. 202. OTHER AMENDMENTS.

(a) AMENDMENTS TO TITLE VII.—(1) Title VII (42 U.S.C. 901 et seq.) is amended by adding at the end the following new section:

"DUTIES AND AUTHORITY OF SECRETARY

"SEC. 712. The Secretary shall perform the duties imposed upon the Secretary by this Act. The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures as may be necessary for carrying out the functions of the Secretary under this Act.".

(2) Section 706 (42 U.S.C. 907) is amended—

(A) in subsection (a), by striking "Advisory Council on Social Security" and all that follows through "disability insurance program and" and inserting "Advisory Council on Hospital and Supplementary Medical Insurance for the purpose of reviewing the status of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in relation to the long-term commitments of";

(B) in subsection (d), by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively, and

(C) by striking the section heading and inserting the following:

"ADVISORY COUNCIL ON HOSPITAL AND SUPPLEMENTARY MEDICAL INSURANCE".

(3) Paragraph (2) of section 709(b) (42 U.S.C. 910(b)) is amended by striking "(as estimated by the Secretary)" and inserting "(for amounts which will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as estimated by the Commissioner, and for amounts which will be paid from the Federal Hospital Insurance Trust and the Federal Supplementary Medical Insurance Trust Fund, as estimated by the Secretary)".

(4) Sections 709 and 710 (42 U.S.C. 910 and 911) are amended by striking "Internal Revenue Code of 1954" each place it appears and inserting "Internal Revenue Code of 1986".

(b) AMENDMENTS TO TITLE XI.—(1) Section 1101(a) (42 U.S.C. 1301(a)) is amended by adding at the end the following new paragraph:

"(10) The term 'Administration' means the Social Security Administration, except where the context requires otherwise.".

(2) Section 1106(a) (42 U.S.C. 1306(a)) is amended—

(A) by inserting "(1)" after "(a)";

(B) by striking "Department of Health and Human Services" each place it appears and inserting "applicable agency";

(C) by striking "Secretary" each place it appears and inserting "head of the applicable agency"; and

(D) by adding at the end the following new paragraph:

"(2) For purposes of this subsection and subsection (b), the term 'applicable agency' means—

"(A) the Social Security Administration, with respect to matter transmitted to or obtained by such Administration or matter disclosed by such Administration, or

"(B) the Department of Health and Human Services, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department.".

(3) Section 1106(b) (42 U.S.C. 1306(b)) is amended—

(A) by striking "Secretary" each place it appears and inserting "head of the applicable agency"; and

(B) by striking "Department of Health and Human Services" and inserting "applicable agency".

(4) Section 1106(c) (42 U.S.C. 1306(c)) is amended—

(A) by striking "the Secretary" the first place it appears and inserting "the Commissioner of Social Security or the Secretary"; and

(B) by striking "the Secretary" each subsequent place it appears and inserting "such Commissioner or Secretary".

(5) Section 1107(b) (42 U.S.C. 1307(b)) is amended by striking "the Secretary of Health and Human Services" and inserting "the Commissioner of Social Security or the Secretary".

(6) Section 1110 (42 U.S.C. 1310) is amended—

(A) in subsection (a)(2), by inserting "(or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning titles II or XVI)" after "Secretary";

(B) in subsection (b)—

(i) by striking "Secretary" each place it appears and inserting "Commissioner", and

(ii) by striking "the Secretary's" each place it appears and inserting "the Commissioner's"; and

(C) by striking "he", "his", "him", and "himself" each place they appear (except in subsection (b)(2)(A)) and inserting "the Commissioner", "the Commissioner's", "the Commissioner", and "himself or herself", respectively.

(7) Subsections (b) and (c) of section 1127 (42 U.S.C. 1320a–6) are each amended by striking "Secretary" and inserting "Commissioner of Social Security".

(8) Section 1128(f) (42 U.S.C. 1320a–7(f)) is amended by inserting after "section 205(g)" the following: ", except that, in so applying such sections and section 205(l), any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

(9) Section 1131 (42 U.S.C. 1320b–1) is amended—

(A) by striking "Secretary" each place it appears and inserting "Commissioner of Social Security";

(B) in subsection (a)(1)(A), by adding "or" at the end;

(C) in subsection (a)(1)(B), by striking "or" at the end;

(D) by striking subsection (a)(1)(C);

(E) by redesignating subsection (a)(2) as subsection (a)(3);

(F) by inserting after subsection (a)(1) the following new paragraph:

"(2) the Secretary makes a finding of fact and a decision as to the entitlement under section 226 of any individual to hospital insurance benefits under part A of title XVIII, or"; and

(G) by striking "he" in the matter in subsection (a) following paragraph (3) (as so redesignated) and inserting "the Commissioner of Social Security".

(10) Section 1155 (42 U.S.C. 1320c–4) is amended by striking "(to the same extent as is provided in section 205(b))" and all that follows and inserting "(to the same extent as beneficiaries under title II are entitled to a hearing by the Commissioner of Social Security under section 205(b)). For purposes of the preceding sentence, subsection (l) of section 205 shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to judicial review of any final decision relating to a reconsideration described in this subsection.".

(11) Sections 1101, 1106, 1107, and 1137 (42 U.S.C. 1301, 1306, 1307, and 1320b–7, respectively) are amended by striking "Internal Revenue Code of 1954" each place it appears and inserting "Internal Revenue Code of 1986".

(c) AMENDMENTS TO TITLE XVIII.—(1) Subsections (a) and (f) of section 1817 (42 U.S.C. 1395i) are amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Commissioner of Social Security".

(2) Section 1840(a) (42 U.S.C. 1395s(a)) is amended—

(A) in paragraph (1), by striking "Secretary" and inserting "Commissioner of Social Security", and by adding at the end the following new sentence: "Such regulations shall be prescribed after consultation with the Secretary."; and

(B) in paragraph (2), by striking "Secretary of Health and Human Services" and inserting "Commissioner of Social Security".

(3) Section 1872 (42 U.S.C. 1395ii) is amended by inserting after "title II" the following: ", except that, in applying such provisions with respect to this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

(4) Section 1869(b)(1) (42 U.S.C. 1395ff(b)(1)) and the last sentence of section 1876(c)(5)(B) (42 U.S.C. 1395mm(c)(5)(B)) are amended by inserting after "section 205(g)" the following: ", except that, in so applying such sections and section 205(l), any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

(5) Sections 1817, 1862, and 1886 (42 U.S.C. 1395i, 1395y, and 1395ww, respectively) are amended by striking "Internal Revenue Code of 1954" each place it appears and inserting "Internal Revenue Code of 1986".

(d) AMENDMENTS TO TITLE XIX.—(1) Section 1905(q)(2) (42 U.S.C. 1396d(q)(2)) is amended by striking "Secretary" and inserting "Commissioner of Social Security".

(2) Section 1910(b)(2) (42 U.S.C. 1396i(b)(2)) is amended, in the first sentence, by inserting after "section 205(g)" the following: ",

except that, in so applying such sections and section 205(l), any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

(e) AMENDMENT TO TITLE XX.—Section 2002(a)(2)(B) (42 U.S.C. 1397a(a)(2)(B)) is amended by striking "Internal Revenue Code of 1954" and inserting "Internal Revenue Code of 1986".

(f) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended—

(1) by adding at the end of section 5311 the following new item:

"Commissioner, Social Security Administration.";

(2) by adding at the end of section 5313 the following new item:

"Deputy Commissioner, Social Security Administration."; and

(3) by striking "Secretary of Health Education, and Welfare" each place it appears in section 8141 and inserting "Commissioner of Social Security".

(g) AMENDMENTS TO FOOD STAMP ACT OF 1977.—(1) Sections 6(c)(3) and 8(e)(6) of the Food Stamp Act of 1977 (7 U.S.C. 2015(c)(3) and 2017(e)(6)) are each amended by inserting "the Commissioner of Social Security and" before "the Secretary of Health and Human Services".

(2) Sections 6(g), 11(j), and 16(e) of such Act (7 U.S.C. 2015(g), 2020(j), and 2025(e)) are each amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Commissioner of Social Security".

(3) Section 11(i) of such Act (7 U.S.C. 2020(i)) is amended by adding ", the Commissioner of Social Security" after "the Secretary".

(h) AMENDMENT TO TITLE 14, UNITED STATES CODE.—Section 707(e)(3) of title 14, United States Code, is amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Commissioner of Social Security".

(i) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—(1) Subsections (c)(1), (c)(2)(E), (g)(1), (g)(2)(A), and (g)(2)(B) of section 1402 of the Internal Revenue Code of 1986 (26 U.S.C. 1402) are amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Commissioner of Social Security".

(2) Section 3121(b)(10)(B) of such Code (26 U.S.C. 3121(b)(10)(B)) is amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Commissioner of Social Security".

(3) Section 3127 of such Code (26 U.S.C. 3127) is amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Commissioner of Social Security".

(4) Section 6050F(c)(1)(A) of such Code (26 U.S.C. 6050F(c)(1)(A)) is amended by striking "Secretary of Health and Human Services" and inserting "Commissioner of Social Security".

(5) Subsections (d) and (f) of section 6057 of such Code (26 U.S.C. 6057) are amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Commissioner of Social Security".

(6) Section 6103(l)(5) of such Code (26 U.S.C. 6103(l)(5)) is amended—

(A) by striking "Department of Health and Human Services" and inserting "Social Security Administration"; and

(B) by striking "Secretary of Health and Human Services" and inserting "Commissioner of Social Security".

(7) Subsections (d)(3)(C) and (e) of section 6402 of such Code (26 U.S.C. 6402) are amended by striking "Secretary of Health and Human Services" each place it appears and inserting "Commissioner of Social Security".

(8) Section 6511(d)(5) of such Code (26 U.S.C. 6511(d)(5)) is amended by striking "Secretary of Health and Human Services" and inserting "Commissioner of Social Security".

(j) AMENDMENTS TO TITLE 31, UNITED STATES CODE.—Section 3720A(f) of title 31, United States Code, is amended by striking "Secretary of Health and Human Services" each place it appears in and inserting "Commissioner of Social Security".

(k) AMENDMENTS TO TITLE 38, UNITED STATES CODE.—Section 5105 of title 38, United States Code, is amended—

(1) by striking "Secretary of Health and Human Services" each place it appears and inserting "Commissioner of Social Security"; and

(2) by striking the second sentence of subsection (b) and inserting the following new sentence: "A copy of each such application filed with either the Secretary or the Commissioner, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary or the Commissioner with such application, and which may be needed by the other official in connection therewith, shall be transmitted by the Secretary or the Commissioner receiving the application to the other official.".

(l) AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 9(a)(1), by striking "and" at the end of subparagraph (U), and by adding at the end the following new subparagraph:

"(V) of the Social Security Administration, the functions of the Inspector General of the Department of Health and Human Services relating to the administration of the old-age, survivors, and disability insurance program under title II of the Social Security Act and of the supplemental security income program under title XVI of such Act; and";

(2) in section 11(1), by striking "or" after "Commission" and inserting a semicolon, and by inserting after "Board;" the following: "or the Commissioner of Social Security;"; and

(3) in section 11(2), by striking "or" after "Information Agency,", and by inserting after "Veterans' Administration" the following: ", or the Social Security Administration;".

SEC. 203. RULES OF CONSTRUCTION.

(a) REFERENCES TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, record, or document to the Department of Health and Human Services with respect to such Department's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act, such reference shall be considered a reference to the Social Security Administration.

(b) REFERENCES TO THE SECRETARY OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, record, or document to the Secretary of Health and Human Services with respect to such Secretary's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act, such reference shall be considered a reference to the Commissioner of Social Security.

(c) REFERENCES TO OTHER OFFICERS AND EMPLOYEES.—Whenever any reference is made in any provision of law (other than this Act or a provision of law amended by this Act), regulation, rule, record, or document to any other officer or employee of the Department of Health and Human Services with respect to such officer or employee's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act, such reference shall be considered a reference to the appropriate officer or employee of the Social Security Administration.

SEC. 204. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the provisions of this title shall take effect on the date established pursuant to section 107(a).

(b) EXCEPTIONS.—Subsections (f)(1), (f)(2), and (l) of section 202 shall take effect on the date of the enactment of this title.

TITLE III—SOCIAL SECURITY DISABILITY AND REHABILITATION

SEC. 301. SHORT TITLE.

This title may be cited as the "Social Security Disability and Rehabilitation Act of 1994".

SEC. 302. REFORM OF MONTHLY INSURANCE BENEFITS BASED ON DISABILITY INVOLVING SUBSTANCE ABUSE.

(a) SOCIAL SECURITY DISABILITY INSURANCE.—

(1) IN GENERAL.—Section 223 of the Social Security Act (42 U.S.C. 423) is amended by adding at the end the following new subsection:

"Limitation on Payment of Benefits by Reason of Substance Abuse

"(j)(1)(A) Notwithstanding any other provision of this title, no individual whose disability is based in whole or in part on a medical determination that the individual is a drug addict or alcoholic shall be entitled to benefits under this title based on such disability with respect to any month, unless such individual—

"(i) is undergoing, or on a waiting list for, any medical or psychological treatment that may be appropriate for such individual's condition as a drug addict or alcoholic (as the case may be) and for the stage of such individual's rehabilitation at an institution or facility approved for purposes of this paragraph by the Secretary (so long as access to such treatment is reasonably available, as determined by the Secretary), and

"(ii) demonstrates in such manner as the Secretary requires, including at a continuing disability review not later than one year after such determination, that such individual is complying with the terms, conditions, and requirements of such treatment and with the requirements imposed by the Secretary under subparagraph (B).

"(B) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in subparagraph (A), in order to assure such compliance and to determine the extent to which the imposition of such requirements is contributing to the achievement of the purposes of this

title. The Secretary may retain jurisdiction in the case of a hearing before the Secretary under this title to the extent the Secretary determines necessary to carry out the preceding sentence. The Secretary shall annually submit to the Congress a full and complete report on the Secretary's activities under this paragraph.

"(C) The representative payee and the referral and monitoring agency for any individual described in subparagraph (A) shall report to the Secretary any noncompliance with the terms, conditions, and requirements of the treatment described in subparagraph (A) and with the requirements imposed by the Secretary under subparagraph (B).

"(D)(i) If the Secretary finds that an individual is not complying with the terms, conditions, and requirements of the treatment described in subparagraph (A), or with the requirements imposed by the Secretary under subparagraph (B), or both, the Secretary, in lieu of termination, may suspend such individual's benefits under this title until compliance has been reestablished, including compliance with any additional requirements determined to be necessary by the Secretary.

"(ii) Any period of suspension under clause (i) shall be taken into account in determining any 24-month period described in subparagraph (E) and shall not be taken into account in determining the 36-month period described in such subparagraph.

"(E)(i) Except as provided in clause (ii), no individual described in subparagraph (A) shall be entitled to benefits under this title for any month following the 24-month period beginning with the determination of the disability described in such subparagraph.

"(ii) If at the end of the 24-month period described in clause (i), the individual furnishes evidence in accordance with subsection (d)(5) that the individual continues to be under a disability based in whole or in part on a medical determination that the individual is a drug addict or alcoholic, such individual shall continue to be entitled to benefits under this title based on such disability.

"(iii) Subject to clause (iv), if such an individual continues to be entitled to such benefits for an additional 24-month period following a determination under clause (ii), clauses (i) and (ii) shall apply with regard to any further entitlement to such benefits following the end of such additional period.

"(iv) In no event shall such an individual be entitled to benefits under this title for more than a total of 36 months, unless upon the termination of the 36th month such individual furnishes evidence in accordance with subsection (d)(5) that the individual is under a disability which is not related in part to a medical determination that the individual is a drug addict or alcoholic.

"(2)(A) Any benefits under this title payable to any individual referred to in paragraph (1), including any benefits payable in a lump sum amount, shall be payable only pursuant to a certification of such payment to a qualified organization acting as a representative payee of such individual pursuant to section 205(j).

"(B) For purposes of subparagraph (A) and section 205(j)(4), the term 'qualified organization'—

"(i) shall have the meaning given such term by section 205(j)(4)(B), and

"(ii) shall mean an agency or instrumentality of a State or a political subdivision of a State.

"(3) Monthly insurance benefits under this title which would be payable to any individual (other than the disabled individual to whom benefits are not payable by reason of this subsection) on the basis of the wages and self-employment income of such a disabled individual but for the provisions of paragraph (1), shall be payable as though such disabled individual were receiving such benefits which are not payable under this subsection."

(2) CONFORMING AMENDMENTS.—

(A) Section 205(j)(1) of such Act (42 U.S.C. 405(j)(1)) is amended by inserting ", or in the case of any individual referred to in section 223(j)(1)(A)" after "thereby".

(B) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking "legally incompetent or under the age of 15" and inserting "legally incompetent, under the age of 15, or a drug addict or alcoholic referred to in section 223(j)(1)(A)".

(b) SUPPLEMENTAL SECURITY INCOME.—Paragraph (3) of section 1611(e) of the Social Security Act (42 U.S.C. 1382(e)) is amended to read as follows:

"(3)(A)(i) No person who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1614(a)(3)) shall be an eligible individual or eligible spouse for purposes of this title with respect to any month if such individual's disability is based in whole or in part on a medical determination that the individual is a drug addict or alcoholic, unless such individual—

"(I) is undergoing, or on a waiting list for, any medical or psychological treatment that may be appropriate for such individual's condition as a drug addict or alcoholic (as the case may be) and for the stage of such individual's rehabilitation at an institution or facility approved for purposes of this paragraph by the Secretary (so long as access to such treatment is reasonably available, as determined by the Secretary), and

"(II) demonstrates in such manner as the Secretary requires, including at a continuing disability review not later than one year after such determination, that such individual is complying with the terms, conditions, and requirements of such treatment and with the requirements imposed by the Secretary under clause (ii).

"(ii) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in clause (i), in order to assure such compliance and to determine the extent to which the imposition of such requirements is contributing to the achievement of the purposes of this title. The Secretary may retain jurisdiction in the case of a hearing before the Secretary under this title to the extent the Secretary determines necessary to carry out the preceding sentence. The Secretary shall annually submit to the Congress a full and complete report on the Secretary's activities under this subparagraph.

"(iii) The representative payee and the referral and monitoring agency for any individual described in clause (i) shall report to the Secretary any noncompliance with the terms, conditions, and requirements of the treatment described in clause (i) and with the requirements imposed by the Secretary under clause (ii).

"(iv)(I) If the Secretary finds that an individual is not complying with the terms, conditions, and requirements of the treatment described in clause (i), or with the requirements imposed by the Secretary under clause (ii), or both, the Secretary, in lieu of termination, may suspend such individual's benefits under this title until compliance has been reestablished, including compliance with any additional requirements determined to be necessary by the Secretary.

"(II) Any period of suspension under subclause (I) shall be taken into account in determining any 24-month period described in clause (v) and shall not be taken into account in determining the 36-month period described in such clause.

"(v)(I) Except as provided in subclause (II), no individual described in clause (i) shall be entitled to benefits under this title for any month following the 24-month period beginning with the determination of the disability described in such clause.

"(II) If at the end of the 24-month period described in subclause (I), the individual furnishes evidence in accordance with section 223(d)(5) that the individual continues to be under a disability based in whole on a medical determination that the individual is a drug addict or alcoholic, such individual shall be entitled to benefits under this title based on such disability for no more than an additional 36 months.

"(III) Subject to subclause (IV), if such an individual continues to be entitled to such benefits for an additional 24-month period following a determination under subclause (II), subclauses (I) and (II) shall apply with regard to any further entitlement to such benefits following the end of such additional period.

"(IV) In no event shall such an individual be entitled to benefits under this title for more than a total of 36 months, unless upon the termination of the 36th month such individual furnishes evidence in accordance with section 223(d)(5) that the individual is under a disability which is not related in part to a medical determination that the individual is a drug addict or alcoholic.

"(B)(i) Any benefits under this title payable to any individual referred to in subparagraph (A), including any benefits payable in a lump sum amount, shall be payable only pursuant to a certification of such payment to a qualified organization acting as a representative payee of such individual pursuant to section 1631(a)(2)(A)(ii).

"(ii) For purposes of clause (i) and section 1631(a)(2)(D), the term 'qualified organization'—

"(I) shall have the meaning given such term by section 1631(a)(2)(D)(ii), and

"(II) shall mean an agency or instrumentality of a State or a political subdivision of a State."

(c) EFFECTIVE DATES; AUTHORIZATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to benefits payable for determinations of disability made 90 or more days after the date of the enactment of this Act.

(2) CURRENT DETERMINATIONS.—

(A) IN GENERAL.—With respect to any individual described in subparagraph (B), the Secretary of Health and Human Services shall provide during the 3-year period beginning after the date of the enactment of this Act for the application of the amendments made by this section to such individual with the time periods described in such amendments to begin upon such application.

(B) INDIVIDUAL DESCRIBED.—An individual is described in this subparagraph if such individual is entitled to benefits under title II or XVI of the Social Security Act based on a disability determined before the date de-

scribed in paragraph (1) to be based in whole or in part on a medical determination that the individual is a drug addict or alcoholic.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of the provisions of, and the amendments made by, this section.

SEC. 303. PRIORITY OF TREATMENT.

The Secretary of Health and Human Services, through the Administrator of the Substance Abuse and Mental Health Services Administration, shall assure that every individual receiving disability benefits under title II or XVI of the Social Security Act based in whole or in part on a medical determination that the individual is a drug addict or alcoholic be given high priority for treatment through entities supported by the various States through any substance abuse block grant authorized under law.

SEC. 304. ESTABLISHMENT OF REFERRAL MONITORING AGENCIES REQUIRED IN ALL STATES.

The Secretary of Health and Human Services shall, within 1 year of the date of the enactment of this Act, provide for the establishment of referral and monitoring agencies for each State for the purpose of carrying out the treatment requirements under sections 223(j)(1) and 1611(e)(3)(A) of the Social Security Act (42 U.S.C. 423(j)(1) and 1382(e)(3)(A)).

SEC. 305. PROCEEDS FROM CERTAIN CRIMINAL ACTIVITIES CONSTITUTE SUBSTANTIAL GAINFUL EMPLOYMENT.

(a) SOCIAL SECURITY DISABILITY INSURANCE.—Section 223(d)(4) of the Social Security Act (42 U.S.C. 423(d)(4)) is amended by inserting the following after the first sentence: "If an individual engages in a criminal activity to support substance abuse, any proceeds derived from such activity shall demonstrate such individual's ability to engage in substantial gainful activity.".

(b) SUPPLEMENTAL SECURITY INCOME.—Section 1614(a)(3)(D) of the Social Security Act (42 U.S.C. 1382(a)(3)(D)) is amended by inserting the following after the first sentence: "If an individual engages in a criminal activity to support substance abuse, any proceeds derived from such activity shall demonstrate such individual's ability to engage in substantial gainful activity.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disability determinations conducted on or after the date of the enactment of this Act.

SEC. 306. CONSISTENT PENALTY PROVISIONS FOR SSDI AND SSI PROGRAMS.

(a) FELONY PENALTIES FOR FRAUD.—

(1) IN GENERAL.—Subsection (a) of section 1631 of the Social Security Act (42 U.S.C. 1383a) is amended by striking "shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both" and inserting "shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both".

(2) REPRESENTATIVE PAYEES.—

(A) SSDI.—Subsections (b) and (c) of section 208 of such Act (42 U.S.C. 408) are amended to read as follows:

"(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse or an entity described in section 223(j)(2)(B)(ii)), shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both.

"(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"(3) Any person or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).

"(c) For the purpose of subsection (a)(7), the terms 'social security number' and 'social security account number' mean such numbers as are assigned by the Secretary under section 205(c)(2) whether or not, in actual use, such numbers are called social security numbers."

(B) SSI.—Subsection (b)(1) of section 1632 of such Act (42 U.S.C. 1383a) is amended by striking "(other than such person's spouse)" and all that follows through the period and inserting "(other than such person's spouse or an entity described in section 1611(e)(3)(B)(ii)(II)), shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both."

(b) CIVIL ADMINISTRATIVE PENALTIES.—

(1) SSDI.—Section 208 of the Social Security Act (42 U.S.C. 408) is amended by adding at the end the following new subsections:

"(e) For administrative penalties for false claims and statements with respect to which an individual or other entity knows or has reason to know such falsity, see chapter 38 of title 31, United States Code.

"(f) In the case of the second or subsequent imposition of an administrative or criminal penalty on any person or other entity under this section, the Secretary may exclude such person or entity from participation in any program under this title and titles V, XVI, XVIII, and XX, and may direct that such person or entity be excluded from any State health care program (as defined in section 1128(h)) and any other Federal program as provided by law."

(2) SSI.—

(A) IN GENERAL.—Section 1632 of such Act (42 U.S.C. 1383a) is amended by adding at the end the following new subsections:

"(c) For administrative penalties for false claims and statements with respect to which an individual or other entity knows or has reason to know such falsity, see chapter 38 of title 31, United States Code.

"(d) In the case of the second or subsequent imposition of an administrative or criminal penalty on any person or other entity under this section, the Secretary may exclude such person or entity from participation in any program under this title and titles II, V, XVIII, and XX, and may direct that such person or entity be excluded from any State health care program (as defined in section 1128(h)) and any other Federal program as provided by law."

(B) CONFORMING AMENDMENT.—The heading for section 1632 of such Act (42 U.S.C. 1383a) is amended by striking "FOR FRAUD".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective on or after the date of the enactment of this Act.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, we thank all concerned. I know on my side, Ed Lopez and Margaret Malone were hugely helpful on this measure that is 15 years past due. Its time has finally come.

Mr. PACKWOOD. Mr. President, on my side, Kathy Tobin who has worked long and hard on this, and Lindy Paull.

Mr. MOYNIHAN. Mr. President, this is a momentous act. We will now go to conference with the House which has on one occasion passed this measure unanimously, as we have just done, and we hope to see a new era in Social Security in consequence. We thank the cooperation of everybody.

MORNING BUSINESS

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the Senate enter a period for morning business, in which Senators be allowed to speak for up to 10 minutes.

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

Mr. MOYNIHAN. Mr. President, I respectfully suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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. Parliamentary inquiry, are we in morning business?

The PRESIDING OFFICER. The Senate is in morning business. Each Senator is permitted to speak for up to 10 minutes.

AMERICAN JUDICIAL SYSTEM

Mr. SPECTER. Mr. President, I will speak for a few moments this afternoon about the American judicial system, and I speak not really as a lawyer or as a Senator but as an American who has just had an opportunity to observe the Supreme Court of the United States in action. I did so this morning as a lawyer representing plaintiffs in a case involving the Philadelphia Navy Yard.

I do not at this moment speak about the merits of the case, which I had an opportunity to do this morning before the Court, and have had an opportunity to do on this floor on prior occasions, but about our system of justice, about our Constitution and about our Federal courts.

It is an inspirational experience to come into the Supreme Court building and to see the inscriptions about major court decisions, starting with Marbury versus Madison, a case decided in 1803 which upheld the principle of Supreme Court review on constitutional issues,

and the declaration by Chief Justice Marshall that it is emphatically the province of the Federal courts to decide the law.

The Constitution of the United States has been widely cited as the greatest document ever written, and it has provided the basis for the evolution of the greatest country in the history of the world—the United States of America—as it has defined a tripartite system of Congress: The Congress under article I; the executive under article II and the judiciary under article III.

Taking the opportunity to argue a case before the Supreme Court and to revisit constitutional cases has been a new, growing, and learning experience for me and gives me new insights into the workings of our Government as a whole and especially our workings here in the Senate, and a new appreciation of our role in making the law and establishing appropriate standards whenever the Congress delegates authority to carry out important public policy functions.

The Constitution needs to be reread from time to time to see the precise sphere of activity. While the President, as Chief Executive Officer, has substantial constitutional authority—illustratively, as Commander in Chief of the military—it is the Congress which has the sole authority to make the laws.

That is an awesome responsibility. Revisiting constitutional cases starting with Marbury versus Madison, our written Constitution and our tradition of judicial review, under which the Federal courts, and especially the Supreme Court, interpret the law and make sure that individual rights are protected and that there is no infringement on the constitutional process, distinguish the United States, I think, from every other country in the world.

I reread the decision of Little versus Barreme from 1804, 1 year after Marbury versus Madison, in which Chief Justice Marshall wrote an opinion limiting Executive power because the authority to make laws resides solely with the Congress. In that case, the Congress had authorized the seizure on the high seas of any vessel sailing from a French port. The President authorized the seizure of vessels sailing to or from a French port. The Supreme Court of the United States said that the President's authority does not go beyond the congressional authorization.

When the President authorized the seizure of any vessel sailing from a French port, it was declared illegal; even in the time of a military situation when the President's authority might arguably be construed to be broader, that authority was limited by the Supreme Court to the seizure of vessels going to a French port, and was held not to encompass a seizure of a vessel coming from the port.

These decisions supporting the concept of limited government range to landmark cases like the review of the seizure of the steel mills by President Truman, which was declared unconstitutional as being in excess of Presidential authority. In that case, Justice Jackson wrote a learned concurring opinion, saying that in a parliamentary government, which the United States has, the legislative power resides in the Congress, and authority in case of public necessity to seize the steel mills could come only from the Congress. There is no broader power in the President. Notwithstanding the generalized constitutional Executive powers, they were not broad enough to comprehend the seizure of the steel mills in the absence of congressional authorization.

In the landmark decision of Panama Refining versus Ryan, on an issue which was before the Supreme Court this morning, the Supreme Court of the United States ruled that the President could not carry out legislative functions even when the Congress had delegated those functions to the President because only the Congress has the authority to make law, and that there cannot be a pact between the President and the Congress which violates the Constitution. An attempt by the Congress to grant broad powers to the President which infringe upon the congressional authority to make laws violates the Constitution and the principle of separation of power.

The Congress has responded to the proliferation of administrative agencies by expanding judicial review, and that expansion of judicial review was encompassed in the Administrative Procedure Act. That statutory authority for judicial review stands in addition to the case law or common law which has given the judiciary broad authority to review Executive decisions and to be sure that when the Executive acts, it acts within the confines of the congressional delegation and in conformity with the standards that Congress has authorized.

That is a critical part of the Navy Yard case, where the Congress established an elaborate procedure in order to resolve the issue of base closures, which had been a political hot potato. The Congress felt unable to select military bases for closure, and the Congress felt it inappropriate for the President to select bases for closure because of favoritism or politics. To solve this problem, the Congress established an elaborate process which required standards for closure—a strategic plan, criteria, hearings, full disclosure to the Comptroller General, the General Accounting Office, the investigative arm of the Congress.

The essential issue in the Philadelphia Navy Yard case is whether those statutory standards were followed, and whether, in not following those standards, the Executive exceeded its authority and violated the constitutional doctrine of separation of powers.

As a totally independent basis, there is also statutory authority for judicial review, and when we legislate in the Congress, most frequently the Congress does not expressly state whether the action of the administrative agency is or is not subject to judicial review.

From a reexamination of these cases, Mr. President, I see that we might be wiser in our legislative capacities to look at that issue and to provide some judicial guidance. But the Supreme Court has broadly interpreted the courts' authority to undertake judicial review, saying that the Congress is not drawing blank checks to the administrative agencies, that there is a presumption in favor of judicial review of agency action, and that it is really up to the courts to say what the law means.

But just as more care might be given by the Congress, the Senate and House, to establish standards, more care should be given to congressional intent on the issue of judicial review.

(Mrs. BOXER assumed the chair.)

Mr. SPECTER. Today's argument considered at some length a case handed down by the Supreme Court involving reapportionment. Secretary of Commerce Barbara Franklin submitted the census report to the President, who certified the numbers. The Supreme Court ultimately said there was no judicial review because of the absence of finality of agency action, where the President was able to change, alter, modify, or supervise what the President's Cabinet official had done.

A central point in today's argument was the basic distinction between what the President could do on the census data reported by the Secretary of Commerce contrasted with what he could do with the Base Closure Commission, where the President had to take it all or leave it all. The President could send it back once, but on the second round the President had to take it all or leave it all.

Now, then, the Congress provided in the base closure process for a resolution of disapproval—again, all or nothing. There is a fundamental difference in that kind of procedure from the situation where the President is the supervising Executive over the Secretary of Commerce and revisions could be made, so that there was final agency action, at least arguably, and I think realistically, by the Base Closure Commission.

The opportunity to be a U.S. Senator, Madam President—and I am sure you will agree with me—is a privilege, and it is a rare privilege for Senator BOXER to serve the State of California or for ARLEN SPECTER to serve the State of Pennsylvania. It is a rare privilege. We have heavy responsibilities that affect 260 million people whenever we act. On

some occasions, we affect 6 billion people around the world because of the superpower stature of the United States.

An opportunity to reexamine the delicate constitutional balance gives me a new appreciation of the separation of powers and our responsibilities in establishing standards in legislation dealing with issues of judicial review. To have had an opportunity to appear before the Supreme Court is really inspirational. Actually, it is inspirational to appear on the floor of the U.S. Senate even when the Chamber is largely empty. It is inspirational for a person such as me every time I leave Union Station and see the Capitol dome and reflect on the kind of country we have and the kind of Government we have.

So I just wanted to make those few comments, Madam President, within a few hours of leaving the Supreme Court Chamber, to articulate my view on what a great country we have, a great Constitution we have, and to pay tribute to the Federal judicial system as the final arbiter of the greatest document in the history of the world which has led to the development of the greatest country in the history of the world.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

THE EXECUTIVE CALENDAR

Mr. MITCHELL. Madam President, as if in executive session, I ask unanimous consent that the Senate proceed to executive session at 3 p.m. today to consider the nomination of William B. Gould IV to be a member of the National Labor Relations Board; that is Executive Calendar No. 476; that there be 2 hours of debate equally divided between the chairman and ranking member of the Committee on Labor and Human Resources or their designees; that when time is used or yielded back, the Senate, without intervening action, vote on the nomination; and that, if confirmed, the motion to reconsider be tabled; and, that the President be immediately notified of the Senate's action.

I further ask unanimous consent that if William B. Gould IV is confirmed with respect to Executive Calendar No. 476, the Senate proceed to the consideration of the following nominations:

Margaret A. Browning to be a member of the National Labor Relations Board (Ex. Cal. 706);

Frederick L. Feinstein to be general counsel of the National Labor Relations Board (Ex. Cal. 707);

Charles I. Cohen to be a member of the National Labor Relations Board (Ex. Cal. 708); and

William B. Gould IV to be a member of the National Labor Relations Board (Ex. Cal. 475).

I further ask unanimous consent that the nominees be confirmed en bloc; that any statements appear in the RECORD as if read; that, upon confirmation, the motions to reconsider be laid upon the table en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

Madam President, I am authorized to state on behalf of the minority that this has been cleared by the minority leader and his staff.

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

MORNING BUSINESS

Mr. MITCHELL. Madam President, I now ask unanimous consent that there be a period for morning business between now and the hour of 3 p.m., with Senators permitted to speak therein for up to 10 minutes each.

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

ORDER OF PROCEDURE

Mr. MITCHELL. Madam President, pursuant to this agreement, the Senate will take up nominations to the National Labor Relations Board beginning at 3 p.m. There is a maximum possible of 2 hours of debate, meaning that a vote will occur on the nomination of William B. Gould IV to be a member of the National Labor Relations Board no later than 5 p.m.

I am advised by staff of the managers that it is likely that not all of the time for debate will be used. And, therefore, Senators should be aware that a vote may occur at some time, which is not now possible to state with certainty, between 3 p.m. and 5 p.m.

Senators should be aware of that and be prepared to be on the floor within 20 minutes.

I thank my colleagues for their cooperation.

Madam President, I now yield the floor.

Madam President, seeing no other Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

REPORT OF THE VISIT OF SENATORS COCHRAN, PRESSLER, AND BROWN TO KOREA, BURMA, INDIA, PAKISTAN, KUWAIT, AND THE INTERNATIONAL ATOMIC ENERGY AGENCY

Mr. COCHRAN. Mr. President, I am pleased to submit a report to the Senate of my visit with Senators PRESSLER and BROWN to Korea, Burma, India, Pakistan, Kuwait, and the International Atomic Energy Agency in Vienna from December 5 through December 19, 1993.

I ask unanimous consent that the report be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, March 2, 1994.

Hon. ROBERT DOLE,
U.S. Senate,
Washington, DC.

DEAR SENATOR DOLE: I am pleased to submit this report on my trip with Senators Pressler and Brown to Korea, Burma, India, Pakistan, Kuwait, and the International Atomic Energy Agency in Vienna from December 5 through December 19, 1993.

We undertook this mission to engage senior officials in discussions of political and economic changes in the countries visited; the danger of proliferation of weapons of mass destruction; and the likely impact of U.S. policy on these issues.

In South Korea, we met with Minister of Foreign Affairs Han Sun-joo and Lieutenant General William W. Crouch, Chief of Staff, U.N. Command/Combined Forces Command/U.S. Forces Korea/Deputy Commanding General, Eighth U.S. Army.

In Burma, we met with Minister of Foreign Affairs U Ohn Gyaw; Lieutenant General Khin Nyunt of the State Law and Order Restoration Council; and Brigadier General David Oliver Abel, Minister of National Planning and Economic Development.

In India, we had discussions with business leaders in the Indo-American Chamber of Commerce and at the Bombay Stock Exchange; Maharashtra Chief Minister Sharad Pawar, former Minister of Defense; Minister of State for External Affairs Salman Khurshid; Minister of Finance Manmohan Singh; representatives of the All Parties Freedom Conference of Kashmir; Prime Minister P.V. Narasimha Rao; Member of Parliament Murli Deora, Bombay chief of the Congress(I) Party; Minister for Home Affairs S. B. Chavan; Vice President K. R. Narayanan; and Minister of External Affairs Dinesh Singh.

In Pakistan, we met with Senate Chairman Wasim Sajjad; Minister of Defense Aftab Shaban Mirani; Foreign Secretary Shaharyar Khan; Minister of Foreign Affairs Sardar Assef Ali; President Farooq Leghari; Prime Minister Benazir Bhutto; and members of the American Business Council of Pakistan.

In Kuwait, we had discussions with the Prime Minister, Crown Prince Shaikh Saad Abdallah Al-Sabah, and Minister of Information Shaikh Saud Nasir Al-Sabah, former ambassador to the United States.

At the International Atomic Energy Agency in Vienna we had discussions with Director General Hans Blix; Deputy Director for Safeguards Bruno Pellaud; Deputy Director for Administration David Waller; and Jan Priest, Head of the Safeguards and Non-Proliferation Policy Section of the Division of External Relations.

We gained valuable insights regarding U.S. nonproliferation policy and issues confronting the countries visited. I believe the trip will enhance U.S. bilateral and multilateral relations.

I am very grateful to you, as well as Deputy Chief of Mission Charles Kartman and the embassy staff in Seoul; Charge d'Affaires

Franklin P. Huddle, Jr., and the embassy staff in Rangoon; Charge d'Affaires Kenneth C. Brill and the embassy staff in New Delhi and Consul General Charles A. Mast and the consular staff in Bombay; Ambassador John C. Monjo and the embassy staff in Islamabad and Consul General Richard C. Faulk and the consular staff in Karachi; Deputy Chief of Mission Georgia Debell and the embassy staff in Kuwait; and Ambassador Swanee G. Hunt and the staffs at the embassy and the U.S. Mission to International Organizations in Vienna, for valuable assistance in making our trip successful. In this report, I take the opportunity to discuss some of the highlights of this enlightening and beneficial trip.

Sincerely,

THAD COCHRAN,
U.S. Senator.

REPORT OF THE VISIT OF SENATORS COCHRAN, PRESSLER, AND BROWN TO KOREA, BURMA, INDIA, PAKISTAN, KUWAIT, AND THE INTERNATIONAL ATOMIC ENERGY AGENCY—DECEMBER 5–19, 1993

PURPOSE

Senators Cochran, Pressler, and Brown welcomed the Republican Leader's authorization to visit the Republic of Korea, the Union of Burma, the Republic of India, the Islamic Republic of Pakistan, the State of Kuwait, and the International Atomic Energy Agency (IAEA) in Vienna. The delegation was hosted by the respective U.S. embassies.

On December 7 in South Korea, the Senators discussed tensions associated with the refusal of North Korea to allow adequate IAEA inspection of its nuclear facilities.

During the December 8–9 stay in Burma, they met with members of the State Law and Order Restoration Council to consider regional issues and human rights.

In India from December 10 to 13, talks focused on regional conditions, especially tensions with Pakistan over Kashmir; nuclear proliferation; and India's opening economy.

During its December 13–16 visit in Pakistan, the Delegation discussed regional issues, nuclear proliferation, and Pakistan's economic development.

On December 16 in Kuwait, the Senators observed Kuwait's recovery from the Persian Gulf War and discussed the country's regional relations.

In Vienna on December 18, the Delegation discussed nuclear concerns with IAEA officials.

REPUBLIC OF KOREA

After years of international uncertainty regarding its nuclear weapons intentions, North Korea agreed in 1986 to join the Non-Proliferation Treaty. When in 1992 the IAEA asked to inspect some questionable nuclear sites, however, the North Koreans refused and announced in 1993 their intention to withdraw from the Treaty. During negotiations with the United States, North Korea had suspended its withdrawal, but at the time of the Delegation's visit to South Korea, the North was still refusing IAEA access to the sites and seeking greater U.S. concessions.

Minister of Foreign Affairs Han Sung-joo

Upon arrival in Seoul on Tuesday, December 7, the Delegation met with the Minister of Foreign Affairs at his office. The Foreign Minister mentioned the street demonstrations that day protesting the decision to open the South Korean rice market to foreign competition. Despite strong public feelings on this issue, his government believed Korea would benefit from freer trade, symbolized by successful conclusion of the Uruguay Round.

Addressing the North Korean nuclear issue, the Foreign Minister described the next few weeks as critical, since the continuity of IAEA safeguards was at stake. Although North Korea was more militant than before, there was no qualitative change in the situation sufficient to warrant a buildup of South Korean or U.S. forces. The U.S. commitment to the defense of South Korea was adequate to deal with the threat.

It was not clear whether North Korea would eventually agree to special IAEA inspections, was using the nuclear issue to obtain as many concessions as possible, or was determined to develop nuclear weapons in any case. Some diplomatic success had been achieved, but each time North Korea had agreed to something, it later demanded even more concessions. Resolution of the dispute would require patient dialogue.

The Foreign Minister said North Korean acquisition of nuclear weapons would not automatically trigger similar action by its neighbors. Without significant political change, Japan would not consider developing nuclear weapons, and South Korea was "determined not to go nuclear, no matter what."

He noted the rapid expansion in South Korean trade with China since diplomatic relations were established in August 1992. That country was facing internal uncertainty, but the Foreign Minister was hopeful China would play a constructive regional role as its economy continued to expand.

For the foreseeable future, with or without unification, Korea would have to live with powerful neighbors: Japan, China, and Russia. South Korea could not hope to match those countries militarily, but it would maintain a reasonable defense posture. Its main objectives were to maintain its security relationship with the United States and to promote a regional organization for confidence-building, arms control, nonproliferation, sea safety and environmental protection.

Lieutenant General William W. Crouch

The Delegation met at Yongsan Base with Lieutenant General William W. Crouch, Chief of Staff, U.N. Command/Combined Forces Command/U.S. Forces Korea/Deputy Commanding General, Eighth U.S. Army; Major General James M. Myatt, Assistant Chief of Staff C5; and Colonel Richard M. Hasbrouck III, Assistant Chief of Staff J2; for a briefing on the nuclear situation in North Korea.

UNION OF BURMA

In 1988, the armed forces suspended Burma's constitution and established the State Law and Order Restoration Council (SLORC). The SLORC refused to honor the results of the 1990 election won by the National League for Democracy, whose leader, Aung San Suu Kyi, had been under house arrest since 1989.

After General Than Shwe became prime minister in 1992, the government freed some 2,000 political prisoners, allowed family visits to Aung San Suu Kyi, and suspended offensive military operations against some insurgent groups.

Although a national convention to draft a new constitution began in January 1993, the SLORC limited the scope of debate and made it clear the military would play a major role even after a civilian government was established.

At the time of the Delegation's visit, human rights issues were major impediments to improved U.S.-Burma relations, and the Clinton Administration had refused to name an ambassador.

Minister of Foreign Affairs U Ohn Gyaw

The Senators were guests of honor at a December 8 dinner hosted by the Minister of Foreign Affairs, who welcomed the delegation and expressed the hope that their visit would improve relations between Burma and the United States.

Lieutenant General Khin Nyunt

On Thursday morning, December 9, the Delegation met the SLORC First Secretary, Lieutenant General Khin Nyunt, who gave his interpretation of Burma's recent history. In 1988, 51 persons had been beheaded and a communist-instigated takeover appeared imminent. When the politicians could not control the turmoil, the military intervened. The first objective had been to restore law and order. The current constitutional convention was the next step, since the 1974 constitution was inadequate to move Burma from one-party socialism to free-market democracy.

Senator Cochran asked when democracy would be achieved. The General said the convention was trying to agree on constitutional principles and to devise a civilian governmental framework in which the armed forces would also have responsibilities. He said it was difficult to predict when the convention would complete its work.

When the Senators asked if they could visit Aung San Suu Kyi, the General answered that only family members could visit her. The SLORC respected her as the daughter of the national founder, but it would not abandon the principle that a person residing abroad could not participate in Burmese politics. She had left Burma at an early age and had lived in Britain with her husband, an Oxford don. She had received lenient treatment and was free to leave Burma at any time.

He said the SLORC was trying to maintain the peaceful conditions necessary to establish democracy. It was not the Council's intention to prolong the current situation, but Burma would have to move cautiously toward normalization because communism was still a force. Communist groups had disintegrated, but their leaders were hiding on the China border. If communists and their sympathizers were given "too many rights," they could create problems for the country.

Brigadier General David Oliver Abel

Brigadier General David Abel, Minister of National Planning and Economic Development, received the Senators later that morning. When asked how long it would take the convention to develop a constitutional framework, he replied it should not take long once the delegates agreed on basic principles.

In response to questions about the economy, he said the industrial base was small but growing with government-encouraged foreign investment. When it took power in 1988, the Council had managed to stabilize a declining situation, and the economy had gradually resumed healthy growth.

Senator Cochran saw great potential in Burma, but he warned that a negative human rights record would be a drawback to development. The General replied that the situation had been misinterpreted in the media: "If the people are happy in the political, economic, and administrative situation, I think they have their human rights."

When asked what power the military would have under the new constitution, General Abel said the veto power of the military would not be absolute, but the armed forces

would intervene if national unity and solidarity were threatened. That had been their patriotic function since Burma became independent.

Senator Cochran emphasized that the suspension of the 1990 election results was a major U.S. concern, and he wished the Council success in establishing democracy at an early date. He said that once democratic reform was achieved, Burma should flourish, since the country had so much to offer.

REPUBLIC OF INDIA

At the time of the Delegation's visit, India was experiencing basic economic reform, inflation had been reduced, and accelerated economic growth was expected in 1994. Increased foreign investment was sought, especially by U.S. firms, the major investors in India. As opportunities for bilateral economic cooperation increased, however, Indian suspicion of U.S. political intentions remained, especially with regard to Kashmir and nonproliferation. Some Indians feared the United States tilted in favor of Pakistan on both issues.

The United States maintained the Kashmir issue should be settled by Pakistan and India and was encouraged that Indo-Pakistani tensions had lessened somewhat as both countries focused on such confidence-building measures as the special hotline used regularly by the Pakistani and Indian armed forces.

India was especially concerned that the United States might modify the Pressler Amendment, under which U.S. aid to Pakistan was suspended in 1990 because of the Pakistani nuclear program. There were indications the Clinton Administration wanted to overhaul U.S. foreign aid by establishing broad standards for all nations rather than targeting specific countries for sanctions.

Indo-American Chamber of Commerce

In Bombay on Friday morning, December 10, the Senators were breakfast quests of the Indo-American Chamber of Commerce, which welcomed the "visitors from the world's greatest democracy to the world's largest democracy" and expressed appreciation for the fact that the United States was India's investor and trading partner.

Senator Cochran stressed the importance of trade as nations redirected their attention from military power to economic development. He hoped India's reforms would strengthen its economy, contribute to stability in South Asia, and deepen friendship between India and the United States.

When asked about U.S. nonproliferation policy, Senator Pressler said he knew of no change of the subcontinent that warranted repeal of the Pressler Amendment.

Senator Brown told the group that the strength of any country was not to be found in the quantity of its population, territory, or natural resources, but in the creative spirit of its people. The United States had fostered the economic freedom that enabled people to keep a fair share of what they produced, and that was an enormous stimulant to economic development. National economic success depended upon efficient management and freedom from the deadening hand of bureaucracy.

Maharashtra Chief Minister Sharad Pawar

During their meeting later Friday morning with Maharashtra Chief Minister Sharad Pawar, the Senators discussed Indian economic reform and foreign relations. When the Chief Minister, a former defense minister, asked about the Pressler Amendment's future, Senator Pressler said it was too early to predict the changes President Clinton might recommend in U.S. foreign aid policy. The Chief Minister noted that Indian uncertainties had been heightened by the Pakistani prime minister's commitment to continue that country's nuclear weapons program.

When Senator Brown asked the Chief Minister to assess the Chinese defense buildup, he said it would continue for another 10 to 15 years. China's nuclear program showed it wanted to be a superpower, a goal that seemed to derive from traditional Middle Kingdom attitudes rather than communist ideology. When asked whether this meant India would still need a nuclear program to offset China even if relations with Pakistan improved, he replied that Pakistan was working against India with a number of her neighbors, including China. Iran and Pakistan were supporting fundamentalists in India and sending arms into Kashmir. In this situation, any U.S. "moral support for Pakistan vis-a-vis India strengthens Muslim fundamentalism."

When Senator Cochran asked the best way to improve U.S.-India relations, the Chief Minister observed that the United States "only takes interest when there is investment." The United States needed to invest more in the big Indian market. Just as U.S. businesses supported China policy, their interest in Indian policy might grow as U.S. investment in India increased.

Bombay Stock Exchange

The Senators toured the Bombay Stock Exchange, India's premier bourse and the oldest in Asia. Accounting for 70 percent of turnover in India's 22 stock exchanges, its capitalization of $75 billion was 30 percent of India's Gross Domestic Product and four times the comparable figure for China.

In discussions with Executive Director Arvind N. Kolhatkar and members of the governing board, the Delegation learned that the Exchange had responded to recent economic reforms by shifting to a new trading ring and computerizing its trading facilities. The market had boomed following the entry of foreign institutional investment. Since January 1993, investment by some 115 foreign institutions had totalled $650 million, the bulk coming from the United States. Some $5 billion in U.S. investment was expected in the next 5 years. Recession in Japan and other countries had actually increased interest in India.

Minister of State for External Affairs Salman Khurshid

The Minister of State for External Affairs welcomed the Senators to New Delhi at a December 11 luncheon. The Minister said repeal of the Pressler Amendment would permit delivery of F-16 aircraft to Pakistan, legitimize that country's nuclear weapons program, destabilize South Asia, and force India to reassess its defense policies. This would be disappointing in light of the fact that the United States and India had worked together on a chemical weapons convention, a comprehensive nuclear test ban treaty, and an agreement to end production of fissile material for nuclear weapons.

The Minister objected to those who lectured India on human rights and ignored her clear need to combat terrorism while upholding democracy. "We are faced with a proxy war in Kashmir, and the menace of externally aided terrorism looms large, not only in Kashmir, but in other parts of our country, "such as Bombay, where bombs were exploded in March. India wanted to revive the political process in Kashmir, but this required an end to outside aid to terrorists.

India's commitment to global nonproliferation was "second to none," but the country would not sign the Non-Proliferation Treaty in its present "discriminatory" form, since Indians "do not subscribe to attempts at achieving regional solutions to an essentially global problem.

Minister of Finance Manmohan Singh

In the afternoon, the Delegation called on the Minister of Finance in his office. Senator Cochran congratulated the Minister on India's economic reforms and assured him they had received much attention in the United States. Dr. Singh responded that India was grateful for U.S. help in the transition. India's relationship with the United States was of tremendous importance as India worked to strengthen its role in the globalizing economy.

Senator Brown said he had been amazed at the economic liberalization and asked whether Dr. Singh thought it would continue. The Minister said it would continue, widen, and deepen, but there might be obstacles along the way, since Indian voters—as in any democracy—might not always see the long-term benefits, only the short-term discomforts.

Dr. Singh said he hoped U.S. investment would increase. When told that some companies hesitated to invest because they thought the regulations showed India did not want foreign business, the Minister said the Indian government had removed most of the irritants and was continuing to liberalize. As an example of the government's determination, he noted that though farmers constituted 70 percent of the Indian work force and were an important political interest, the government had taken the highly unpopular step of deregulating the cost of fertilizer because it had "to get the system in shape."

In response to a question from Senator Pressler, Dr. Singh agreed that normalized trade could help bring Pakistan and India closer together. Although India had agreed to step-by-step normalization, to his great disappointment Pakistan had declined. Perhaps the matter would be discussed when the Pakistani and Indian foreign secretaries held talks in January.

Directorate General of Military Operations

The Directorate General of Military Operations of India briefed the Senators on border tensions with Pakistan.

All Parties Freedom Conference

The All Parties Freedom Conference, a coalition of 27 Kashmiri political parties, was established in 1993 to unite factions of the self-determination movement behind a common political platform. The Senators met late Saturday afternoon with three persons associated with the Conference; Shabnum Lone, daughter of Abdul Gani Lone, a detained Conference leader; Altaf Ahmed, son-in-law of Syed Ali Gilani, another imprisoned leader; and Tariq Ahmad or Nehru University.

The group said 40,000 people had died in Kashmir and Indian troops should end their crackdown there and withdraw to barracks. They maintained that India should accept the fact that Kashmir was a "disputed territory" whose final status should be determined by the people of Kashmir. Moreover, a tripartite conference including India, Pakistan, and legitimate representatives of the Kashmiri people should be held to negotiate a final settlement to be supervised by the United Nations or a third country.

Prime Minister P.V. Narasimha Rao

Early Saturday evening, the Prime Minister received the Delegation at his resi-

dence. He moved immediately to the Indo-Pakistani relationship, specifically the Kashmir situation and the destabilizing impact of any change in the Pressler Amendment's restrictions on U.S. aid to Pakistan because of its nuclear program. Any move by the Clinton Administration to change U.S. foreign assistance by modifying the Amendment would lead to resumption of aid to Pakistan and force India to reassess its defense policy.

The Prime Minister told the Senators that statements on Kashmir by officials like Assistant Secretary of State for South Asian Affairs Robin Raphel would not improve U.S.-India relations. Strong exception had been taken to the specific statement that Washington did not recognize Kashmir's instrument of accession and considered it a disputed territory. When Charge d'Affaires Kenneth Brill said the Raphel statement was casual and off-the-record, the Prime Minister said the statement was nevertheless appalling; wherever it came from and whatever its motivation, it hurt.

When asked about the upcoming foreign secretaries' talks, the Prime Minister said he had stopped hoping in advance. There was a framework for resolving the Kashmir issue, but the political will had been lacking. Over the years, he had noticed that "every time I see light at the end of the tunnel, something has changed." He expected something better this time, and friends like the Senators might be able to persuade the Pakistanis to move forward. He thought the general climate was good, but a great deal depended on the Pakistani political climate.

The Prime Minister said India wanted to forge economic and commercial relations with China while continuing the dialogue on their border dispute. When asked what he thought China wanted, the Prime Minister replied "They don't want any trouble. They want investment, especially in the less well-off provinces. China does need peace for this. They do have their ambitions in the long run, but for the next 10 years they need peace."

When Senator Cochran said the Prime Minister had to be pleased with the outcome of the recent Indian elections, he responded that his government's policies "are clicking with our people." By rejecting the fundamentalist parties, the people had shown they were for "peace and development to the exclusion of other emotive issues," and the economic reforms under way would be given an added push by that message. Senator Cochran said the United States strongly supported the reforms and assured the Prime Minister that more U.S. companies would come as those reforms matured.

Senator Pressler asked whether trade might improve Indo-Pakistani relations. The Prime Minister said that would be difficult, since Pakistan feared Indian trade and had erected various barriers, producing a situation in which Pakistanis paid four times the actual price for anything produced in India. The two countries cooperated on such things as libraries, but not on economics. "Pakistan still feels we pose a threat to them."

Senator Brown said that India's economic reforms were significant but relatively unknown in the United States. A visit by the Prime Minister would be well-received, especially in the U.S. financial community. The Prime Minister said his ambassador in Washington had been urging that, and he had told him to go ahead with the dates.

The Prime Minister expressed satisfaction that the United States was India's largest trading partner and that the U.S. Indo-American community was serving as a bridge between India and the United States. He wanted greater interaction between U.S. Senators and Members of the Indian Parliament. He said he was personnally very accessible: "I'm glad to answer questions, and I don't see any other forum that is better than this."

Minister for Home Affairs Shankarrao Bhaurao Chavan

On Monday morning, the Delegation had discussions with the Minister for Home Affairs in his office. He said the Kashmir problem could be worked out if the Kashmiri people were left to themselves. Pakistan had lost three wars over the territory, and now they were waging a proxy war in Kashmir through terrorism. Continued interference by Pakistan was preventing the installation of a democratically elected government, and only such a body could redress genuine public grievances. If outside interference were stopped, the Kashmir dispute could be settled through autonomy and other arrangements. The press and judiciary were free there, and the Indian government felt it could work with anyone elected there.

He noted there were more Muslims in India than in either Pakistan or Bangladesh, and the Muslims of India felt confident about their future in a secular country. The government would be able to deal with the situation in Kashmir in the same way and redress Muslim grievances there within the Indian constitutional framework.

The Home Minister said the statement by Assistant Secretary of State Robin Raphel, whatever the motivation, had been extremely disturbing. If Kashmir's accession to India were questioned, then the status of all other Indian States could be challenged, as well as the creation of Pakistan. Terrorism should be distinguished from human rights. Pakistan had supported the militants who holed up in the Hazratbal shrine, and statements by various American officials had only served to prolong the siege.

Mr. Chavan expressed apprehension over any change in the Pressler Amendment, since such action would eventually lead to enhancement of Pakistan's offensive military capabilities. When he asked for clarification on the Amendment's status, Senator Pressler told him there would be strong opposition in the U.S. Senate to any move to abandon the aims of the Amendment.

Senator Cochran inquired about the status of imprisoned Kashmiris and asked if international agencies like the Red Cross could visit them. The Home Minister said that would pose no problem, "but they should not encourage rebellion." Government representatives had met with Amnesty International and the International Committee of the Red Cross to discuss possible visits to Kashmir to investigate alleged human rights violations.

Vice President Kicheril Raman Narayanan

Vice President K. R. Narayanan received the Senators at his residence. Senator Cochran asked him to identify the number one problem in Indo-American relations. The Vice President replied that although there were no major problems, there were inevitable differences in perception from time to time. Cold War problems had been eliminated, but some current problems resembled Cold War differences.

He warned that the United States should not attempt to separate India's problems with Pakistan from India's problems with China. He had always felt China wanted to dominate the world, and he had been perturbed when President Clinton said recently in Seattle that the United States and China were the two great powers. The Chinese wanted to extend their power in Asia; they had plenty of time and always said "We can wait." In the current period of transition, China wanted friendship with everyone, but that was not their long-term objective.

The Vice President agreed with Senator Pressler that trade could help lessen tensions between India and Pakistan. Indeed, he felt the basic Indo-Pakistani problem was not Kashmir, but trade. Without trade, it made little sense to talk about friendship. Without trade, the two countries could not go far on issues like Kashmir.

Senator Brown asked what the United States and India should be doing to draw closer to one another. The Vice President said the core of economic development was technology. Some Indians feared the United States believed India did not "fit" into U.S. plans for the future and did not "deserve" to share advanced technology. If this indeed became U.S. policy, the resulting gap between haves and have-nots would become greater than in the imperial period.

In answer to the Vice President's concern, Charge d'Affaires Kenneth Brill pointed out that the United States had greater technological cooperation with India than with any other country. While it was true that there had been a recent suspension of technology exchange in one field, the suspension was required under the Missile Control Technology Regime.

The Vice President said this denial of technology illustrated why India had refused to sign the Non-Proliferation Treaty. The United States was spending too much time trying to keep from sharing technology for fear it would fall into the hands of "your next enemy," whoever that might be. It was "like the Cold War all over again." The proliferation problem was not caused by countries like India which needed technology for development, but rather by the nuclear weapons states with their pile of weapons and their continued nuclear testing: "Stop piling on just a small group of countries who are not proliferating."

Minister of External Affairs Dinesh Singh

The Senators called on the Minister of External Affairs during their visit to parliament House. Mr. Singh emphasized the importance of Indo-American relations and said current economic ties were stronger than ever. India stood ready to cooperate with the United States in promoting genuine disarmament and would work to promote nonproliferation through nondiscriminatory, universal agreements.

The Minister said visits by U.S. Senators and Congressmen were opportunities for first-hand observation of Indian democracy and for frank discussion of mutual concerns. He wished the Senators could have more time to see for themselves that India was one of the few developing countries running a secular, multicultural democracy. That was the main reason India opposed secession; if a portion of the nation such as Kashmir seceded, others might attempt to follow. The Indian government could give autonomy, but not independence. India ensured equal rights under the Constitution for all citizens; since there was equality, groups had no right to complain, let alone secede.

When Senator Pressler asked whether increased trade would help improve Indo-Pakistani relations, the Minister replied that he was ready to recommend bilateral removal of all tariffs between the two countries. Athough Pakistan feared India would flood her market, chambers of commerce in Paki-

stan wanted to be able to buy Indian goods and were doing so through third countries. The problem was not economic, but political: The government of Pakistan did not want Pakistanis to communicate with Indians.

The Minister asserted that the United States should not concentrate on tensions between India and Pakistan. It was in the U.S. national interest to build up India to counter the growing power and influence of China.

Press Conference at Roosevelt House

Prior to their departure for Islamabad on Monday afternoon, December 13, the Senators held a press conference at Roosevelt House in New Delhi. They expressed the hope that the January talks between the foreign secretaries of India and Pakistan would be successful, and they emphasized that the United States respected the rights and responsibilities of the two countries to resolve the Kashmir dispute themselves.

When asked whether they had assured Prime Minister Rao that the view of Assistant Secretary of State Robin Raphel on Kashmir's instrument of accession was not the view of the U.S. Government, they declined to be drawn into the debate over the legality of Kashmir's accession. Senator Cochran said the origin of the Kashmir dispute was a matter of historical interest, "but the parties should look to the future and find ways to deal with the problem."

Senator Pressler said that development of trade and tourism was the key to improving relations between India and Pakistan; business could do more to "clear the atmosphere" than the actions of politicians or bureaucrats. He felt strongly that initiatives should be taken to begin trade between the two countries and that the United States should assist such trade.

Answering a question about nuclear proliferation on the subcontinent, Senator Pressler said he was against U.S. aid going to countries that were developing weapons of mass destruction. This principle was embodied in the Pressler Amendment to the 1985 Foreign Assistance Act, and he would oppose any attempt to weaken that amendment, which had forced the ending of U.S. aid to Pakistan because of that country's nuclear program. He would prefer to see the amendment applied to all countries.

Senator Cochran said India's striking economic reforms had created a favorable environment for improved U.S.-India relations not only in commerce but in such fields as nonproliferation, peacekeeping, and science and technology.

Senator Brown added that India was on the verge of an "explosion in economic activity" in which the United States would play an important role. He expected Indo-American trade to double in three years, and he did not believe the expansion would be greatly affected by India's refusal to sign the Non-Proliferation Treaty.

ISLAMIC REPUBLIC OF PAKISTAN

Although U.S.-Pakistan cooperation has been close over the years, nonproliferation policy has been a major problem. When President Bush could not certify in 1990 that Pakistan was not developing nuclear weapons, U.S. aid was halted in compliance with the Pressler Amendment. Many Pakistanis with strong ties to the United States were disappointed by what they felt was unfair treatment of their country.

At the time of the Delegation's visit, Pakistan had come through recent political uncertainties and was making considerable economic progress. American companies were active, and the Karachi Stock Exchange was booming.

Senate Chairman Wasim Sajjad

After their arrival in Islamabad Monday afternoon, December 13, the Senators attended a dinner at the residence of the Chairman of the Senate of Pakistan. In the discussion before dinner, Senator Cochran expressed the hope that forthcoming talks between India and Pakistan would reduce tensions. He said the United States wanted friendly relations with both countries and appreciated Pakistan's peacekeeping role in Somalia and other parts of the world.

Expressing Pakistan's deep concern over Kashmir, the Senate Chairman said the United States was committed to human rights and should fulfill its responsibility to persuade India to solve the Kashmir issue through peaceful means. India currently had over 400,000 troops in Kashmir: If Kashmir was such an integral part of India, why were so many troops necessary?

India was not allowing the Red Cross, Amnesty International, or other neutral observers to visit Kashmir. Although Pakistan was willing to continue talks with India, experience showed that India always offered to talk whenever international pressure mounted on Kashmir, but found some pretext to withdraw from talks after pressure subsided.

The Pressler Amendment was discriminatory and had weakened Pakistan's defense capability by denying the country arms from the United States, its longtime ally. The amendment had neither promoted stability nor prevented proliferation on the subcontinent. Since India was known to have an advanced program producing nuclear weapons and missiles, it was unreasonable to require Pakistan to end unilaterally its peaceful nuclear program, especially since Pakistan did not intend to make a bomb.

As long as there was a Pressler Amendment that did not apply to India, India had no incentive to cooperate with U.S. nonproliferation objectives. Pakistan would accept any arrangements India accepted for controlling nuclear weapons. Pakistan, for instance, was prepared to sign the Non-Proliferation Treaty if India signed.

Minister of Defense Aftab Shaban Mirani

On Tuesday morning, December 14, the delegation traveled to Rawalpindi to meet the Minister of Defense. The Minister said the Pressler Amendment did not achieve its nonproliferation objective and discriminated against an old ally. Although Pakistan shared U.S. nonproliferation objectives and had proposed a five-nation conference on nonproliferation in South Asia, the Pressler Amendment has seriously undermined U.S.-Pakistan cooperation.

Pakistan's chief regional concern was Kashmir, and the only solution was a plebiscite as called for in U.N. resolutions. Massive human rights violations were being perpetrated by the Indian Army, one-third of which was occupying Kashmir. The Minister hoped the Senators' findings would cause the U.S. government to review its policies and take a more even-handed approach toward Pakistan and Indian.

The Defense Minister said his biggest defense problem was the Pressler Amendment, which was forcing Pakistan to turn to other countries for defense materiel. The country had paid $1 billion to purchase F–16 aircraft and other items and had received nothing. Was this proper treatment for an ally who had stood by U.S. policies in Afghanistan, Cambodia, and Kuwait, and had suffered greater in Somalia than any other country?

When Senator Pressler said the United States was only trying to control proliferation and wanted to be the friend of both India and Pakistan, the Defense Minister retorted that India, not Pakistan, had exploded a nuclear device, and that Pakistan had helped the United States far more than India: "Don't compare us."

Senator Brown said Americans remembered Pakistan's steadfastness in times of adversity, and each Senator felt the need to work with Pakistan. He knew the retroactive suspension of the defense materiel was especially difficult to accept.

The Minister did not believe the India-Pakistan talks in January would produce a solution on Kashmir. The Indians knew they could not win a referendum among the people of Kashmir, so they would try to find a reason not to agree.

Foreign Secretary Shaharyar Khan

Later in the morning, the Senators returned to Islamabad to meet with the Foreign Secretary at the Ministry of Foreign Affairs.

The Foreign Secretary noted that the major concerns of Pakistan's foreign policy were relations with the United States, relations with India, nuclear proliferation, and Pakistan's regional role.

He began by reviewing the long U.S.-Pakistan relationship. The nations had not only shared aims and friendship: "They were allies." The United States voted with Pakistan on Kashmir in the early days in the United Nations; Pakistan made the difficult decision to fight in the Persian Gulf War; and the country had received 3.5 million refugees from the Afghan civil war, the highest number ever supported by one country.

While some Pakistanis feared the United States had turned its back on an old friend, the Foreign Secretary did not join them, and he hoped the Senators would be convinced when they met "our modern, progressive Prime Minister" that Pakistan was a moderate democracy committed to peace with justice.

India and Pakistan had fought three wars over Kashmir. If that one issue could be resolved, other tensions would ease: "This cancer must be removed for us to have normal relations." India had at least 6 divisions in Kashmir, one soldier for every three adults: "There are enough Indian soldiers to keep a mouse from crossing" the boundary. No terrorists were crossing into Kashmir from Pakistan, and his government would be glad to have a monitoring group on the border to confirm that fact.

The Foreign Secretary had once told Mr. Rao that their countries were spending too much on military preparedness, especially nuclear operations. They had enough technicians to get ahead economically but were diverted by the Kashmir issue. He asked Mr. Rao to show his commitment to a solution on Kashmir; Pakistan had shown its commitment by actually shooting some of its own citizens who tried to cross the border. A week later, Mr. Rao wrote a letter blaming Pakistan for terrorism. Because of this experience, the Foreign Secretary was not confident any progress would be made at the January talks.

What was the civilized way to settle the issue? Go to court or let a country friendly to both countries mediate the dispute. The World Bank had forced them to accept mediation by a third party of their water problem, why not have the same process for Kashmir?

Pakistan was committed to nonproliferation. It was ready to sign the Non-Prolifera-

tion Treaty if India would sign. It was for a comprehensive test ban. It had proposed a five-power conference on South Asian nonproliferation. If the nations of the South Pacific and Latin America could have a regional approach to nonproliferation, why not South Asia? The United States, Russia, China, and Pakistan had agreed, but India had shot down the proposal by counterproposing the inclusion of Kazakhstan, Israel, Iran, and perhaps even Britain and Japan.

Pakistan was the country whose aid was cut off. Pakistan was the one who was threatened, while India, who did not want cooperation, was free to do as it pleased, with only an occasional tap on the knuckles. Since Pakistan had agreed it would not deploy missiles as long as the U.S. missile proposal was on the table, it could in no way be a threat to India, since India's army was five times as large as Pakistan's, and its navy six times as large.

Pakistan was strategically positioned and had generally good relations with the countries of Central Asia, including Iran. Pakistan wanted to connect Azerbaijan, Afghanistan, and other republics through improved infrastructure and telecommunications. Implementation of its plans would greatly enhance regional security and economic development.

Senator Cochran said the Foreign Secretary's remarks had deepened his appreciation of the importance of the U.S.-Pakistan relationship. He would keep an open mind when revisions in the Foreign Assistance Act came before Congress in 1994. He was fascinated by the idea of taking the Kashmir issue to the World Court or to mediation by a third country. Did the Foreign Secretary think Iran or any other country had the confidence of both countries to mediate the dispute?

The Foreign Secretary replied that India would reject any mediation, claiming the disagreement was a bilateral problem. Acceptance of this reality was the reason Pakistan was willing to try the bilateral approach once again in January. Because only 2 percent of the people voted in the last election in Kashmir, India kept looking for an interlocutor in Kashmir, and they blamed Pakistan when they could not find one. They continued to act as if the situation could go on indefinitely, just as it had for 47 years.

The United States was the only country that could pressure the two countries to settle. It would be difficult, but not as difficult as the peace processes in the Middle East and South Africa. It could be done.

Senator Pressler said some feared an "Islamic Bomb." The Foreign Secretary responded that the Pakistanis had given assurances to the United States that they would not enrich uranium beyond a certain point and would not transfer nuclear technology. They could build a bomb, but they had taken the political decision not to do so, and they would not provide information to any nation, Islamic or non-Islamic. Though Pakistan had not recognized Israel, it had recognized the importance of the Israeli-Palestinian agreement, and its position would be affected positively if the peace process achieved results.

Senator Pressler said President Clinton would be sending up legislative recommendations affecting these issues, and he was sure the Senators would have the Foreign Secretary's presentation in mind as they considered those recommendations.

Senator Brown asked what the United States should be doing to help the countries of Central Asia. The Foreign Secretary said the United States should help them stand up to Russia. They had great natural resources, and the United States could work with Pakistan to build roads and pipelines to help them stand together on their own. Pakistani workers would take the risks and do the construction, but Pakistan needed economic backing. If the United States was not interested, Japan has given the impression that it was.

Minister of Foreign Affairs Sardar Assef Ali

When the Senators met next with the Minister of Foreign Affairs, he noted that Pakistan's recent election had been clean and fair, "one of the most accepted in our history." The fundamentalists had been soundly defeated, and the fact that the President and Prime Minister were now of the same party should provide stability and improve relations with the United States. The government saw no reason Pakistan should not return to its previous level of warm relations as the "most allied ally" of the United States.

During the chill in U.S.-Pakistan relations, India had continued its arms buildup through barter with the Soviet Union at prices one-fifth the world level. India took advantage of the Cold War and did nothing in the battle against Soviet communism.

Pakistan paid a heavy price for its stand in the Afghan war, providing relief for 3.5 million refugees. The country sustained environmental damage, increased narcotics traffic, and emergence of a mafia. Bombings, presumably by Afghan or Soviet terrorists, averaged two or three daily. The 1988 Geneva Accords did not end Afghanistan's internal strife, and 1.5 million Afghan refugees were still in Pakistan, though they would eventually return to their homeland.

Pakistan had furnished 10,000 troops in the Persian Gulf War and had played a role in Cambodia and Somalia. If Americans were now less interested in Pakistan, they ignored not only that country's proud role in the defense of freedom but also its vital geopolitical position: If the territory of the five neighboring Central Asian republics were added to Iran, the area would constitute the second largest hydrocarbon reserve in the world. Pakistan believed it had a role to play in helping this area open to the western world.

Pakistan sympathized with U.S. nonproliferation concerns and did not question American intentions. Pakistan was justifiably proud of its nonproliferation record and was fully committed to the goal of a South Asia free of nuclear weapons. Pakistan had fought three aggressions from India, however, and it had to view its nuclear policy in light of the reality that India had not only exploded a nuclear device but had built one of the largest armies in the world and a huge navy with nuclear submarines and a nuclear carrier.

The one-sided restraints placed on Pakistan by the Pressler Amendment had damaged the country's self-defense capability, and the discrimination had produced a strong reaction in Pakistani public opinion. His government hoped to work with the U.S. Administration and Congress to restore and strengthen the traditional bilateral relationship.

India always responded to Pakistani concerns by saying "Let's not argue about Pakistan; we're concerned about China." India should examine the terms of the Non-Proliferation Treaty. China had signed the Treaty, so India could not claim to be endangered any more by China. India had not signed and had rejected Pakistan's proposal that they sign together. India was developing long-range missiles even as they claimed that they did not have weapons of mass destruction. Any impartial observer would conclude that India was the threat to peace, not Pakistan.

The Pressler Amendment had frozen over $1 billion in defense purchases in the pipeline, including $658 million for F–16 aircraft. Why should India have a nonproliferation program when they were the beneficiaries of a U.S. nonproliferation policy that weakened Pakistan's defense? The U.S. policy was pushing an ally too far and was not a moral policy. It weakened Pakistani moderates against militants and would eventually drive the entire region into proliferation if not changed.

Senator Cochran said it might be time for the United States to take a new approach, although he had not made up his mind on the issue. The Senators were going on to Vienna for talks with IAEA officials on the international nonproliferation regime, and the perspectives gained on the subcontinent would be useful in those discussions.

President Farooq Ahmad Khan Leghari and Prime Minister Benazir Bhutto

The Senators dined later in the evening with President Leghari and Prime Minister Bhutto. The President said Pakistan shared many of the aims of the U.S. Administration, wanted strong links with the United States, and hoped for understanding from the U.S. Senate.

Senator Cochran responded that the visit to Islamabad had shown the need for changes in U.S. policy toward Pakistan and that the Senators would be exploring ways to address problems in U.S.-Pakistan relations.

The Prime Minister said the recent elections were indicative of the "modernity and moderation" of Pakistan. If Pakistan could keep extremists at bay, it could be done in other countries. Her opponents had accused her of being "soft" on the nuclear issue when she urged moderation in the face of U.S. interpretation of the Pressler Amendment to require an aid cutoff when Pakistan came to possess unassembled components for a nuclear device. Five Pakistani governments had exercised restraint in not assembling a bomb, and the United States should appreciate that fact. Pakistan wanted to remain the "most allied ally" of the United States, but when it received nothing for its steadfastness, the government came under criticism from its opponents.

The Pressler Amendment was intended to prevent proliferation, but it had been used by India to promote proliferation. The real question was how the United States could play an effective role on the subcontinent. In light of the Kashmir issue and the need for mutual arms reduction, the time had come for the United States to review its policy in South Asia and to remove the distance that had entered the U.S.-Pakistan relationship.

Pakistan was not asking the United States or Senator Pressler to give up their commitment to nonproliferation, only that nonproliferation requirements apply to all countries and not just Pakistan. When Senator Pressler responded that another Senator (not in the delegation) had said repeal of the Pressler Amendment's restrictions on U.S. aid to Pakistan would signal a lessening of U.S. vigilance on nonproliferation, the Prime Minister said she was not just talking about U.S. aid; she was talking about the basic U.S.-Pakistan relationship and stability on the subcontinent. When Senator Pressler asked what changes she would suggest,

the Prime Minister said she had suggested a mutual arms reduction treaty for the subcontinent.

The Foreign Secretary, also present, said all parties claimed to be seeking nonproliferation. The question was whether the Pressler Amendment advanced nonproliferation. Pakistan felt as currently interpreted it did not. A global policy was needed that would bind all countries, with higher standards applied to all pre-nuclear countries. The Prime Minister said that since Pakistan had "capped and frozen" its nuclear program, it deserved better treatment than it had received from the United States.

Press Conference at the American Center

Before leaving Islamabad on Wednesday morning, December 15, the Senators held a news conference at the American Center.

Senator Pressler said the Senator wanted to see both India and Pakistan sign the Non-Proliferation Treaty. Senator Cochran said the talks with Pakistani leaders had produced very persuasive evidence that the present interpretation of the Pressler Amendment was against the interests of Pakistan. He said the Senators would explore options for a more even-handed application of U.S. law.

When Senator Pressler was asked why his Amendment had been applied only to Pakistan, he said there were reports in the media in the mid-1980s that an "Islamic bomb" was being prepared, and he had feared that technology might pass from Pakistan to another country. Senator Brown dismissed this idea and said there was no such thing as an Islamic bomb: "The United States wants to control nuclear proliferation, but not on the basis of likes and dislikes of religions." U.S. nonproliferation efforts must focus not only on Pakistan but on any country that might be tempted to build a nuclear device.

In answer to a question, Senator Pressler denied that his Amendment had been counterproductive by denying Pakistan conventional weapons and pushing the country toward developing a nuclear device. He said the amendment had heightened public awareness of proliferation dangers and had dissuaded many countries from developing nuclear weapons. He maintained the arms race on the subcontinent would have been worse if his Amendment had not existed.

Asked whether he would support the effort to remove all country-specific language in U.S. nonproliferation policy, Senator Pressler said that though he was not willing to do so at that time, it was possible that Congress would pass "new but tougher legislation" against nuclear proliferation by all countries.

Asked whether the delegation had raised with Indian officials the issue of the violation of human rights in Kashmir, Senator Cochran said the issue had been discussed in India—as it had been in all countries the Senators had visited—because the United States expected human rights to be respected all over the world.

American Business Council of Pakistan

The Senators were guests at a Wednesday luncheon in Karachi hosted by the executive committee of the American Business Council of Pakistan. Founded in 1985, the organization worked closely with U.S. consular officials and occasionally made recommendations to the Pakistani government on trade and commercial matters of concern to American companies, which accounted for about 40 percent of foreign investment in Pakistan. The group complained most about high corporate taxation and the government's regulatory inconsistency.

The businessmen felt economic liberalization would continue; the stock market had gone up 40 percent. The staying power of the Bhutto government would depend on relations with the military, but it certainly should be able to last 5 years.

The businessmen said the Pressler Amendment had cast a shadow over Pakistani-American business relations. The Amendment had prevented the U.S. Overseas Private Investment Corporation from providing new insurance for ventures in Pakistan. Businesses has been forced to seek other sources, and some companies had been unable to bid for projects.

Senator Cochran responded that he hoped the Senate would look carefully at any proposal by the President to modify the Foreign Assistance Act. It was proper for the United States to try to retard the spread of weapons of mass destruction, but if any particular policy dislocated friends like Pakistan, it should be closely scrutinized. Pakistan was an old ally of the United States and continued to be a good friend, as evidenced by the $30 million wheat sale announced while the Senators were in Islamabad.

Senator Pressler agreed that the Pressler Amendment would be a big issue in the upcoming session of Congress. He said the Administration had indicated their proposed changes would follow the principles of the Pressler Amendment. Senator Brown said the Amendment had been helpful; if modifications were made, Congress should ensure that the changes could not be interpreted as a retreat in the battle against nuclear proliferation.

When asked why the Senators had not visited Kashmir, Senator Cochran said safety could not be guaranteed. The delegation had met some Kashmiris in New Delhi and had also discussed with Indian officials the question of Red Cross visitation.

Senator Brown brought up the question of human rights and terrorism. He said Indian army officials said Pakistan was sending terrorists into Kashmir. The Pakistani government had denied this. A businessman replied, "Not one person has been caught crossing the boundary." Another noted that the Indian press at first claimed Pakistanis were involved in bombings in Bombay but now reported the bombers had been found in Bombay. One businessman suggested the U.S. Congress send a delegation to Kashmir to see what was happening there.

One person said he hoped the Senators knew that Pakistanis were genuinely angry at their treatment by the United States. The government and the diplomats might be tolerant and forgiving, but the Pakistani people expected Americans to recognize the sacrifices their country had made as a U.S. ally. Any action taken by the U.S. Congress on the Pressler Amendment would be of great importance to the Pakistani people.

STATE OF KUWAIT

Since the 1991 Persian Gulf War liberated Kuwait from 7 months of Iraqi occupation, the country's relations with the United States have broadened and deepened. A pillar of the relationship is a classified 10-year defense pact signed in September 1991. American firms are participating substantially in Kuwait's reconstruction, and the United States is building a radio station there. The Administration and Congress are also encouraging Kuwaiti democratization.

Crown Prince Shaikh Saad Abdallah Al-Sabah

Upon their arrival in Kuwait on Thursday morning, December 16, the Senators met with the Crown Prince/Prime Minister at the Shaab Palace. Shaikh Saud Nasir Al-Sabah, Minister of Information and former Ambassador to the United States, also attended.

The Crown Prince said that while Kuwait hoped the situation with Iraq would improve, he personally had little hope that any part of the region could be secure as long as Saddam Hussein remained in power. U.N. forces would be able to prevent minor border incidents, but Kuwait nonetheless remained vulnerable.

The Minister of Information said Kuwait looked to its allies to focus the attention of the U.N. Security Council on issues of concern to Kuwait, especially U.N. resolutions concerning missing Kuwaitis, border demarcation, Iraqi respect for Kuwaiti sovereignty, and Iraqi reparations for the invasion and occupation of Kuwait. In response to a subsequent question by Senator Brown, the Minister affirmed that the United States fully supported Kuwait's views on these matters.

The Crown Prince explained that Kuwait's fear was that the Security Council might lift sanctions while Saddam Hussein was still in power, in which case Iraq might take the money earned from oil sales to rearm and again threaten its neighbors. For this reason, Kuwait placed special emphasis on the Security Council resolution that demarcated the Kuwait-Iraq boundary.

Senator Pressler asked about Kuwait's record on human rights and democratization. The Crown Prince said he simply encouraged the Senators to put their questions to any Kuwaiti citizen. The Minister of Information said democratic principles were enshrined in the Kuwaiti constitution, but each country had to pursue democracy according to its own traditions and governmental institutions. Every international human rights organization that requested was given full access to Kuwait, its courts, and places of detention. As in other countries following military occupation, there had been abuses by individuals seeking vengeance in the period after liberation, but the government had put an end to that. Western media did not give Kuwait credit for what it had done in human rights, however, and preferred to focus on a few incidents of abuse.

In response to a question by Senator Pressler, the Crown Prince said that close relations among members of the Gulf Cooperation Council were important to Kuwait and there was concern when differences arose within the council with regard to critical issues like Iraq. Because Iraq was working hard to create and exploit these differences, Kuwait attached great significance to the upcoming Council summit and hoped differences on policy toward Iraq would be resolved.

Senator Pressler asked about Kuwait's nuclear proliferation concerns. The Crown Prince said Kuwait's interest focused on Iraq and Iran. Iran was working hard to acquire weapons, including nuclear arms, and reports indicated North Korea and China were engaged in arms transfers to Iran. He had no hard information about Chinese arms transactions with Iraq, but two months earlier a senior Iraqi delegation had visited Beijing.

Senator Cochran thanked the Crown Prince and congratulated him on Kuwait's remarkable recovery and reconstruction since the Persian Gulf War.

Camp Doha

The Senators visited Camp Doha, where they were briefed by U.S. Army officers on the training and security mission of the post and had lunch with military personnel from their respective States. The base was operated under a 10-year agreement that would

be reviewed after 8 years and remain in effect after that point unless the United States or Kuwait decided to cancel it.

The forces were mainly involved in combined/joint exercise coordination and support, together with maintenance of prepositioned equipment and supplies. Units from the U.S. mainland were involved almost every month in the camp's operations and exercises.

While U.S. military salaries were not paid by Kuwait, almost all other costs were. Other nationals were involved in operations in Kuwait, including troops from India and Pakistan, who reportedly worked well together.

Minister of Information Shaikh Saud Nasir Al-Sabah

The Minister of Information and former Ambassador to the United States Shaikh Saud Nasir Al-Sabah hosted a dinner for Codel Cochran and expressed warm appreciation for the help of the United States in the liberation of Kuwait. The Senators indicated in their responses that in coming to the aid of Kuwait, Americans had been motivated by the U.S. national interest and the values that had made their nation great.

INTERNATIONAL ATOMIC ENERGY AGENCY

The two IAEA missions are to promote the peaceful uses of nuclear technology and to ensure that nuclear technology is not used for weapons production.

After a country signs the Non-Proliferation Treaty, it agrees to place its nuclear facilities under IAEA safeguards. When the world learned that Iraq had succeeded in conducting a nuclear weapons program even after signing the Non-Proliferation Treaty and placing its declared nuclear facilities under IAEA safeguards, the credibility of safeguards was weakened. The IAEA decided that henceforth its inspections would include more intrusive "unannounced special inspections" to lessen the likelihood that a country could disguise its nuclear intentions.

While this new intrusiveness worked in defeated Iraq, it was challenged in North Korea, which threatened to withdraw from the Non-Proliferation Treaty rather than submit to IAEA special inspections. The United States entered negotiations with North Korea to persuade it to remain a Treaty signatory and to submit to special inspections. It was a virtual certainty that if the negotiations did not persuade North Korea to permit inspections, the IAEA Board of Governors would refer the matter to the U.N. Security Council, which might apply sanctions.

Director General Hans Blix

On Saturday morning, December 18, the Senators visited IAEA Director General Hans Blix at his residence. Also present were Bruno Pellaud, Deputy Director General for Safeguards; David Waller, Deputy Director General for Administration; and Jan Priest, Head of the Safeguards and Non-Proliferation Policy Section of the Division of External Relations.

The Director General reviewed the IAEA organization and the missions of the Agency. Although the major IAEA work in safeguards related to the Non-Proliferation Treaty, the Director General emphasized that the IAEA only inspected and was not the secretariat of the Treaty; it was independent in its operations.

With regard to nonproliferation in South Asia, a hopeful sign was that India appeared ready to accept President Clinton's proposal to "cap" plutonium by ending production of fissile material, if the cap applied to all countries. Pakistan would also agree, in which case both countries would open their nuclear facilities to IAEA inspections. Countries could continue to reprocess civilian waste, but reprocessing facilities would have to be under IAEA safeguards.

The Director General said IAEA could not select countries for special attention, and since most of the world's nuclear material was in countries posing little proliferation threat, the Agency had to expend scarce resources in routine inspections. If IAEA could reduce those routine inspections, it could save money. Deputy Director General Pellaud said there might be a way out: While the Agency could not discriminate among countries, it could discriminate among reactors, i.e., it could focus inspection on reactors using the technologies most associated with weapons programs.

Its experience with the Iraqi nuclear program had caused IAEA to assert its right to conduct special inspections at undeclared sites if it had reason to suspect that a country was producing weapons material, and to take the matter to the U.N. Security Council if it found a safeguards violation.

The Director General reviewed the facts which caused the Agency to suspect North Korea of violating safeguards. Far from rushing to judgment, as some had charged, the Agency had worked through the whole autumn of 1992, trying to persuade North Korea to accept voluntary inspection. IAEA officials then requested special inspection and notified the Security Council of the situation. He emphasized, however, that the Agency was by no means certain that the suspect sites would yield conclusive evidence and said the importance of the sites should not be overemphasized.

IAEA had made it clear that the North Koreans could not determine what would be inspected. The Agency would not negotiate the issue: It would not confine its inspections to sites designated by North Korea. The United States was discussing a number of issues with the North Koreans in an effort to persuade them to cooperate with the IAEA. The problem with the U.S. approach was that it might be perceived as rewarding intransigent attitudes, and other countries might later also threaten to withdraw from the Non-Proliferation Treaty in order to obtain concessions from the United States.

Senator Cochran asked if the process by which Argentina and Brazil reached accommodation on their nuclear standoff might be useful to India and Pakistan in resolving their differences. Dr. Blix responded that a limited India-Pakistan agreement might be possible if there was movement by China and other nuclear powers toward nuclear disarmament. What was needed was a tailor-made solution including India, Pakistan, and China. The same thing was needed among the countries of the Middle East.

He emphasized that nations were dissuaded from developing nuclear weapons by political calculation, not by the safeguards regime. If countries did not think they needed a bomb for their military security, they were unlikely to develop a bomb. Thus, if countries were under a "nuclear umbrella," as in the case of Europe and Japan, they had little incentive to go nuclear.

When Senator Brown asked what policy should be followed to encourage countries to join the Non-Proliferation Treaty, the Director General said little more could be done. Countries in Latin America and the South Pacific, for instance, had devised regional compacts for nuclear-free zones, and others might do the same. The Middle East situation could only be settled in the context of a final peace settlement.

With regard to North Korea, some had suggested North Korea should be denied technical assistance or even expelled from the IAEA. That nation would sustain greater damage, however, if Japan prohibited remittances to North Korea from Koreans living in Japan, or if China suspended trade relations.

Dr. Blix said the U.N. Secretary General might go to North Korea during his upcoming trip to South Korea, though he would not become involved in negotiations. Dr. Blix said such a visit might provide a bit of realism to the North Korean leadership.

CONCLUSION

While the trip provided new insights into regional tensions and the threat to peace and stability which results from the development of nuclear weapons capability in India and Pakistan, and from the new threat from North Korea, it also enabled us to convey a clear message to Burma on the importance of recognition of the rights of individuals there to participate in democratic political processes without fear of personal harm or recriminations.

In Kuwait we were pleased to be able to assure military forces of the United States who are stationed there of our continued appreciation and support for the contribution they are making to keep the peace in that very important area of the world.

THE DEATH PENALTY: JUSTICE BLACKMUN'S OPPOSITION

Mr. HATFIELD. Mr. President, last fall the Senate passed a crime bill that included a broad expansion of the death penalty to numerous Federal crimes. That was a mistake that I hope is not replicated soon by the House of Representatives. Last week, dissenting from the Supreme Court's decision to deny review of the scheduled execution of a prisoner in Texas, Justice Blackmun eloquently stated many of the inherent problems with the death penalty. I ask unanimous consent that this opinion be placed in the RECORD following my remarks, and I urge my colleagues to review it carefully.

(See exhibit 1.)

Mr. HATFIELD. After many years of struggle with this question, Justice Blackmun has come to the conclusion that the death penalty can not satisfy the constitutional demands for consistency, fairness, and individualized sentencing. Justice Blackmun has seen the death penalty applied in an arbitrary and often discriminatory manner. The legal barriers making it possible that valid evidence of a prisoner's innocence might not be heard provide further reason for his coming to the conclusion that the death penalty can not be reconciled with the eighth amendment's requirement against cruel and unusual punishment.

I do not presume to be an expert in constitutional law. And, I have disagreed with some important positions that Justice Blackmun has taken, including his past stance that the death penalty might be imposed if somehow

it could be used fairly and consistently. I oppose the death penalty because I believe that government-sponsored killing in all of its forms is immoral. It serves to further this point when a Justice of the Supreme Court, who has seen a vast number of death penalty cases over his long career, comes to the final conclusion that fallible humans can not fairly apply this punishment, or even be certain that they are executing the right person. When human beings attempt to take on authority that only our Creator possesses they are doomed to failure.

EXHIBIT 1

[No. 93-7074, Supreme Court of the United States, Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, February 22, 1994, Justice Blackmun, dissenting]

Bruce Edwin Callins, Petitioner *v.* James A. Collins, Director, Texas Department of Criminal Justice, Institutional Division

On February 23, 1994, as approximately 1:00 a.m., Bruce Edwin Callins will be executed by the State of Texas. Intravenous tubes attached to his arms will carry the instrument of death, a toxic fluid designed specifically for the purpose of killing human beings. The witnesses, standing a few feet away, will behold Callins, no longer a defendant, an appellant, or a petitioner, but a man, strapped to a gurney, and seconds away from extinction.

Within days, or perhaps hours, the memory of Callins will begin to fade. The wheels of justice will churn again, and somewhere, another jury or another judge will have the unenviable task of determining whether some human being is to live or die. We hope, of course, that the defendant whose life is at risk will be represented by competent counsel—someone who is inspired by the awareness that a less-than-vigorous defense truly could have fatal consequences for the defendant. We hope that the attorney will investigate all aspects of the case, follow all evidentiary and procedural rules, and appear before a judge who is still committed to the protection of defendants' rights—even now, as the prospect of meaningful judicial oversight has diminished. In the same vein, we hope that the prosecution, in urging the penalty of death, will have exercised its discretion wisely, free from bias, prejudice, or political motive, and will be humbled, rather than emboldened, by the awesome authority conferred by the State.

But even if we can feel confident that these actors will fulfill their roles to the best of their human ability, our collective conscience will remain uneasy. Twenty years have passed since this Court declared that the death penalty must be imposed fairly, and with reasonable consistency, or not at all, see *Furman* v. *Georgia*, 408 U.S. 238 (1972), and, despite the effort of the States and courts to devise legal formulas and procedural rules to meet this daunting challenge, the death penalty remains fraught with arbitrariness, discrimination, caprice, and mistake. This is not to say that the problems with the death penalty today are identical to those that were present 20 years ago. Rather, the problems that were pursued down one hole with procedural rules and verbal formulas have come to the surface somewhere else, just as virulent and pernicious as they were in their original form. Experience has taught us that the constitutional goal of eliminating arbitrariness and discrimination from the administration of death, see *Furman* v. *Georgia*, *supra*, can never be achieved without compromising an equally essential component of fundamental fairness—individualized sentencing. See *Lockett* v. *Ohio*, 438 U.S. 586 (1978).

It is tempting, when faced with conflicting constitutional commands, to sacrifice one for the other or to assume that an acceptable balance between them already has been struck. In the context of the death penalty, however, such jurisprudential maneuvers are wholly inappropriate. The death penalty must be imposed "fairly, and with reasonable consistency, or not at all." *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982).

To be fair, a capital sentencing scheme must treat each person convicted of a capital offense with that "degree of respect due the uniqueness of the individual." *Lockett* v. *Ohio*, 438 U.S., at 605 (plurality opinion). That means affording the sentencer the power and discretion to grant mercy in a particular case, and providing avenues for the consideration of any and all relevant mitigating evidence that would justify a sentence less than death. Reasonable consistency, on the other hand, requires that the death penalty be inflicted evenhandedly, in accordance with reason and objective standards, rather than by whim, caprice, or prejudice. Finally, because human error is inevitable, and because our criminal justice system is less than perfect, searching appellate review of death sentences and their underlying convictions is a prerequisite to a constitutional death penalty scheme.

On their face, these goals of individual fairness, reasonable consistency, and absence of error appear to be attainable: Courts are in the very business of erecting procedural devices from which fair, equitable, and reliable outcomes are presumed to flow. Yet, in the death penalty area, this Court, in my view, has engaged in a futile effort to balance these constitutional demands, and now is retreating not only from the *Furman* promise of consistency and rationality, but from the requirement of individualized sentencing as well. Having virtually conceded that both fairness and rationality cannot be achieved in the administration of the death penalty, see *McCleskey* v. *Kemp*, 481 U.S. 279, 313, n. 37 (1987), the Court has chosen to deregulate the entire enterprise, replacing, it would seem, substantive constitutional requirements with mere aesthetics, and abdicating its statutorily and constitutionally imposed duty to provide meaningful judicial oversight to the administration of death by the States.

From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored—indeed, I have struggled—along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor.[1] Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question—does the system accurately and consistently determine which defendants "deserve" to die?—cannot be answered in the affirmative. It is not simply that this court has allowed vague aggravating circumstances to be employed, see, *e.g.*, *Arave* v. *Creech*, ___ U.S. ___ (1993), relevant mitigating evidence to be disregarded, see, *e.g.*, *Johnson* v. *Texas*, ___ U.S. ___ (1993), and vital judicial review to be blocked, see, *e.g.*, *Coleman* v. *Thompson*, 501 U.S. ___ (1991). The problem is that the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution.[2]

I

In 1971, in an opinion which has proved partly prophetic, the second Justice Harlan, writing for the Court, observed:

"Those who have come to grips with the hard task of actually attempting to draft means of channeling capital sentencing discretion have confirmed the lesson taught by the history recounted above. To identify before the fact those characteristics of criminal homicides and their perpetrators which call for the death penalty, and to express these characteristics in language which can be fairly understood and applied by the sentencing authority, appear to be tasks which are beyond present human ability. . . For a court to attempt to catalog the appropriate factors in this elusive area could inhibit rather than expand the scope of consideration, for no list of circumstances would ever be really complete." *McGautha* v. *California*, 402 U. S. 183, 204, 208 (1971).

In *McGautha*, the petitioner argued that a statute which left the penalty of death entirely in the jury's discretion, without any standards to govern its imposition, violated the Fourteenth Amendment. Although the Court did not deny that serious risks were associated with a sentencer's unbounded discretion, the Court found no remedy in the Constitution for the inevitable failings of human judgment.

A year later, the Court reversed its course completely in *Furman* v. *Georgia*, 408 U. S. 238 (1972) (*per curiam*, with each of the nine Justices writing separately). The concurring Justices argued that the glaring inequities in the administration of death, the standardless discretion wielded by judges and juries, and the pervasive racial and economic discrimination, rendered the death penalty, at least as administered, "cruel and unusual" within the meaning of the Eighth Amendment. Justice White explained that, out of the hundreds of people convicted of murder every year, only a handful were sent to their deaths, and that there was "no meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not." 408 U. S., at 313. If any discernible basis could be identified for the selection of those few who were chosen to die, it was "the constitutionally impermissible basis of race." *Id.*, at 310 (Stewart, J., concurring).

I dissented in *Furman*. Despite my intellectual, moral, and personal objections to the death penalty, I refrained from joining the majority because I found objectionable the Court's abrupt change of position in the single year that had passed since *McGautha*. While I agreed that the Eighth Amendment's prohibition against cruel and unusual punishments "'may acquire meaning as public opinion becomes enlightened by a humane justice,'" 408 U. S., at 409, quoting *Weems* v. *United States*, 217 U. S. 349, 378 (1910), I objected to the "suddenness of the Court's perception of progress in the human attitude since decisions of only a short while ago." 408 U.S., at 410. Four years after *Furman* was decided, I concurred in the judgment in *Gregg* v. *Georgia*, 428 U.S. 153 (1976), and its compan-

ion cases which upheld death sentences rendered under statutes passed after *Furman* was decided. See *Proffitt* v. *Florida*, 428 U.S. 242, 261 (1976), and *Jurek* v. *Texas*, 428 U.S. 262, 279 (1976). Cf. *Woodson* v. *North Carolina*, 428 U.S. 280, 307 (1976), and *Roberts* v. *Louisiana*, 428, U.S. 325, 363 (1976).

A

There is little doubt now that *Furman's* essential holding was correct. Although most of the public seems to desire, and the Constitution appears to permit, the penalty of death, it surely is beyond dispute that if the death penalty cannot be administered consistently and rationally, it may not be administered at all. *Eddings* v. *Oklahoma*, 455 U.S., at 112. I never have quarreled with this principle; in my mind, the real meaning of *Furman's* diverse concurring opinions did not emerge until some years after *Furman* was decided. See *Gregg* v. *Georgia*, 428 U.S., at 189 (opinion of Stewart, Powell, and STEVENS, JJ.) ("*Furman* mandates that where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as the minimize the risk of wholly arbitrary and capricious action"). Since *Gregg*, I faithfully have adhered to the *Furman* holding and have come to believe that it is indispensable to the Court's Eighth Amendment jurisprudence.

Delivering on the *Furman* promise, however, has proved to be another matter. *Furman* aspired to eliminate the vestiges of racism and the effects of poverty in capital sentencing; it deplored the "wanton" and "random" infliction of death by a government with constitutionally limited power. *FUrman* demanded that the sentencer's discretion be directed and limited by procedural rules and objective standards in order to minimize the risk of arbitrary and capricious sentences of death.

In the years following *Furman*, serious efforts were made to comply with its mandate. State legislatures and appellate courts struggled to provide judges and juries with sensible and objective guidelines for determining who should live and who should die. some States attempted to define who is "deserving" of the death penalty through the use of carefully chosen adjectives, reserving the death penalty for those who commit crimes that are "especially heinous, atrocious, or cruel," see Fla. Stat. §921.141(5)(h) (Supp. 1976), or "wantonly vile, horrible or inhuman," see Ga. Code Ann. §27–2534.1(b)(7) (1978). Other States enacted mandatory death penalty statutes, reading *Furman* as an invitation to eliminate sentencer discretion altogether. See, *e.g.*, N.C. Gen. Stat. §14–17 (Cum. Supp. 1975). But see *Woodson* v. *North Carolina*, 428 U.S. 280 (1976) (invalidating mandatory death penalty statutes). Still other States specified aggravating and mitigating factors that were to be considered by the sentencer and weighed against one another in a calculated and rational manner. See, *e.g.*, Ga. Code. Ann. §17–10–30(c) (1982); cf. Tex. Code Crim. Proc. Ann., Art. 37.071(c)-(e) (Vernon 1981 and Supp. 1989) (identifying "special issues" to be considered by the sentencer when determining the appropriate sentence).

Unfortunately, all this experimentation and ingenuity yielded little of what *Furman* demanded. It soon became apparent that discretion could not be eliminated from capital sentencing without threatening the fundamental fairness due a defendant when life is at stake. Just as contemporary society was no longer tolerant of the random or discriminatory infliction of the penalty of death, see *Furman*, *supra*, evolving standards of decency required due consideration of the uniqueness of each individual defendant when imposing society's ultimate penalty. See *Woodson*, 428 U.S., at 301 (opinion of Stewart, Powell, and Stevens, JJ.) referring to *Trop* v. *Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

This development in the American conscience would have presented no constitutional dilemma if fairness to the individual could be achieved without sacrificing the consistency and rationality promised in *Furman*. But over the past two decades, efforts to balance these competing constitutional commands have been to no avail. Experience has shown that the consistency and rationality promised in *Furman* are inversely related to the fairness owed the individual when considering a sentence of death. A step toward consistency is a step away from fairness.

B

There is a heightened need for fairness in the administration of death. This unique level of fairness is born of the appreciation that death truly is different from all other punishments a society inflicts upon its citizens. "Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two." *Woodson*, 428 U.S., at 305 (opinion of Stewart, Powell, and Stevens, JJ.). Because of the qualitative difference of the death penalty, "there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." *Ibid.* In *Woodson*, a decision striking down mandatory death penalty statutes as unconstitutional, a plurality of the Court explained: "A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind." *Id.*, at 304.

While the risk of mistake in the determination of the appropriate penalty may be tolerated in other areas of the criminal law, "in capital cases the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." *Ibid.* Thus, although individualized sentencing in capital cases was not considered essential at the time the Constitution was adopted, *Woodson* recognized that American standards of decency could no longer tolerate a capital sentencing process that failed to afford a defendant individualized consideration in the determination whether he or she should live or die. *Id.*, at 301.

The Court elaborated on the principle of individualized sentencing in *Lockett* v. *Ohio*, 438 U.S. 586 (1978). In that case, a plurality acknowledged that strict restraints on sentencer discretion are necessary to achieve the consistency and rationality promised in *Furman*, but held that, in the end, the sentencer must retain unbridled discretion to afford mercy. Any process or procedure that prevents the sentencer from considering "*as a mitigating factor*, any aspect of a defendant's character or record and any circumstances of the offense that the defendant proffers as a basis for a sentence less than death," creates the constitutionally intolerable risk that "the death penalty will be imposed in spite of factors which may call for a less severe penalty." *Id.*, at 604–605 (emphasis in original). See also *Sumner* v. *Shuman*, 483 U.S. 66 (1987) (invalidating a mandatory death penalty statute reserving the death penalty for life-term inmates convicted of murder). The Court's duty under the Constitution therefore is to "develop a system of capital punishment at once consistent and principled but also humane and sensible to the uniqueness of the individual." *Eddings* v. *Oklahoma*, 455 U.S., at 110.

C

I believe the *Woodson-Lockett* line of cases to be fundamentally sound and rooted in American standards of decency that have evolved over time. The notion of prohibiting a sentencer from exercising its discretion "to dispense mercy on the basis of factors too intangible to write into a statute," *Gregg*, 428 U.S., at 222 (White, J., concurring), is offensive to our sense of fundamental fairness and respect for the uniqueness of the individual. In *California* v. *Brown*, 479 U.S. 538 (1987), I said in dissent:

"The sentencer's ability to respond with mercy towards a defendant has always struck me as a particularly valuable aspect of the capital sentencing procedure. . . . [W]e adhere so strongly to our belief that a sentencer should have the opportunity to spare a capital defendant's life on account of compassion for the individual because, recognizing that the capital sentencing decision must be made in the context of 'contemporary values,' *Gregg* v. *Georgia*, 428 U.S., at 181 (opinion of Stewart, POWELL, and STEVENS, JJ.), we see in the sentencer's expression of mercy a distinctive feature of our society that we deeply value." *Id.*, at 562–563.

Yet, as several Members of the Court have recognized, there is real "tension" between the need for fairness to the individual and the consistency promised in *Furman*. See *Franklin* v. *Lynaugh*, 487 U.S. 164, 182 (1988) (plurality opinion); *California* v. *Brown*, 479 U.S., at 544 (O'CONNOR, J., concurring); *McCleskey* v. *Kemp*, 481 U.S., at 363 (BLACKMUN, J., dissenting); *Graham* v. *Collins*, ___ U.S. ___, ___ (1993) (THOMAS, J., concurring). On the one hand, discretion in capital sentencing must be "'controlled by clear and objective standards so as to produce non-discriminatory [and reasoned] application.'" *Gregg*, 428 U.S., at 198 (opinion of Stewart, Powell, and STEVENS, JJ.), quoting *Coley* v. *State*, 231 Ga. 829, 834, 204 S.E. 2d 612, 615 (1974). On the other hand, the Constitution also requires that the sentencer be able to consider "any relevant mitigating evidence regarding the defendant's character or background, and the circumstances of the particular offense." *California* v. *Brown*, 479 U.S. 538, 544 (1987) (O'CONNOR, J., concurring). The power to consider mitigating evidence that would warrant a sentence less than death is meaningless unless the sentencer has the discretion and authority to dispense mercy based on that evidence. Thus, the Constitution, by requiring a heightened degree of fairness to the individual, and also a greater degree of equality and rationality in the administration of death, demands sentencer discretion that is at once generously expanded and severely restricted.

This dilemma was laid bare in *Penry* v. *Lynaugh*, 492 U.S. 302 (1989). The defendant in *Penry* challenged the Texas death penalty statute, arguing that it failed to allow the sentencing jury to give full mitigating effect to his evidence of mental retardation and history of child abuse. The Texas statute re-

quired the jury, during the penalty phase, to answer three "special issues"; if the jury unanimously answered "yes" to each issue, the trial court was obligated to sentence the defendant to death. Tex. Code Crim. Proc. Ann., Art. 37.071(c)–(e) (Vernon 1981 and Supp. 1989). Only one of the three issues—whether the defendant posed a "continuing threat to society"—was related to the evidence Penry offered in mitigation. But Penry's evidence of mental retardation and child abuse was a two-edged sword as it related to that special issue: "it diminish[ed] his blameworthiness for his crime even as it indicate[d] that there [was] a probability that he [would] be dangerous in the future." 492 U.S., at 324. The Court therefore reversed Penry's death sentence, explaining that a reasonable juror could have believed that the statute prohibited a sentence less than death based upon his mitigating evidence. *Id.*, at 326.

After *Penry*, the paradox underlying the Court's post-*Furman* jurisprudence was undeniable. Texas had complied with *Furman* by severely limiting the sentencer's discretion, but those very limitations rendered Penry's death sentence unconstitutional.

D

The theory underlying *Penry* and *Lockett* is that an appropriate balance can be struck between the *Furman* promise of consistency and the *Lockett* requirement of individualized sentencing if the death penalty is conceptualized as consisting of two distinct stages.[3] In the first stage of capital sentencing, the demands of *Furman* are met by "narrowing" the class of death-eligible offenders according to objective, fact-bound characteristics of the defendant or the circumstances of the offense. Once the pool of death-eligible defendants has been reduced, the sentencer retains the discretion to consider whatever relevant mitigating evidence the defendant chooses to offer. See *Graham* v. *Collins*, ___ U.S., at ___ (STEVENS, J., dissenting) (slip op. 3) (arguing that providing full discretion to the sentencer is not inconsistent with *Furman* and may actually help to protect against arbitrary and capricious sentencing).

Over time, I have come to conclude that even this approach is unacceptable: It simply reduces, rather than eliminates, the number of people subject to arbitrary sentencing.[4] It is the decision to sentence a defendant to death—not merely the decision to make a defendant eligible for death—that may not be arbitrary. While one might hope that providing the sentencer with as much relevant mitigating evidence as possible will lead to more rational and consistent sentences, experience has taught otherwise. It seems that the decision whether a human being should live or die is so inherently subjective—rife with all of life's understandings, experiences, prejudices, and passions—that it inevitably defies the rationality and consistency required by the Constitution.

E

The arbitrariness inherent in the sentencer's discretion to afford mercy is exacerbated by the problem of race. Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die. Perhaps it should not be surprising that the biases and prejudices that infect society generally would influence the determination of who is sentenced to death, even within the narrower pool of death-eligible defendants selected according to objective standards. No matter how narrowly the pool of death-eligible defendants is drawn according to objective standards, *Furman*'s promise still will go unfulfilled so long as the sentencer is free to exercise unbridled discretion within the smaller group and thereby to discriminate. "'The power to be lenient [also] is the power to discriminate.'" *McCleskey* v. *Kemp*, 481 U.S., at 312, quoting K. Davis, Discretionary Justice 170 (1973).

A renowned example of racism infecting a capital-sentencing scheme is documented in *McCleskey* v. *Kemp*, 481 U.S. 279 (1987). Warren McCleskey, an African-American, argued that the Georgia capital-sentencing scheme was administered in a racially discriminatory manner, in violation of the Eighth and Fourteenth Amendments. In support of his claim, he proffered a highly reliable statistical study (the Baldus study) which indicated that, "after taking into account some 230 nonracial factors that might legitimately influence a sentencer, the jury *more likely than not* would have spared McCleskey's life had his victim been black." 481 U.S., at 325 (emphasis in original) (BRENNAN, J., dissenting). The Baldus study further demonstrated that blacks who kill whites are sentenced to death "at nearly *22 times* the rate of blacks who kill blacks, and more than *7 times* the rate of whites who kill blacks." *Id.*, at 327 (emphasis in original).

Despite this staggering evidence of racial prejudice infecting Georgia's capital-sentencing scheme, the majority turned its back on McCleskey's claims, apparently troubled by the fact that Georgia had instituted more procedural and substantive safeguards than most other States since *Furman*, but was still unable to stamp out the virus of racism. Faced with the apparent failure of traditional legal devices to cure the evils identified in *Furman*, the majority wondered aloud whether the consistency and rationality demanded by the dissent could ever be achieved without sacrificing the discretion which is essential to fair treatment of individual defendants:

"[I]t is difficult to imagine guidelines that would produce the predictability sought by the dissent without sacrificing the discretion essential to a humane and fair system of criminal justice . . . . The dissent repeatedly emphasizes the need for 'a uniquely high degree of rationality in imposing the death penalty' . . . . Again, no suggestion is made as to how greater 'rationality' could be achieved under any type of statute that authorizes capital punishment . . . . Given these safeguards already inherent in the imposition and review of capital sentences, the dissent's call for greater rationality is no less than a claim that a capital punishment system cannot be administered in accord with the Constitution." *Id.* at 314–315, n. 37.

I joined most of Justice Brennan's significant dissent which expounded McCleskey's Eighth Amendment claim, and I wrote separately, *id.*, at 345, to explain that McCleskey also had a solid equal protection argument under the Fourteenth Amendment. I still adhere to the views set forth in both dissents, and, as far as I know, there has been no serious effort to impeach the Baldus study. Nor, for that matter, have proponents of capital punishment provided any reason to believe that the findings of that study are unique to Georgia.

The fact that we may not be capable of devising procedural or substantive rules to prevent the more subtle and often unconscious forms of racism from creeping into the system does not justify the wholesale abandonment of the *Furman* promise. To the contrary, where a morally irrelevant—indeed, a repugnant—consideration plays a major role in the determination of who shall live and who shall die, it suggests that the continued enforcement of the death penalty in light of its clear and admitted defects is deserving of a "sober second thought." Justice Brennan explained:

"Those whom we would banish from society or from the human community itself often speak in too faint a voice to be heard above society's demand for punishment. It is the particular role of courts to hear these voices, for the Constitution declares that the majoritarian chorus may not alone dictate the conditions of social life. The Court thus fulfills, rather than disrupts, the scheme of separation of powers by closely scrutinizing the imposition of the death penalty, for no decision of a society is more deserving of the 'sober second thought.' Stone, The Common Law in the United States, 50 Harv. L. Rev. 4, 25 (1936)." *Id.*, at 343.

F

In the years since *McCleskey*, I have come to wonder whether there was truth in the majority's suggestion that discrimination and arbitrariness could not be purged from the administration of capital punishment without sacrificing the equally essential component of fairness—individualized sentencing. Viewed in this way, the consistency promised in *Furman* and the fairness to the individual demanded in *Lockett* are not only inversely related, but irreconcilable in the context of capital punishment. Any statute or procedure that could effectively eliminate arbitrariness from the administration of death would also restrict the sentencer's discretion to such an extent that the sentencer would be unable to give full consideration to the unique characteristics of each defendant and the circumstances of the offense. By the same token, any statute or procedure that would provide the sentencer with sufficient discretion to consider fully and act upon the unique circumstances of each defendant would "thro[w] open the back door to arbitrary and irrational sentencing." *Graham* v. *Collins*, ___ U.S., at ___ (THOMAS, J., concurring) (slip op. 17). All efforts to strike an appropriate balance between these conflicting constitutional commands are futile because there is a heightened need for both in the administration of death.

But even if the constitutional requirements of consistency and fairness are theoretically reconcilable in the context of capital punishment, it is clear that this Court is not prepared to meet the challenge. In apparent frustration over its inability to strike an appropriate balance between the *Furman* promise of consistency and the *Lockett* requirement of individualized sentencing, the Court has retreated from the field,[5] allowing relevant mitigating evidence to be discarded,[6] vague aggravating circumstances to be employed,[7] and providing no indication that the problem of race in the administration of death will ever be addressed. In fact some members of the Court openly have acknowledged a willingness simply to pick one of the competing constitutional commands and sacrifice the other. See *Graham*, ___ U.S., at ___ (THOMAS, J., concurring) (calling for the reversal of *Penry*); *Walton* v. *Arizona*, 497 U.S. 639, 673 (1990) (SCALIA, J., concurring in part and concurring in the judgment) (announcing that he will no longer enforce the requirement of individualized sentencing, and reasoning that either *Furman* or *Lockett* is wrong and a choice must be made between the two). These developments are troubling, as they ensure that death will continue to be meted out in this country arbitrarily and discriminatorily, and without

that "degree of respect due the uniqueness of the individual." *Lockett*, 438 U.S., at 605. In my view, the proper course when faced with irreconcilable constitutional commands is not to ignore one or the other, nor to pretend that the dilemma does not exist, but to admit the futility of the effort to harmonize them. This means accepting the fact that the death penalty cannot be administered in accord with our Constitution.

II

My belief that this Court would not enforce the death penalty (even if it could) in accordance with the Constitution is buttressed by the Court's "obvious eagerness to do away with any restriction on the States' power to execute whomever and however they please." *Herrera*, ___ U.S., at ___ (BLACKMUN, J., dissenting) (slip op. 18). I have explained at length on numerous occasions that my willingness to enforce the capital punishment statutes enacted by the States and the Federal Government, "notwithstanding my own deep moral reservations . . . has always rested on an understanding that certain procedural safeguards, chief among them the federal judiciary's power to reach and correct claims of constitutional error on federal habeas review, would ensure that death sentences are fairly imposed." *Sawyer* v. *Whitley*, ___ U.S. ___, ___ (1992) (BLACKMUN, J., concurring in the judgment) (slip op. 8–9). See also *Herrera* v. *Collins*, ___ U.S., at ___ (BLACKMUN, J., dissenting). In recent years, I have grown increasingly skeptical that "the death penalty really can be imposed fairly and in accordance with the requirements of the Eighth Amendment" given the now limited ability of the federal courts to remedy constitutional errors. *Sawyer*, ___ U.S., at ___ (BLACKMUN, J., concurring in the judgment) (slip op. 1).

Federal courts are required by statute to entertain petitions from state prisoners who allege that they are held "in violation of the Constitution or the treaties of the United States." 28 U.S.C. §2254(a). Serious review of these claims helps to ensure that government does not secure the penalty of death by depriving a defendant of his or her constitutional rights. At the time I voted with the majority to uphold the constitutionality of the death penalty in *Gregg* v. *Georgia*, 428 U.S. 153, 227 (1976), federal courts possessed much broader authority than they do today to address claims of constitutional error on habeas review. In 1976, there were few procedural barriers to the federal judiciary's review of a State's capital sentencing scheme, or the fairness and reliability of a State's decision to impose death in a particular case. Since then, however, the Court has "erected unprecedented and unwarranted barriers" to the federal judiciary's review of the constitutional claims of capital defendants. *Sawyer*, ___ U.S., at ___ (BLACKMUN, J., concurring in the judgment) (slip op. 2). See, *e.g.*, *Herrera* v. *Collins*, *supra*; *Coleman* v. *Thompson*, 501 U.S. ___ (1991); *McCleskey* v. *Zant*, 499 U.S. ___ (1991); *Keeney* v. *Tamayo-Reyes*, ___ U.S. ___ (1992) (overruling *Townsend* v. *Sain*, 372 U.S. 293 (1963), in part); *Teague* v. *Lane*, 489 U.S. 288 (1989); *Butler* v. *McKellar*, 494 U.S. 407 (1990).

The Court's refusal last term to afford Leonel Torres Herrera an evidentiary hearing, despite his colorable showing of actual innocence, demonstrates just how far afield the Court has strayed from its statutorily and constitutionally imposed obligations. See *Herrera* v. *Collins*, *supra*. In *Herrera*, only a bare majority of this Court could bring itself to state forthrightly that the execution of an actually innocent person violates the Eighth Amendment. This concession was made only in the course of erecting nearly insurmountable barriers to a defendant's ability to get a hearing on a claim of actual innocence. *Ibid.* Certainly there will be individuals who are actually innocent who will be unable to make a better showing than what was made by Herrera without the benefit of an evidentiary hearing.[8] The Court is unmoved by the dilemma, however; it prefers "finality" in death sentences to reliable determinations of a capital defendant's guilt. Because I no longer can state with any confidence that this Court is able to reconcile the Eighth Amendment's competing constitutional commands, or that the federal judiciary will provide meaningful oversight to the state courts as they exercise their authority to inflict the penalty of death, I believe that the death penalty, as currently administered, is unconstitutional.

III

Perhaps one day this Court will develop procedural rules or verbal formulas that actually will provide consistency, fairness, and reliability in a capital-sentencing scheme. I am not optimistic that such a day will come. I am more optimistic, though, that this Court eventually will conclude that the effort to eliminate arbitrariness while preserving fairness "in the infliction of [death] is so plainly doomed to failure that it—and the death penalty—must be abandoned altogether." *Godfrey* v. *Georgia*, 446 U.S. S. 420, 442 (1980) (MARSHALL, J., concurring in the judgment). I may not live to see that day, but I have faith that eventually it will arrive. The path the Court has chosen lessens us all. I dissent.

FOOTNOTES

[1] As a member of the United States Court of Appeals, I voted to enforce the death penalty, even as I stated publicly that I doubted its moral, social, and constitutional legitimacy. See *Feguer* v. *United States*, 302 F. 2d 214 (CA8), cert. denied, 371 U. S. 872 (1962); *Pope* v. *United States*, 372 F. 2d 710 (CA8 1967) (en banc), vacated and remanded, 392 U. S. 651 (1968); *Maxwell* v. *Bishop*, 398 F. 2d 138, 153–154 (CA8 1968), vacated and remanded, 398 U. S. 262 (1970). See *Furman* v. *Georgia*, 408 U. S. 238, 405 (1972).

[2] Because I conclude that no sentence of death may be constitutionally imposed under our death penalty scheme, I do not address Callins' individual claims of error. I note, though, that the Court has stripped "state prisoners of virtually *any* meaningful federal review of the constitutionality of their incarceration." *Butler* v. *McKellar*, 494 U. S. 407, 417 (1990) (Brennan, J., dissenting) (emphasis in original). Even if Callins had a legitimate claim of constitutional error, this Court would be deaf to it on federal habeas unless "the state court's rejection of the constitutional challenge was *so* clearly invalid under then-prevailing legal standards that the decision could not be defended by any reasonable jurist." *Id.*, at 417–418 (emphasis in original). That a capital defendant facing imminent execution is required to meet such a standard before the Court will remedy constitutional violations is indefensible.

[3] See Sundby, The *Lockett* Paradox: Reconciling Guided Discretion and Unguided Mitigation in Capital Sentencing, 38 UCLA L. Rev. 1147, 1162 (1991).

[4] The narrowing of death-eligible defendants into a smaller subgroup coupled with the unbridled discretion to pick among them arguably emphasizes rather than ameliorates the inherent arbitrariness of the death penalty. S. Gillers, Deciding Who Dies, 129 U. Pa. L. Rev. 1, 27–28 (1980) (arguing that the inherent arbitrariness of the death penalty is only magnified by post-*Furman* statutes that allow the jury to choose among similarly situated defendants).

[5] See *Clemons* v. *Mississippi*, 494 U. S. 738 (1990) (concluding that appellate courts may engage in a reweighing of aggravating and mitigating circumstances in order to "cure" error in capital sentencing); *Blystone* v. *Pennsylvania*, 494 U. S. 310 (1990) (upholding a death penalty statute mandating death where aggravating, but no mitigating, circumstances are present, thus divesting the jury of its ability to make an individualized determination that death is the appropriate punishment in a particular case).

[6] See *Johnson* v. *Texas*, ___ U. S. ___ (1993) (affirming death sentence even though the jurors were not allowed to give full mitigating effect to the defendant's youth under the Texas death penalty statute); *Graham* v. *Collins*, ___ U. S. ___ (1993). See also *Saffle* v. *Parks*, 494 U. S. 484 (1990) (upholding death sentence where jurors were instructed to avoid "any influence of sympathy," because the claim was raised on federal habeas and a ruling for the petitioner would constitute a "new rule" of constitutional law); *Boyde* v. *California*, 494 U. S. 370 (1990) (upholding death sentence where jurors reasonably may have believed that they could not consider the defendant's mitigating evidence regarding his character and background); *Walton* v. *Arizona*, 497 U.S. 639 (1990) (affirming placement upon the defendant of the burden to establish mitigating circumstances sufficient to call for leniency).

The Court has also refused to hold the death penalty unconstitutional per se for juveniles, see *Stanford* v. *Kentucky*, 492 U. S. 361 (1989), and the mentally retarded, see *Penry* v. *Lynaugh*, 492 U. S. 302 (1989).

[7] See *Arave* v. *Creech*, ___ U. S. ___ (1993) (holding that an Idaho statute, as interpreted by the Idaho Supreme Court, which authorizes the death penalty for those murderers who have displayed "utter disregard for human life," genuinely narrows the class of death-eligible defendants); *Lewis* v. *Jeffers*, 497 U. S. 764 (1990) (affirming lenient standard for the review of the constitutional adequacy of aggravating circumstances).

[8] Even the most sophisticated death penalty schemes are unable to prevent human error from condemning the innocent. Innocent persons *have* been executed, see Bedau & Radelet, Miscarriages of Justice in Potentially Capital Cases, 40 Stan. L. Rev. 21, 36, 173–179 (1987), perhaps recently, see *Herrera* v. *Collins*, *supra*, and will continue to be executed under our death penalty scheme.

VERMONT GUARD BIATHLETES IN LILLEHAMMER

Mr. LEAHY. Mr. President, this week two members of the Vermont National Guard returned home from the winter Olympics in Lillehammer, Norway. Laurie Tavares and David Jareckie may not be household names like Bonnie Blair and Dan Jansen but they are champions in their own right. Both competed with a select group of athletes in one of the most difficult sports in the Olympics: the biathlon.

I can count on one hand the number of minutes CBS dedicated to biathlon coverage. Few Americans know much about the biathlon, let alone that it is one of the most mentally and physically demanding sports at the Olympic games. Biathletes must be able to compete in a grueling cross-country ski race while stopping intermittently to test their marksmanship on a shooting range. As a former member of the St. Michael's College rifle team, I recognize the skill and patience it takes to get off a clean shot. It takes a special athlete to stop and shoot accurately during a cross-country ski race.

Laurie Tavares was nothing short of remarkable in Lillehammer. She was a member of the women's biathlon relay team that finished eighth—the highest ever for a U.S. women's relay. Laurie also finished 32d in the 15-kilometer race.

I would also like to take a moment to commend David Jareckie who made his second appearance at the Olympics.

I am proud that both members of the Vermont National Guard represented our country in Norway.

THE SITUATION IN UKRAINE

Mr. DECONCINI. Mr. President, this week, Ukrainian President Leonid Kravchuk will arrive in Washington for meetings with President Clinton. This is an important visit by the President of a country whose significance to the United States is undeniable. No doubt, President Kravchuk will be rightly praised for taking the difficult—and politically courageous—step of signing the trilateral nuclear accord ridding Ukraine of its nuclear weapons. His visit also marks a milestone in United States-Ukrainian relations, which are beginning to improve as a result of a welcome shift in our own policy that increasingly recognizes the critical role of Ukraine and other Independent States of the former Soviet Union.

However, I continue to harbor grave concerns about Ukraine's future. Recently, I was disturbed to see Ukraine again backing away from what appeared to be economic reform efforts—specifically, the Government's decision to issue a flood of new subsidies to State industry and agriculture. This is a move that will again fuel high inflation after only a brief slowdown. I am aware that this move was taken in order to avert a payments crisis and the collapse of Ukraine's industry. Nevertheless, it points to a larger problem: the inability or unwillingness of the Ukrainian Government—and conservative, majority Parliament—to take decisive measures on meaningful monetary and structural reforms, including privatization.

Mr. President, as chairman of the Helsinki Commission and a former member of the Ukraine Famine Commission, I have long been an advocate of freedom and independence for Ukraine and an admirer of the courage and spirit of the Ukrainian people. But I am deeply troubled at Ukraine's current course. After a promising start with respect to political, and to a lesser extent, economic reforms, Ukraine is undergoing a period of stagnation—an inability to move beyond the initial break with the totalitarianism and centralization of the Soviet era. While not minimizing the intense difficulty of the transition to democracy and free markets, or, for that matter, the serious security threats emanating from Ukraine's northern neighbor, I cannot help fearing for Ukraine's future in the absence of reform.

While the United States has become more serious about assisting Ukraine, an effort I have supported, all of the assistance in the world will not help if the political will and wherewithal are not present in Ukraine itself. Next month, the people of Ukraine will vote for a new Parliament—hopefully one that will push, not hinder, significant economic change.

We need to reinforce the message that Ukraine's very future depends upon immediate measures with respect to economic and political reform.

TURKISH DEMOCRACY IMPERILED

Mr. DECONCINI. Mr. President, I rise today to voice concern over Turkey's political future. Because Turkey is an important friend and ally in an unstable region, this Congress and administration should be deeply troubled by increasing violence in southeast Turkey. This predominantly Kurdish region has become a virtual war-zone where basic human rights have been suspended and fear and death mount. Since 1991, more than 5,000 have died in an increasingly brutal battle between Kurdish guerrillas, Moslem fundamentalists and Turkish security forces. The vicious cycle threatens to expand, tearing at the fabric of Turkish democracy and straining delicate regional relations. And while I have no doubt that Turkey's democratic institutions are currently stronger than ever, rumors of a coup have already surfaced in the Turkish press, stirring unpleasant memories of three such previous setbacks to democracy since 1960.

Since modern Turkey's establishment in 1923, Kurds, who presently comprise about 11 million of Turkey's 57 million population, have faced varying pressure to deny their cultural distinctiveness. While Moslem, they maintain distinct language and cultural forms. Through expressions of their Kurdish identity, civil disobedience, or at the extreme, open rebellion, Kurds have sought to promote and preserve their culture and rights. Since 1987, eight provinces where Kurds reside have withered under a state of emergency which authorizes a regional governor and the military to curb political, media and cultural activity.

In 1984, the Kurdish Workers Party [PKK] initiated a violent campaign in support of Kurdish autonomy. Funded in part by groups in Europe, the PKK operates from Syria, Iraq, Iran, and hideouts in Turkey and is considered a terrorist organization by the United States and most other governments. Recently, the group has targeted Turkey's tourist industry. Civilians in areas where the PKK operates often face a terrible choice between aiding the guerrillas and risking violent reprisal by Turkish security forces—or not helping and facing equally harsh PKK retribution. On the one hand, locals suspected of collaborating with Turkish authorities are executed by the PKK. On the other, security forces arbitrarily round up villagers and subject them to beatings, mass arrests, and intimidation. A particularly disturbing tactic, which has caused substantial hardship and displacement, has been the forced evacuation of hundreds of villages and the destruction of entire towns in response to alleged terrorist incidents.

While Turkey, and indeed all states, is entitled to protect their citizens from terrorism and to preserve the integrity of its borders, Turkey has also obligated itself to uphold basic human rights principles. Unfortunately, as the PKK steps up its attacks, civilians are also increasingly threatened by reactions of security forces, and indeed, legitimate rights of Turkey's Kurdish citizens are being denied under the mantle of combating terrorism. The violence is polarizing Turks and Kurds, creating an unprecedented level of fear and mistrust. Kurds, resentful of security abuses, become more supportive of Kurdish nationalism and the PKK. Turks, angered by the costs and brutality of terrorism, are increasingly intolerant of the legitimate rights of Kurdish citizens.

The Turkish Government's military efforts to address the Kurdish situation have only escalated tensions. Massive discontent has resulted in an increasing and unacceptable toll of innocent lives. The one-dimensional military approach stifles even moderate Kurdish political voices, enabling the PKK to gather support among a population weary of constant harassment and with no power or representation to put forward legitimate cultural and political aspirations.

The violent prelude to upcoming local elections has highlighted threats to the democratic process and underlined the inability of Kurds to gain political representation or exercise other basic rights. In the past 2 years, shadowy death squads have killed 70 members of the pro-Kurdish Democratic Party [DEP], which holds 18 of 450 seats in the Turkish Parliament, including a Member of Parliament. Twenty party offices have been bombed. Over 300 DEP election candidates have been arrested and changes in electoral laws—reportedly made on security grounds—have made it extremely difficult for voters in Kurdish regions to cast their ballots. On February 23, DEP members decided to boycott the March 27 elections. International human rights organizations and the European Parliament have announced intentions to send election observes to Turkey.

Mr. President, just yesterday the Turkish Parliament lifted the immunity of four DEP parliamentarians in order to prosecute them for the contents of speeches or writings. Two were detained outside parliament on charges which could bring the death penalty. Prosecutors want to charge a total of eight Kurdish parliamentarians. Such policies are contrary to basic principles of free speech and an affront to the rights of Kurds throughout Turkey. While Turkey remains a NATO ally and major recipient of U.S. military and

economic assistance, this Congress and administration should not be deterred from voicing serious concerns over the deteriorating human rights situation and the Turkish Government's inability or unwillingness to constructively address abuses.

Mr. President, while there are no easy solutions to the complex Kurdish issue, fortunately some voices of moderation are heard among civilian policy makers who call for redressing Kurdish grievances and meeting Turkey's commitments to a society based on rule of law. Such voices have called for continued economic investment in the southeast; rescinding the state of emergency; abolishing the restrictive antiterror law and village guard system; reaffirming Kurdish cultural rights; and removing restrictions on Kurdish broadcasting, publishing and other forms of free speech. Major causes of frustration and discontent, which have swelled the ranks of the PKK, could be significantly alleviated by permitting Kurdish political and cultural expression, restoring civil and economic institutions and withdrawing soldiers from city streets and village. Such actions, in my view, could help establish the foundation of a more peaceful, prosperous, and stable Turkish democracy for all its citizens.

Last October, as Turkey's Prime Minister Ciller visited Washington, I joined the cochairman of the Helsinki Commission, STENY HOYER, and a number of congressional colleagues on a letter suggesting that the Government of Turkey pursue political, as opposed to military, solutions to the Kurdish situation. Six months later, I am disappointed not to have received a reply to our views. Cochairman HOYER discussed and passed the letter to a senior Turkish official who indicated a response would be forwarded. I would like to insert a text of that letter into the RECORD following my remarks, and reiterate my hope that a response will soon be forthcoming.

Meanwhile, as the violence escalates, I again urge the Turkish Government to use more carrot and less stick to address underlying roots of Kurdish discontent. The heavy-handed security presence has disrupted normal life and crippled economic viability in the southeast. The military approach drains Turkish coffers, strains relations with neighboring countries, and draws criticism from human rights observers worldwide. Members of the 53 State Conference on Security and Cooperation in Europe have been asked to consider sending official human rights monitor missions to Turkey, and given the present level of hostilities in the southeast, I believe such CSCE missions are warranted.

Mr. President, we in the United States often look with pride upon our heritage as a "melting pot" of ethnicity and culture. We should appreciate that Turkey has been a "melting pot" far longer. Tolerance and understanding, ingredients crucial to keeping such societies from boiling over, are in great need today in Turkey. Violence will certainly beget more violence and further imperil Turkish democracy. Support for the PKK will grow until the Government pursues political solutions and acts to protect the rights of all Turkey's citizens.

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

OCTOBER 14, 1993.

DEAR MADAME PRIME MINISTER: We respectfully offer our congratulations on your appointment as Prime Minister. We hope your term will be marked by peace and prosperity, and look forward to working with your government to strengthen the bonds of friendship which exist between our two governments and peoples.

As a NATO ally, trusted friend of the United States and signatory to the Helsinki Final Act, Turkey occupies a unique position between East and West. We appreciate that while developing its resources and society, Turkey has also proved committed to strengthening its democratic institutions and protecting and promoting human rights.

We understand that Turkey faces a difficult security situation, and has a legitimate need to counter the terrorist actions of the Kurdish Workers Party [PKK]. At the same time, we are deeply troubled by the apparent escalation of restrictive measures and government-sanctioned violence against Kurdish civilians in southeast Turkey.

The recent decision by the Turkish Constitutional Court to outlaw the People's Labor Party [HEP] and official attempts to suppress Kurdish publications and broadcasting indicate that free expression remains restricted for those who peacefully support the promotion and protection of Kurdish rights.

The unsolved assassinations of Kurdish leaders, human rights activists and journalists have created a climate of fear and mistrust of the government among Turkey's Kurds. The assassination of Mehmet Sincar, a member of Parliament, is a prominent reminder of the danger facing those who promote legitimate cultural and political rights for Kurds.

Under the mantle of combatting terrorism, Turkish government security forces are reported to have forcibly evacuated thousands of Kurdish civilians from their homes and destroyed hundreds of Kurdish villages. We believe this use of military extremism encourages other kinds of extremism and hinders development of moderate Kurdish political views and organizations.

The U.S. government clearly condemns acts of terrorism employed by any people, organization or government, and is against any action which threatens Turkey's stability and sovereignty. However, we also believe it is imperative that Turkey uphold the rights and freedoms of all its citizens, including those of Kurdish origin. In view of the spiraling levels of violence in southeast Turkey, it appears that a political solution, rather than continued reliance on military force, offers the best chance of reestablishing security and peace throughout Turkey and the region.

As friends and supporters of Turkey, we sincerely hope that you will be successful in addressing this critical issue.

Sincerely,

MOSLEM AND CROAT AGREEMENT ON BOSNIA OFFERS SIGN OF HOPE

Mr. PELL. Mr. President, yesterday, Bosnian Croat and Bosnian Moslem representatives reached an agreement which we all hope will lead to an end to the bitter fighting between the Croat and Moslem people in Bosnia. As a unified front, the Bosnian Croats and Moslems stand a better chance of prompting the Bosnian Serbs into negotiations, which will not only bring an end to the fighting, but could yield a fair and just settlement to one of the world's most difficult foreign policy challenges.

At the state level, the Croatian and Bosnian Governments also signed an agreement yesterday which could lead to the establishment of a confederation between the Republic of Croatia and the Bosnian Federation. That separate accord also sets out procedures regarding access to the sea for the Bosnian Federation, and transit through Bosnia for Croatian vehicles.

I must say that there is a bit of irony surrounding the confederation agreement between Croatia and Bosnia. In 1990 and 1991, before the breakup of Yugoslavia, many, including Croatian leaders, saw confederation as a compromise between the complete breakup of Yugoslavia and its continued unity. Serbian leader Slobodan Milosevic, insisting on the preservation of a Serb-dominated Yugoslav Federation, vetoed the confederation idea, precipitating the independence declarations by Slovenia, Croatia, and later, Bosnia and Herzegovina. Three bloody years later, the confederation idea is back on the table as a real alternative.

There is cause for optimism, but we should be cautious. These agreements are only first steps. The negotiations included neither the Bosnian Serbs, who continue to control approximately 70 percent of the land in Bosnia, nor their patrons in Serbia. Moreover, as we have seen during the past few days in the Middle East—another part of the world long wracked by ethnic and religious strife—today's hope engendered by the commitments of leaders can easily give way to doubt and frustration produced by the bullets of a fanatic.

As one who is very reluctant to see United States military involvement in the former Yugoslavia, I am encouraged by the diplomatic successes of the past several days. The United States, with the personal leadership of Secretary of State Christopher and the able negotiating skills of Ambassador Charles Redman and our diplomatic staff in the former Yugoslavia, deserves great credit for seizing the diplomatic initiative.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, as of the close of business yesterday, March 1,

the Federal debt stood at $4,554,537,138,164.09, meaning that on a per capita basis, every man, woman, and child in America owes $17,469.68 as his or her share of that debt.

THE 1994 WINTER OLYMPIC GAMES AND A TRIBUTE TO MINNESOTA ATHLETES

Mr. DURENBERGER. Mr. President, for the past 16 days the world has taken a breather—and enjoyed the 17th Winter Olympics held in Lillehammer, Norway.

I want to extend my congratulations and thanks to the people of Norway. For 2 weeks in February, the people of Norway showed us a spirit of cooperation, gracious hospitality, environmental co-existence, and unmatched generosity through their Olympic Aid package to Sarajevo, and perhaps the highest measure of sportsmanship that has been experienced in recent memory.

International Olympic Committee President Juan Antonio Samaranch said it himself, "You have presented to the entire world the best Olympic Winter Games ever."

And now, Mr. President, I want to pay tribute to 18 fine Minnesota athletes who participated in this Olympiad.

Randy Bartz, Roseville, won a silver medal for the United States in the 5,000-meter relay short-track speed skating; Amy Peterson, Maplewood, brought home two bronze medals in short-track speed skating—one in the 500 meters, and another in the 3,000-meter relay.

Olympians from Minnesota also included Todd Boonstra, Eagan; Peggy Clasen, St. Paul; Joan Guetschow, Minnetonka; Brett Hauer, Richfield; Darby Hendrickson, Richfield; Ben Husaby, Eden Prairie; Chris Imes, Birchdale; Craig Johnson, St. Paul; Suzanne King, Minneapolis; Michelle Kline, Circle Pines; Matt Laue, Long Lake; Travis Richards, Crystal; Trace Worthington, Minneapolis.

And because their parents are of Greek heritage, Greta Sebald, Askov; Greg Sebald, Minneapolis; and Spiro Pina, St. Paul, were able to compete for the Greek Olympic Team.

Mr. President, I am extremely proud that Minnesota had more people on the Olympic Team than any other State in the Nation. My heartiest congratulations and best wishes to each one of them for continued success in their life journey.

LEGACY OF JUSTICE FRANK MURPHY PRESERVED

Mr. LEVIN. Mr. President, retired Judge James Lincoln, of Harbor Beach, MI, deserves the praise of his fellow Michiganites for working tirelessly to preserve the memory and history of his former neighbor, mentor and friend, Justice Frank Murphy.

Justice Murphy, born in Harbor Beach in 1890, began a career in law after serving in World War I. During the 1930's, he was mayor of Detroit, Governor-General of the Philippines, and Governor of Michigan. President Roosevelt appointed him Attorney General of the United States in 1939 and to the U.S. Supreme Court in 1940, where he served until his death in 1949.

In 1990, the State of Michigan provided funds to acquire the Murphy estate in Harbor Beach if matching funds could be raised from private sources. In a 3-year effort, spearheaded by Judge Lincoln, the Frank Murphy Memorial Museum Foundation raised these funds. With dedication, determination and a great deal of help and support from the foundation board members, he surmounted many obstacles and finally reached the fundraising goal at the end of 1993.

Mr. President, Judge Lincoln's efforts to preserve the legacy of an American with Frank Murphy's record of public service should be applauded. As a former judge of the juvenile court in Wayne County, his job was not just to pronounce judgments on youngsters, but to educate them. Today, he continues his efforts to educate—not just youngsters, but all citizens, young and old.

Justice Murphy would have liked what James Lincoln has done. He would have liked the fact that he, too, became a judge. And he would have been pleased that two buildings stand in Detroit today—the Frank Murphy Hall of Justice and the James Lincoln Hall of Justice, fitting tributes to two good citizens of Michigan. For his efforts, I commend Judge James Lincoln; the preservation of the Murphy estate and the Murphy legacy will draw visitors to Harbor Beach for years to come.

THE MAJORITY LEADER'S SPEECH ON THE BALANCED BUDGET AMENDMENT

Mr. LEAHY. Madam President, the distinguished majority leader has just spoken on the floor. I would like to note—and it is in the RECORD—his speech from last night on the balanced budget. I am not seeking to embarrass the distinguished Senator from Maine. But in my 20 years in the Senate, I do not know of anybody in leadership in either party that has ever given as strong, as powerful, as cogent, and as compelling a speech as my friend from Maine did.

I think he underscored something that all of us as Senators ought to realize. We are not here, any of us, from any State because we own a seat in the U.S. Senate. We are here to take full advantage of the fact that the Constitution gives us 6-year terms so that we can look at things carefully, think them through, and do what is best for the country.

The famous colloquy between George Washington and Thomas Jefferson, the coffee being poured into the saucer to cool it and the saucer being referred to as the U.S. Senate, came to mind as I heard the distinguished Senator from Maine last night.

If the U.S. Senate is to truly be the conscience of the Nation, as it should be, we should be here voting the same way in an open session on the record as we would if we were voting in a secret ballot. We should be willing to stand up, all of us, all men and women, in this body and do what is right.

So, Madam President, I do not want to detain the distinguished Senator from Maine, nor do I want to embarrass him, nor have I made a speech like this at any other time in my 20 years here, but I was so moved by what he had to say, both on the floor and earlier in the caucus, that I wanted to note that fact.

Mr. MITCHELL. Madam President, I thank my colleague for his kind words. They are very much appreciated, especially coming from such a good friend, whom I respect and admire so much.

TRIBUTE TO GEORGE TAMES

Mr. LEAHY. Madam President, last week, on February 23, a man died, who was in many ways more of a significant historical figure in Washington than those of us who hold public office. I am speaking of my good friend, George Tames, who for many years was the chief photographer for the New York Times.

George Tames was 75 when he died while undergoing heart surgery here in Washington. He was a close and dear friend. When my wife Marcelle and I were at his funeral on Saturday, I could not help but think back over the years that I had known him, both as a law student here in Washington and as a reader of the the New York Times. I had seen his photographs, many taken before I was born, and others taken when I was a child, of Presidents Roosevelt and Truman.

During that funeral, my mind kept moving from past to present to the night before George died. He was at the hospital being prepared for open heart surgery the next day. It was surgery that he was concerned about, surgery that he feared. I knew that, and I had called to talk with him. We talked for quite a time. I remember saying two or three times—it was quite late at night—I said, "George, do you not want to go to sleep and get some rest?" He said, no, he just wanted to talk, because he worried about the next day. I said, "You will be out of the hospital in a couple of weeks, and we will be having lunch in the Senators' dining room and, of course, you will not eat anything because all your friends will be

coming over to shake your hand and talk with you." He said, "That is OK, and I will still let you pay the bill." We joked back and forth.

The next day I called the hospital several times during the surgery and all seemed to be going well. Then, we got the dreadful news that he did not make it. While we had talked the night before until it was time for him to go to sleep, in many ways I wished we had talked longer. As it always is with these things, something is always left unsaid. I thought about how proud all of us were of his accomplishments. But I felt the sadness that everybody at St. Sophia's was feeling on Saturday for his lovely wife Fran and his five children and five very lovely grandchildren.

When I first came to the U.S. Senate, I remember the very first caucus I attended. It was held in what is now the Mike Mansfield room, S. 207. I was a 34-year-old kid, a little awed and wondering what I was doing in the U.S. Senate. A few days before, I had been a county prosecutor of one of Vermont's 14 counties. A few days later I walk into a caucus room and there are Scoop Jackson, Hubert Humphrey, John Stennis, BOB BYRD, Frank Church, Gaylord Nelson, Warren Magnuson, and TED KENNEDY. They were people I had just seen in the news but did not know. I retreated to an empty seat in the back of the room. I remember Senator Humphrey coming up to remark that I was learning fast. I said, "What do you mean?" He said, "When you sit in the back row, if it gets really boring, you can slip out quietly, and nobody will notice."

There was a debate going on as to whether or not there would be a committee to oversee the CIA—what later became the Church Committee. I remember that Senator Stennis, who was chairman of the Armed Services Committee, which did have oversight of the intelligence agencies, did not like the idea of a separate committee. Senator Frank Church was very much in favor of it. I remember these two courtly Senators having a polite, but very straightforward, debate. Senator Stennis' facial expressions reflected his great doubt about this idea, but Frank Church pursued his case strongly. It would take a half-hour to describe that scene, but George Tames walked into that room, took out his battered old Nikon, which looked as if it had doubled as a hammer at home, sized up the situation, took one shot, and left. This picture is indelibly in my mind—not so much the picture of my first caucus, but the picture that George Tames took. It turned out to be a prize-winning photograph on the front page of the New York Times the next day.

George would walk into a room where dozens of photographers were taking hundreds of pictures. I swear the man not only did not use a light meter, I think he tested the wind for exposure. He would shoot two or three pictures, then stop to chat with everyone in the room before leaving. He knew everyone. And everyone knew George. No one was left guessing at what he had done, for the next day the photograph would be on the front page of the New York Times and it would be the best photograph of the event.

Senator Humphrey was the first one to introduce me to George Tames. He said, "I want you to know that had I become President of the United States, George Tames was going to be the White House photographer."

When he retired, just a short while ago, it seemed that everyone had a retirement party for George. After we get over a couple dozen retirement parties, you stop counting. But the one I remember was at the National Press Club, and Ken Burns and I were asked to speak about this wonderful man.

I said that George was a man who had captured history better than most writers, because in the next century, and the century after, his photographs would give researchers and historians a real sense of what happened when President Roosevelt had lunch with Harry Truman to demonstrate to the American people he actually did talk with his Vice President, or when President Truman took his morning constitutional, or when Dwight Eisenhower pondered questions, or Richard Nixon decided to play golf, or when John Kennedy, bearing the awesome burdens of the Presidency, leaned over a table in silhouette in the Oval Office, and on and on.

These were photographs taken by George Tames, and they are what people remember. They will fill in the living part of history, not just for our generation but for generations to come.

George wrote a wonderful book with his photographs called "Eye on Washington: Presidents Who Have Known Me," a very typical comment.

I think one of the things that I was most proud of is he asked me to write a jacket blurb for him on that book.

Madam President, I ask unanimous consent that what I wrote be printed in the RECORD.

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

Historians, including my friend George Tames, will write the history of the past fifty years. George Tames's brilliance as a photographer will make that history live forever. His images are a national treasure.—Senator Patrick J. Leahy.

Mr. LEAHY. So, Madam President, all of us in church on Saturday shared an enormous sense of sadness and loss. But as I looked around and saw progenies of his, people who came along and learned from him, Paul Hosefros, Jose Lopez, and others from the Times, and realized the legacy would go on, I also could not help but think that we, in effect, celebrated a life of a man who had done more to show the history of this Nation then most people would in a lifetime or one who could bring about memories for those of us who shared part of these lives better than anyone else.

I ask unanimous consent that the obituary from the New York Times by David Binder and the obituary from the Washington Post, which is the Associated Press, be printed in the RECORD.

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

[From the New York Times, Feb. 24, 1994]

GEORGE TAMES, PHOTOGRAPHER, DIES AT 75

(By David Binder)

WASHINGTON, February 23—George Tames, a news photographer for more than half a century whose work changed the way Americans look at Presidents and political power, died here today while undergoing heart surgery. He was 75.

His photographs chronicled 10 Presidents from Franklin D. Roosevelt to George Bush, countless members of Congress and visiting statesman from Churchill to Khrushchev. President Eisenhower chose two Tames photographs for official portraits, and a third became a 6-cent Eisenhower stamp.

The photo for the stamp was a characteristic Tames shot, taken of Eisenhower in 1953 in an unguarded moment as the president was delivering a radio-television address announcing that a truce had been agreed to ending the Korean War.

Over the years Mr. Tames also won awards and citations for dramatic action shots of a farmers' protest, a civil rights march and a still life of the Lincoln Memorial. The bulk of his work was for The New York Times, which he joined in 1945, after six years with Times magazine. That was the era of the large Speed Graphic camera, which shot only one frame at a time. He retired from The Times 40 years later in the era of the .35 millimeter camera with high-speed shutters and large, fast lenses.

KENNEDY AT HIS DESK

Mr. Tames was a keen student of Washington's changing political culture; early on, he developed an instinct for capturing dramatic moments on film.

One of his most widely known photographs showed a silhouette of President Kennedy from the back, leaning on his desk in the Oval Office and visibly burdened by the weight of his job. It was the kind of picture that Mr. Tames could find and shoot because of his ability to develop easy and informal access to the powerful.

"Mine was an unofficial role in his political kingdom," Mr. Tames recalled in his memoir, "Eye on Washington," published in 1990, "That of jokester and bringer of news, rumors and spicy Capitol Hill gossip."

Knowing that Kennedy often worked standing up because of an injured back and that his door was often open, Mr. Tames saw the President bent over, reading something in a newspaper. "I deliberately underexposed," he said later. "I wanted the blackness, the mood that I saw with my eye."

POSTERITY'S SPY

In a tribute two years ago on the occasion of the National Press Club's Fourth Estate award to the photographer, Ken Burns, the

documentary film maker, spoke of Mr. Tames' work as "pictures that last, that speak eloquently, that have and will endure, that clearly are the DNA of our political story in the last 50 years."

Mr. Burns said Mr. Tames was "posterity's spy—a mole—penetrating farther and much deeper into our political landscape and psyche than any reporter who hangs on words has."

George Tames was born in Jan. 21, 1919, a few blocks from the Capitol. He was the son of Greek-Albanian immigrants; his father was a pushcart peddler. In the Depression, when the large Tames family depended heavily on relief, President Roosevelt was venerated in their back-alley home, his photograph placed alongside those of St. George and the Virgin Mother next to candles on an icon stand.

George was introduced to the Capitol early in his life. He had to work after completing the 10th grade and he began as an office courier for Time-Life, which took him back to Capitol Hill.

The work of news photographers attracted him, although at the time cameramen were not allowed to roam the Congressional corridors. But he was soon permitted to make photographs of individual members of Congress, and by the end of World War II he was among a small number of photographers permitted to take pictures of Roosevelt.

Although Mr. Tames had a deep affection for President Kennedy, President Truman was undoubtedly his favorite, not the least because he was the first to treat photographers with respect.

Mr. Tames relished the recollection of the day Truman "made White House photographers first-class citizens" by freeing them from the confines of a tiny West Wing chamber they called the Doghouse, and giving them entree to the press room.

Mr. Tames recalled Truman telling a foreign dignitary: "I am President of the most powerful nation in the world. I take orders from nobody, except photographers."

Mr. Tames had a wiry build and always seeming to be on the move around a city he loved. He was a tireless raconteur, telling anecdotes he had shared with the high and mighty, capped with a raucous laugh. This was a part of the persona he cultivated that made him popular not only with the politicians he covered, but also with his colleagues.

They celebrated him at 14 retirement parties, starting in 1986, after which everyone lost count. But Mr. Tames did not really retire. He went on shooting pictures as a freelance, mainly for the Times, and when a colleague or a colleague's child got married he happily volunteered to make the wedding pictures, asking only for the cost of the film and permission to dance with the bride.

He was usually the life of any party he attended. "He's the champion," Cornell Capa, a former Life photographer, said a decade ago. "He beats everybody."

In a tribute to Mr. Tames, Wally Bennett, a longtime Washington photographer for Time, said today: "He knew all the players in the political game. He did his background work. He had a marvelous eye. He used his knowledge to make marvelous photographs that will be in the history books."

Mr. Tames is survived by his wife, the former Frances Fay Owens; two sons, Chris, of Nags Head, N.C., and Michael G., of Manteo, N.C.; three daughters, Pamale Tames Goodman of Wilson, N.C., Kathryn Tames Walton of Springfield, Va., and Stephanie Tames Nelson of Statesboro, Ga.

[From the Washington Post, Feb. 24, 1994]

PHOTOGRAPHER GEORGE TAMES DIES

George Tames, who photographed 11 presidents during nearly a half-century as a Washington-based photographer for the New York Times, died Feb. 23 while undergoing heart surgery. He was 75.

Mr. Tames, who died at Washington Hospital Center, used wit and charm to gain unique access to presidents from Franklin D. Roosevelt to Bill Clinton, said colleagues at the Times, which he joined in 1945.

"He photographed Roosevelt and Truman * * * sitting on the White House lawn having breakfast, and he was still at it 50 years later. That's an unparalleled run," said R.W. Apple Jr., chief of the Times' Washington bureau. "He had a wonderful eye."

President Eisenhower chose photos by Mr. Tames for his official portraits, and a postage stamp honoring Eisenhower was based on a picture by him.

Along the way, Mr. Tames won numerous awards from the White House Press Photographers Association and other groups and received the National Press Club's Fourth Estate Award for lifetime achievement.

One of his best-known photographs was of a backlit John F. Kennedy leaning over an Oval Office table reading a document.

On his last assignment, he photographed Secretary of State Warren Christopher on Sunday.

Mr. Tames, known as a consummate storyteller, chronicled his career in a 1990 book, "Eye on Washington: Presidents Who Have Known Me."

Mr. Tames, a native of Washington, began his news career in 1939 as an office boy at Times magazine and learned photography on the job.

He is survived by his wife, Frances; five children; and five grandchildren.

Mr. LEAHY. Madam President, I see other Senators have come to the floor, and I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

CONGRATULATIONS TO THE ATHLETES COMPETING IN THE 1994 WINTER OLYMPIC GAMES

Mr. FEINGOLD. Madam President, I would like to take a brief moment to congratulate all of the athletes who competed in Lillehammer, Norway, the last several weeks who have made this year's winter Olympic games such a success and pleasure to watch.

The Olympic games provide the world a friendly forum in which nations can showcase their people's athletic talents and compete with each other in a noncombative and productive manner. Over the years the Olympics have symbolized that at least for a few weeks every 4 years the nations of the world can come together and forget their differences and compete in a spirited and peaceful fashion.

We know that the American team made a strong showing in this year's winter games, and I was proud to see that athletes from the State of Wisconsin were again able to make significant contributions to the team. I am honored to represent the State of Wisconsin which produced close to 20 Olympic team athletes who either grew up in the Badger State or adopted it as their home in order to train for the competition. In particular, I would like to commend two of these athletes who were the true American heroes of this year's winter Olympics—Bonnie Blair and Dan Jansen—who combined to win half of America's gold medals.

Bonnie Blair's two gold medals in the women's 500 and 1000 meter speed skating competitions made her the first American woman to capture five gold medals. Although Bonnie hails from Wisconsin's neighbor to the south, Illinois, she has made the Milwaukee area her home and has practiced at the training rink located in West Allis, WI—the same facility which helped produce previous Wisconsin skating greats such as Eric and Beth Heiden of Madison, WI.

Bonnie's achievement was matched only by the emotional triumph of another American speed skater—Dan Jansen—who grew up in West Allis and now makes Greenfield, WI his home. The entire world was moved with Dan's persistent efforts at achieving his goal of winning a gold medal. After 10 years and four winter Olympic games, Dan met this goal by setting a world record in the men's 1000-meter speed skating competition. By now we all know what Dan had to overcome to achieve this victory and we shared in Dan's and the Jansen family's grief resulting from the tragic loss of his sister Jane during the 1988 winter games at Calgary.

But Dan never gave up and rose to the occasion during his final Olympic race, skating to a long awaited gold medal while setting an example that we can all learn from as well. Who could not share in the joy of watching him skate his long deserved victory lap with his 9-month-old daughter Jane in one hand and the American flag in the other. That victory lap made me realize once again how lucky I am to be able to represent individuals such as Dan Jansen who possess the warmth, courage and spirit that so many Wisconsinites share. Together Dan, Bonnie and the rest of the Wisconsin athletes carried the proud Wisconsin athletic tradition of excellence forward. I look forward to seeing this tradition and success continued in the years ahead.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

PRIMARY CARE ISSUES

Mr. BAUCUS. Madam President, in this Olympic year, America's greatest winter athletes came together in the spirit of competition and sportsmanship to compete against the world's best. These young men and women come from all over the country, from various backgrounds, but they all share the desire to be the best. Who did

we send to represent us? Who did we send to go for the gold? America's best. Our first team.

We need the same commitment in health care. We want our first team in the rural areas where the need for basic, primary health care is greater than even before. We depend on the skills of primary care physicians for providing prevention and early detection services.

Over two-thirds of the State of Montana is classified by the Federal Government as a health professional shortage area [HPSA]. Isolation, economics, and family issues have shrunk the pool of primary care doctors. Primary care physicians who do choose to work in rural areas face difficult circumstances—unreasonably long and stressful hours, and much lower salaries than their urban counterparts.

Over the past few years, a consensus has emerged on the physician specialty imbalance. We now have 30 percent in primary care and 70 percent in nonprimary care. The surplus of medical specialists drives up U.S. health care costs, which are already the highest in the world. We need to even the balance if we are to move toward meaningful health reform.

As we have been over the past few weeks of Olympic competition, the difference between a gold medal and the rest of the field can be a fraction of a second. The difference between what I see as our gold medal primary care effort and tinkering around the edges of the problem is just as crucial.

The President's Health Security Act and other health reform bills currently on the table offer several good alternatives geared toward improving the balance between the primary care and nonprimary care physician work force. The proposals would be even more effective in their goals if they would also take a more comprehensive approach to primary care reimbursements.

I introduced legislation last September 20, S. 1473, the Primary Care Support Act of 1993, to address our country's severe shortage of primary care doctors. This bill would increase the number of primary care doctors practicing in the United States, increase the relative income of primary care doctors, and encourage our medical education system to train more primary care doctors.

Let me take a moment to point out how I believe we can all come out winners when it comes to primary care. We must:

Establish fairness in physicians' pay;

Encourage more physician residency programs to train primary care physicians;

Create a national council, such as the National Physician Work Force Commission, to monitor physician supply, identify areas of concern, and propose solutions; and

Provide continued, increased support for the National Health Service Corps and other work force priority areas, as proposed by the Clinton administration.

We must reach out to our health professional shortage areas located throughout rural and urban America if we want to achieve a comprehensive, and long-term solution to our primary care needs. And to do so, we must make sure that our health reform plans keep these elements intact.

As I proposed in the Primary Care Support Act of 1993, and as the President has included in his health reform proposal, we must increase Medicare reimbursement to primary care physicians. We must work toward revising the resource based relative value scale that serves as the basis for Medicare reimbursements, looking beyond historically allowed charges and determining actual resource based practice costs more favorable to primary care. We need to follow up with timely implementation. Following from this, we need to work toward primary care physician pay parity in the private sector as well. We must also reform the payments in the Medicare Program for graduate medical education programs to emphasize primary care. While the public demands more primary care services, the market continues to provide powerful incentives to produce physicians narrowly trained in subspecialty fields. We need to revise the current incentives and establish a meaningful connection between the market for medical care and the market for medical education.

Some people may argue that the market will eventually correct itself. It may. But I see no evidence that we are even moving in the right direction. Even if it were true, we do not have time to wait for this correction to come about. We need to take a pro-active approach to this situation by standardizing Medicare GME payment to hospitals. By basing reimbursement on a weighted national mean amount, we will put the various programs on an equal footing and encourage higher quality programs at hospitals that are currently underpaid.

The Council on Graduate Medical Education currently provides national guidance on primary care issues based on expert advice and targeted research. Health reform plans now under consideration include provisions for the continued use of this council or the creation of a new one that assists in steering medical professionals toward primary care practice.

Like the National Physician Work Force Commission that I proposed in my bill, a national committee would create proposals to allocate more residency positions to general physicians, and decrease the number of specialist residency positions to achieve an even distribution of generalist physicians and specialists.

Physician recruitment and retention in HPSA's is still difficult and the number of HPSA's continues to grow. In Montana and other sparsely populated frontier States, however, the addition of just one or two new physicians can mean that an area loses its HPSA status.

Thus financial incentives can function like a catch-22—health providers are given financial incentives to a HPSA, but as soon as they get there the area loses its HPSA designation, and they never receive the financial incentives they were promised. For this reason, I believe we need multiple incentives that, enacted together, will maintain and build upon and maintain the primary care work force. We need to increase primary care reimbursement to get medical professionals into underserved areas, but also need to offer assurance that they will continue to receive additional compensation in cases where an area loses its HPSA designation.

It is crucial to increase the incentives to practice medicine in health professional shortage areas by doubling the bonus payments in the Medicare Program for services in those areas. Under current law, physicians who furnish services to Medicare beneficiaries that live in health professional shortage areas receive a 10-percent bonus on top of the current geographically determined service reimbursement.

This law has been somewhat helpful in encouraging physicians to serve in those areas, but more must be done. A doubling of this bonus to 20 percent would go further in bridging the reimbursement gap.

I also support continuing bonus payments to physicians who relocate to HPSA's for at least 10 years even if the area loses its HPSA designation. It would be unfair to induce physicians to move into a HPSA and then cut off the bonus payments shortly after they move there.

Health reform will fail in Montana unless we address our shortage of primary care physicians. Without a comprehensive approach to the problem, the shortage will just keep getting worse, reducing access to care, reducing quality of care, and increasing costs. Montana needs primary care physicians and nurses. I will not be able to support a health reform proposal unless I am sure that it will meet Montana's needs. Neither the silver nor the bronze are good enough. Health reform demands our gold medal efforts.

I will not settle for the silver or the bronze.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MURKOWSKI. Madam President, I understand we are in morning business.

The PRESIDING OFFICER. The Senator is correct. We are in morning business until 3 p.m..

Mr. MURKOWSKI. I thank the Chair.

I ask unanimous consent that I may be allowed 5 or 6 minutes to make a statement.

The PRESIDING OFFICER. The Senator is authorized to speak up to 10 minutes under the order.

Mr. MURKOWSKI. I thank the Chair.

THE BALANCED BUDGET AMENDMENT

Mr. MURKOWSKI. Madam President, it is this Senator's contention that yesterday this body missed a historic opportunity to end the Federal Government's three-decade-long addiction to deficit spending and uncontrolled debt. I know there is a difference of opinion among a number of my colleagues on that point, but nevertheless it is still the conviction of the Senator from Alaska.

I think we will recall that the Republican leader indicated last evening the issue of amending the Constitution to require a balanced budget is an issue that is not going to go away. It is undoubtedly going to return next year. In my opinion, it is going to return the year after, if it is not taken care of.

I predict that before this decade is over we will add this amendment to our Constitution for the very reason that we have been unable to address deficit spending, and all actions we have taken to reduce the debt have been to no avail.

We all recall Gramm-Rudman I, Gramm-Rudman II, and the Budget Act of 1990.

I am willing to forecast that the taxpayers out there are not going to forget the action taken last night. I think they are going to hold every one of us accountable for our vote yesterday.

But, Madam President, I want to refer specifically to some remarks made last evening by the distinguished majority leader, Senator MITCHELL, for whom I have the highest esteem. He correctly observed during the debate yesterday that the State governments do not always balance their budgets, but they balance their books. And, of course, the majority leader is correct.

He pointed out that States often have to borrow in the credit markets to finance the construction of many new things—new roads, schools, pollution control facilities, and a host of other capital investments. There is certainly nothing wrong with a State or local government borrowing to finance long-term investments—new bridges, airports, schools, roads, and so forth. I would certainly concur that is in the public interest.

Nor is there really anything wrong when an individual family borrows to purchase a major asset, such as a home. It is the only way that most of us can achieve that kind of financial commitment.

But what the majority leader did not point out, and I think most of my colleagues are aware, is that the current Federal Government borrowing has really nothing to do with long-term investments. Because the difference, Madam President, is the current Federal Government is borrowing to pay interest—interest—on that debt. It is not borrowing to put in roads, invest in schools, airports, and so forth. We are at the current time and for the next several years borrowing for the sole purpose of paying interest on that debt. It is the position of the Senator from Alaska that, indeed, there is a difference between the Government's borrowing and providing specific services and necessities that are needed in this country and borrowing to pay interest on the debt.

This year, our interest costs are about $212 billion. That is what it costs us to service that 4.5 trillion dollars' worth of national debt. If we did not have to pay that $212 billion, we would have operating surpluses, I am told, of approximately $40 billion. A surplus, not a deficit.

According to the Congressional Budget Office, all the money we have to borrow over the next 8 years totals $1.673 trillion. The interesting thing is all of that money is going to be used to pay interest on the debt. None of it is going to provide roads, airports, schools, sewers, police—you name it. That is $1.673 trillion we will not be investing to update the Nation's infrastructure or build new hospitals or upgrade our inner city areas that are crumbling. And not a single job will be created, not a single program will benefit from that outlay of $1.673 trillion that is going for interest. It is interest on top of interest and all it does is increase the size of our national debt.

Madam President, I take issue with the generalization made by the majority leader that there is nothing wrong with borrowing. I think there is a definitive difference, if you will, between borrowing and mortgaging the future.

I was in the banking business prior to coming to the U.S. Senate. One of the great temptations of a banker, when a loan is delinquent, is to bring the borrower in, rewrite the loan, and make it current. That is how the banker gets his interest paid, and the interest is the income that helps to show a profit. Banks are not allowed to rewrite loans to add interest to the principal and create an illusion they are generating earnings. All the bank is doing is creating a false income stream.

But that is what we are doing here. We preclude the private sector from doing this because it is a terrible business practice; it is a straight road to bankruptcy. But that is what we are doing in the Federal Government here, in the sense that we are borrowing $212 billion to service our $4.5 trillion debt. We are not building anything with it. We are not providing any new jobs.

I want to reiterate the point. The majority leader was correct when he said there is nothing wrong with borrowing for long-term investment. I could not agree more with him on that statement. But borrowing year in and year out for the sole purpose of covering your interest costs is an entirely different matter, and it leads to bankruptcy. It is a policy that our Government enforces through the Comptroller of the Currency.

The Federal Deposit Insurance Corporation does not allow our private sector businesses to do that. It simply says you cannot take a delinquent loan, bring in the borrower, have him or her sign an extension to bring it current and add your delinquent interest to the principal and pay yourself back, because it is such a terrible business practice. It would weaken the institution, weaken the capital base, and mislead the shareholders and the general public.

That is just what we are doing. We are misleading the public into believing that we can go on and indefinitely borrow, pile interest and debt on top of interest and debt, ad infinitum, without there being serious long-term consequences to the health and vitality of our domestic economy. Mr. President, future generations will bear the burden of our failure to come to grips with our debt addiction.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. MURRAY). Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF WILLIAM B. GOULD IV, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to consider Calendar item 476, which the clerk will report.

The bill clerk read the nomination of William B. Gould IV, of California, to be a member of the National Labor Relations Board.

The Senate proceeded to consider the nomination.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Madam President, I rise today in strong support of the nomination of Prof. William Gould, to be Chairman of the National Labor Relations Board.

For 13 years, the NLRB has withered under consecutive Republican administrations. Seldom has the Board operated with a full five members. Cases have piled up, preventing the timely resolution of labor disputes, and frustrating workers' efforts to enforce their rights. Today, the Board is in desperate need of leadership, and President Clinton could not have made a better choice as his nominee.

As a matter of fact, Professor Gould stands out as perhaps the most qualified nominee in the history of the NLRB. Bill Gould has spent a lifetime thinking about and addressing the needs of America's working men and women. In his long and successful career, he has practiced labor law from every angle. He has represented workers. He has represented management. He has represented the National Labor Relations Board, working for both Republican and Democratic Members. Clearly, this is a man with an unprecedented breadth of experience in the field of labor relations.

Professor Gould stands out as a respected academic, having taught labor law courses at Stanford University since 1972. The academic community, in a letter signed by 75 labor law professors, says Bill Gould is "an outstanding leader in labor relations * * * uniquely qualified for this critical position."

Professor Gould stands out as a prolific writer, having authored 6 books and more than 60 law review articles. Strangely, the National Association of Manufacturers says its opposition to Professor Gould's nomination "is premised on [his] extensive writings." I have difficulty in comprehending how anybody can be opposed to somebody in view of their extensive writings. Perhaps NAM would prefer a nominee who had never read the National Labor Relations Act, or one who had never given thought to the relationship between workers and employers.

NAM says it opposes this nomination because in some of his writings Professor Gould has advocated changes in our Federal labor laws. But is not that the very purpose of legal academia, to assess how our laws are working and offer thoughtful suggestions as to how they might work better?

Professor Gould's views defy simple categorization as either "liberal" or "conservative." Sometimes he has advocated changes that would strengthen workers' rights. Sometimes he has advocated changes that would strengthen employers' rights. If there is one constant in Bill Gould's writings, it is his dedication to improving the state of labor relations in this country. And if one thing is clear, it is the absurdity of challenging this man's qualifications.

Professor Gould stands out as an arbitrator with 30 years experience and tremendous respect from lawyers representing both labor and management. He has resolved over 200 labor-management disputes, displaying a judicial temperament and an unquestioned ability to build consensus. These are qualities that will serve him well as Chairman of the NLRB.

For all of these reasons, Bill Gould stands out as an extraordinary nominee. But most of all, Bill Gould stands out because of the remarkable breadth of support for his nomination. As we all know, labor-management relations is often a highly adversarial, pitched battle between employer and worker advocates. That is what makes the unanimous outpouring of support for Professor Gould all the more remarkable. All of those who have worked with him—his peers, his fellow practitioners, judges, law school deans, present and former NLRB members, and representatives of management and labor who have won and lost cases before him—have uniformly praised his intellect, his fairness, and his integrity.

Let me quote just one of these supporters, Elliott Azoff, a management labor lawyer from a prominent Cleveland firm:

> Bill understands the need for a neutral to not only be fair but to create a pervasive atmosphere of impartiality. * * * Bill will enforce the National Labor Relations Act as it is written and leave amending of the statute, if that is needed, to Congress, and critiquing of the statute to the rest of us.

Elliott Azoff's views confirm that people who know Bill Gould recognize the difference between reforms he discusses in his academic writings, and his ability as NLRB Chair to enforce the law as it is written. They recognize that his many years of reflection on our labor laws are an asset, not a liability. His extensive record as an arbitrator confirms his neutrality and his strict adherence to existing law, even when deciding issues on which he has written as an academic. There simply is no basis to question Professor Gould's integrity or qualifications for this position.

Bill Gould will seek to enforce the law in a fair and impartial manner, promoting labor relations stability and cooperation. I have heard the concerns raised by some of my colleagues about Professor Gould's nomination. Frankly, I am appalled that some of my colleagues would stoop so low to attack a man who is so universally respected. Bill Gould is a man of uncompromising integrity, and I urge my colleagues to support his nomination to chair the National Labor Relations Board.

I understand that not everyone is in agreement, and I respect the views of those who are in disagreement. But I say categorically I think that Bill Gould is the man for the job and I hope the Senate sees fit to confirm him.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Madam President, I rise in opposition to the nomination of William Gould to be Chairman of the National Labor Relations Board. Certainly, William Gould brings high credentials to this position. However, I cannot support this nominee for this position, which wields such significant power over the lives of American workers and businesses.

This is a nominee who has lent support over the years for radical change in labor law. I cannot support a nominee for a position that holds significant power and authority over the labor laws of our land and a nominee who subscribes to an agenda that will undermine the very legal structure his agency will oversee.

For years, Professor Gould has called for a major overhaul of our Federal labor laws. His writings have been very critical of existing law, as well as numerous Board and Supreme Court precedents. He has, in fact, become one of the Nation's leading champions of labor law reform.

The National Labor Relations Board is charged with the interpretation and enforcement of our Nation's labor laws. It is not and should not become a forum for radical labor law reform.

Professor Gould's recent book "Agenda For Reform" lays out a blueprint for drastically changing Federal labor law. For example, most disturbing is Professor Gould's desire to do away with secret ballot elections when workers are asked to decide whether or not they want to join a union. He would replace secret ballot elections by having workers simply sign cards indicating their support.

Secret ballot elections are an essential part of our democracy, and working men and women are no less deserving of this basic democratic right. Workers should never be subjected to coercion in making the decision about joining a union.

Professor Gould will also expand the ability of unions to punish workers who want to continue working during a strike. I am deeply concerned about a nominee who would place the rights of unions, and their ability to strike, over the rights of individual workers who simply want to earn a living.

Professor Gould also believes that permanent replacement workers should be prohibited during an economic strike.

We all know current law permits such permanent replacements. If the law is changed, as Professor Gould would have it, we will see many more strikes and our effort to encourage labor and management cooperation will take a giant step backward.

Professor Gould also advocates double and triple back pay damage awards to remedy unfair labor practice violations. This so-called reform dates back to the labor law reform ideas of the late 1970's, which were flatly rejected by this body. The increase in damage awards would expand litigation and encourage even further division in the workplace.

Professor Gould would expand an employer's duty to disclose confidential information to unions, far in excess of what current law requires. He advocates increasing access to private property for union organizers who are not employees, in direct contradiction to the Supreme Court's interpretation of the law.

I could go on, because these are only a few of the changes that Professor Gould advocates. Now, it is one thing to advocate. It is another to serve as the Chairman of the National Labor Relations Board.

Madam President, I am sure Professor Gould is sincere in his stated hope that he will distinguish these previously expressed views from his role as NLRB Chairman. But such strongly held views must shape and influence the decisions of one who serves in this role. As NLRB Chairman, he has a great opportunity to interpret the law and that is the crux of my objection and my concern.

In fact, Professor Gould once wrote that "new appointments to the Board from 1989 onward can change the law." Are we to believe that Professor Gould will refrain from exercising the power to reform labor law—that he himself acknowledges the Board can do—when he so clearly stated his belief in the need for such comprehensive reform?

I do not believe any of us want to return to a period of labor unrest, of strikes and of work stoppages and excessive and protracted litigation, all of which will resurface if we have a one-sided and activist National Labor Relations Board.

At this juncture, our economy cannot afford the disruption and uncertainty that will result if the Board is used as a platform for labor law reform. Both employers and labor unions must have confidence in the impartiality of the Board in order for it to function effectively.

Unfortunately, Madam President, I think that Professor Gould has failed to instill that confidence.

The business community is unified in its opposition to the nominee. The National Association of Manufacturers, the Labor Policy Association, the Society of Human Resource Management, the Chamber of Commerce, and the National Federation of Independent Businesses have all expressed their opposition to Professor Gould's nomination. Collectively, they represent an overwhelming majority of the businesses in America. Some of these organizations have never taken a position on a Board nominee, but feel very strongly about Professor Gould. Other business organizations have expressed their opposition as well, and I would ask unanimous consent that these letters of opposition be made a part of the RECORD.

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

NATIONAL ASSOCIATION
OF MANUFACTURERS,
Washington, DC, October 6, 1993.

Hon. NANCY LANDON KASSEBAUM,
Ranking Republican, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR SENATOR KASSEBAUM: In earlier communications, the National Association of Manufacturers expressed serious reservations regarding the nomination of William B. Gould IV to the National Labor Relations Board but withheld final judgment pending his confirmation hearing.

On the basis of the hearing, together with a thorough review of his writings, the NAM has concluded Professor Gould's confirmation would not be in the best interest of our members and urges the rejection of his nomination. We believe that employer-employee relations are at a critical juncture where the substantial rewriting or reinterpretation of labor law would be most disruptive, not only to those relationships but the Nation we well.

The NAM's opposition is premised on Professor Gould's extensive writings, most recently espoused in his book Agenda for Reform, that advocate repeal or substantial change of the law he would be obligated to uphold and administer if confirmed. The NAM appreciates the distinction made by Professor Gould at the hearing between himself as a professor and as a member of the NLRB, *i.e.*, that in the latter role he would enforce the law as written. We are concerned, however, that distancing oneself from such deeply rooted philosophical views is easier said than done.

Our position on this nomination turns also on the fact that the President will this year nominate candidates for two other Board seats and the very critical position of General Counsel. We are aware of possible candidates for the General Counsel and one of the NLRB seats, both of whose sympathies rest with the trade unions. While it is the President's prerogative to make appointments consistent with his own philosophy, we would hope such considerations would provide at least some balance among Board members and the General Counsel.

Accordingly, the NAM urges that the nomination of Professor Gould to be a member and chairman of the National Labor Relations Board be rejected.

Sincerely,

JERRY J. JASINOWSKI.

OCTOBER 19, 1993.

Hon. JUDD GREGG,
Senate Russell Office Building,
Washington, DC.

DEAR SENATOR GREGG: I am a member of the Board of Directors of the U.S. Chamber of Commerce and the Chairman of its Labor Relations Committee. The Committee has reviewed many of the articles and books written by Professor William Gould IV, the nominee for the National Labor Relations Board (NLRB). That review, along with Professor Gould's testimony at the Committee's October 1, 1993 hearing, leads us to conclude that he should not be a member of the NLRB. Accordingly, we respectfully urge that his confirmation not be reported out of committee.

Professor Gould's statements and writings reflect a predisposition toward destruction of many established and fundamental principles of this nation's labor policy, as well as a return to the adversarial and litigious processes of the past. His views conflict with and contravene the evolution of U.S. labor policy which now encourages organized labor and management voluntarily to form long-term, non-adversarial relationships of significant mutual benefit. As Chairman of the NLRB, Professor Gould will hinder that positive evolution.

The United States must do everything possible to position itself to play a leadership role in the ever-expanding global economic market. U.S. labor policy encourages conciliation, cooperation, and dispute avoidance or resolution, and should not be changed in the wholesale manner recommended by Professor Gould. Members of the NLRB must be dedicated to upholding the rights of individual workers, facilitating the cooperation essential to growth and survival in a highly competitive global economy, and striving for the legal and administrative consistency that discourages conflict and litigation.

I would like to bring to your attention some of Professor Gould's statements which clearly demonstrate his intent to alter long-established national labor policies. The attachment shows that Professor Gould will use his authority as NLRB Chairman to effectuate the radical suggestions described in his writings.

In his statement to the Committee on October 1, Professor Gould tried to allay concerns about his radical recommendations for revision of existing labor policy. He noted that in his writings he had extensively expressed his views "on the shape that labor policy should take *if Congress should amend* the National Labor Relations Act or other statutes." (Emphasis added.) He added that his responsibility was a Board member would be "concerned *solely* with the interpretation of the law as it is presently written." (Emphasis in original.)

These statements may be misleading. True, he advocates fundamental changes to the National Labor Relations Act (the Act), many of which would require legislation. However, his writings also clearly show a desire and intent to change the Act through NLRB interpretation and application of the statute. Congress need not amend the Act for Professor Gould, through his Chairmanship of the NLRB, to revamp many well-established principles of labor law. We firmly believe, based on his own statements (discussed in the attachment), that he will attempt to make the many substantial labor policy changes he recommends.

Recently, Professor Gould claimed the Act is in "complete disarray." To correct this, he recommended fundamental changes in well-established NLRB and Supreme Court principles. For Example, he recommends issuance of a Board order requiring an employer to bargain with a union, even though the union does not have the support of a majority of employees. The board has rejected this approach, as have the federal courts. He also recommends broadening the scope of collective bargaining to many topics not now the subject of negotiations between a union and employer (e.g., advertising, decisions on future investments, product design, and any other employer decision that has even an "attenuated" impact on employment).

Professor Gould's testimony on October 1 is inconsistent with prior statements he made concerning NLRB and court interpretations of the law. This could be disregarded but for the awesome power and discretion vested in the NLRB.

Interpreting Congressional intent, the Supreme Court has consistently held that the Board has broad authority to change the national labor policy as well as the National Labor Relations Act through its interpretations. According to the Court, the Board's interpretation of the law is entitled to "considerable deference." It is therefore easy for Professor Gould to assuage concerns about his intent to refrain from making labor law changes by saying he will be concerned "solely with the interpretation of the law as it is presently written." The Act allows for NLRB changes in the interpretation and application of the law.

In light of Professor Gould's recommendations to make substantial changes to previous interpretations of the Act, and his clearly expressed doubts about the wisdom of Supreme Court decisions, it must be concluded that he will, through his leadership of the NLRB, attempt to rewrite labor policy. Nothing in his statement or testimony suggests otherwise.

Professor Gould's testimony, coupled with his numerous written statements over the past several years, establish beyond doubt that he has little regard for existing labor policy formulated over several decades by the NLRB and the Supreme Court, and that he intends to make many substantial changes to the nation's labor policy during his chairmanship.

The fundamental principle of the Act and the nation's established labor policy is that employees have the right to decide whether they will engage in union activity and select which, if any, union they wish to represent them. Relying on essential individual and collective rights—democratic procedures and majority rule—employees' desires regarding union representation are ascertained by objective evidence, usually an NLRB secret-ballot election among employees. Those elections determine whether an employer must bargain with a union as the representative of its employees. Fair and democratic efforts to determine employee desires must not be considered mere "roadblocks" by the person charged with enforcing the law. According to Professor Gould, such elections are mere "roadblocks."

For the above reasons we urge the Committee not to confirm the nomination of Professor Gould.

We request that this letter be included into the official committee record.

Sincerely,

WILLIAM A. STONE.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, November 17, 1993.

Hon. TED KENNEDY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KENNEDY: On behalf of the over 600,000 members of the National Federation of Independent Business (NFIB) I am writing to express opposition to the nomination of William B. Gould IV to chairman of the National Labor Relations Board (NLRB). Historically, NFIB has resisted expressing viewpoints in the NLRB confirmation process. However, upon careful review of Professor Gould's well-publicized views on labor management relations we believe that this nomination warrants our input.

NFIB's opposition to Professor Gould's nomination is based on his extensive writings, specifically his views on labor law as expressed in his recently published book Agenda for Reform. Professor Gould recommends significant changes to the National Labor Relations Act, the same law he will be responsible for upholding as a member of the NLRB. Not only do his writings call for the erosion of many long-held employer rights, but in many cases they reflect a strong union bias.

NFIB members have long opposed drastic revisions in labor law, such as accelerated "quickie" union elections or union certification without secret ballot elections, which would make it easier for unions to organize and would reduce the opportunity for workers to make an informed and uncoerced choice on the important issue of union representation. Professor Gould's writings illustrate his contrary views to established precedents on these and other labor law "reforms." Although during his confirmation hearings Professor Gould attempted to discount these views as the writings of an academic, NFIB is concerned that as chair of the NLRB he will use broad interpretations of the law to move in the direction of his labor law reform "agenda" through administrative adjudication and rule making.

In a time when workplace relations in this country are in transition, small business owners across the country feel that any reinterpretation of labor law aimed solely at institutionalizing organized labor's views would be disruptive and detrimental to the relationship that currently exists between employers and employees.

Thus, NFIB urges the Senate to reject the nomination of Professor William B. Gould IV to be a member and chairman of the National Labor Relations Board.

Sincerely,

JOHN J. MOTLEY,
Vice President, Federal Governmental Affairs.

SOCIETY FOR HUMAN RESOURCE MANAGEMENT,
October 8, 1993.

Hon. EDWARD M. KENNEDY,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Society for Human Resource Management (SHRM) it is with regret that I must inform you of our opposition to the nomination of Professor William B. Gould IV to the National Labor Relations Board (NLRB). SHRM is the leading voice of the human resource profession, representing the interests of more than 55,000 professional and student members from around the world.

Our decision to oppose this nomination follows a review of Professor Gould's writings by members of SHRM's national Employee and Labor Relations Committee, including his recent book Agenda for Reform. This is the first time that SHRM has opposed a presidential nomination.

SHRM believes that the views expressed by Professor Gould in his writings, which include advocating dramatic changes in the nation's labor laws, raise a serious question as to whether the Professor would attempt to re-write the law through his decisions.

Professor Gould's assertion during his confirmation hearing that he will be "concerned solely with the interpretation of law as it is presently written", is not helpful. Employers must comply with the statutory provisions of our nation's labor laws as well as NLRB and court interpretations of those laws. Given his authority to interpret the law as NLRB Chairman, Professor Gould would have the power to dramatically change employer obligations under the statute. And because we disagree with many of the Professor's views on the proper formulation of this nation's labor laws, we must oppose his nomination.

This year, the President will have the opportunity to nominate two additional candidates to the National Labor Relations Board, as well as a candidate for the position for General Counsel. We hope that these candidates are representatives of a more balanced philosophy regarding labor-management issues.

SHRM urges that the nomination of Professor Gould to the National Labor Relations Board be rejected.

Sincerely,

MICHAEL R. LOSEY, SPHR,
President and CEO.

Mrs. KASSEBAUM. I would just like to read one letter, submitted by the chamber of commerce, which concluded after extensive review of his writings that "Professor Gould's intent is fundamentally to revamp well-established, effective national labor relations policies and principles through the decisions of the NLRB in a manner that will lead to increasing adversarial labor-management relations, severely reduced competitiveness, and erosion of employee rights."

I am greatly troubled by the lack of confidence that exists in the business community for this nominee, a lack of confidence which I share. And I believe it is this confidence and this trust that is called into question with this nomination, not the extent of Professor Gould's knowledge of labor law and not the fact that he has written extensively. What is really at issue is the lack of confidence in Professor Gould to interpret the law rather than to attempt to move the Board in a very different direction.

I hope that my colleagues would share these reservations and vote against this nominee.

Madam President, I should like to ask that the RECORD be held open for additional statements until the close of business today, although we will be voting, I believe, at 4 o'clock, or thereabouts. There is an hour's agreed time. But I would like unanimous consent to hold the RECORD open for additional statements until the close of business today.

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

The Chair will remind the Senator there is 2 hours of debate equally divided.

Mrs. KASSEBAUM. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Just an inquiry. What is the time agreement?

The PRESIDING OFFICER. The Senator from Massachusetts controls 53

minutes; the Senator from Kansas controls 51 minutes.

Mr. KENNEDY. I do not believe we, the supporters of Mr. Gould, will use all of the time. And I imagine that although if we used all the time under the time agreement we would vote at 5, I believe we will vote earlier. We will try and give the Members sufficient notice. But I hope we would be able to vote closer to 4 than 5, so the Members ought to understand that.

Madam President, I yield such time as I might use.

Madam President, the Senate will vote today on President Clinton's nominees to the National Labor Relations Board. The Committee on Labor and Human Resources has favorably reported four nominations: William Gould as chairman, Margaret Browning and Charles Cohen as members of the board, and Fred Feinstein as general counsel.

I urge the Senate to support their confirmation.

The National Labor Relations Board is a small agency, but its mission is a large one—not only for the parties appearing before it, but also for the country as a whole. It is the Agency we depend on to implement the rules that bring stability to our system of labor-management relations.

The four persons nominated by President Clinton will bring to that Agency a wealth of practical experience in dealing with labor-management issues, and a high level of expertise that has rarely, if ever, been matched in the 60-year history of the Board.

In selecting these nominees, the President has also chosen individuals who will bring a balanced and varied set of perspectives to their work. Margaret Browning is a highly respected labor law practitioner from Philadelphia whose practice has primarily involved the representation of unions and individual workers. Charles Cohen is a highly regarded management attorney.

Fred Feinstein, the nominee for general counsel, has worked on labor-management issues from a legislative perspective for 17 years as counsel to the House Labor-Management Subcommittee. Both Mr. Feinstein and Mr. Cohen also have prior experience as attorneys working for the Board itself.

Bill Gould, the President's nominee for chairman of the Board, has the distinction of having represented every one of the principal interests that come before the Board: employers, unions, individual workers, and the NLRB itself.

Despite Professor Gould's superb qualifications for the position of chairman, an opposition campaign has been mounted to try to defeat his nomination. It is ironic that he should be the target of such a campaign, because he may well be the best qualified chairman ever nominated to the Board. Let me review for a moment his background and credentials.

As a practicing attorney early in his career, Mr. Gould worked for 1 year as a lawyer for the United Auto Workers, then joined the staff of the NLRB for 2 years. He served there on the staffs of Chairman Frank McCulloch and member Howard Jenkins, both of whom were originally appointed by President Kennedy and who served long and respected terms at the Board.

On leaving the Board, Mr. Gould joined the management firm of Battle, Fowler, Stokes & Kheel in New York City, where he represented employers for 3 years. More recently, he has taken time from his academic duties to represent individual workers on a pro bono basis in a series of significant race discrimination suits against both unions and employers.

In addition to this extensive and extraordinary background as a practitioner of labor law, Professor Gould for the past 25 years has had a brilliant career as a professor at Stanford Law School. He has taught labor law to thousands of law students and has authored 6 books and more than 60 scholarly articles on the subject.

His work has established him as a preeminent expert on a wide variety of labor law-management relations issues—which is why more than 75 faculty members in this discipline from universities and law schools around the country have joined in supporting his nomination. They call him an outstanding leader in labor relations who is uniquely qualified for this critical position as Chairman of the NLRB.

At the same time, during the past 30 years, Professor Gould has earned a nationwide reputation as a fair and thoughtful arbitrator. He has been a member of the prestigious National Academy of Arbitrators since 1970. He has been selected by management and labor to settle more than 200 disputes, involving every sector of the economy—including in recent years, numerous player salary disputes in major league baseball. In every way, his selection by President Clinton is a home run, and the Nation is fortunate that a person of Professor Gould's ability and character is willing to accept this call to public service. The test that President Clinton applied was obviously the test of excellence—and if the Senate applies that test as well, Professor Gould should be confirmed by a vote of 100 to 0.

Those who would like to see his nomination defeated have attempted to characterize Professor Gould as having a bias toward labor that will prevent him from fairly and impartially carrying out his duties as Chairman of the NLRB. But his record as an arbitrator refutes any such claim. According to statistics prepared by the Bureau of National Affairs, in his published arbitration decisions, Professor Gould upheld the position of management in 50 percent of the cases, and ruled in labor's favor in only 30 percent of the cases. The rest were split decisions. That record is hardly the kind of record that indicates bias toward labor.

In fact, Professor Gould's experience in arbitration is probably the best indicator of how he will perform in the role of chairman of the National Labor Relations Board. As an arbitrator, he has been called upon to interpret and apply the law of the workplace, as set forth in the terms of collective bargaining agreements, to the facts of particular cases. His record has earned him the respect and widespread support of the parties who have selected him, and also of his peers.

The high regard in which he is held by those who know his work in the arbitration field is reflected in the many letters the committee has received from fellow arbitrators praising Professor Gould's integrity and reputation for impartiality. The comments of Arthur Stark, a past president of the prestigious National Academy of Arbitrators, are typical:

According to Mr. Stark, Bill Gould as an arbitrator has been acceptable to both management and labor representatives and has retained that acceptability over the years. His ability to see and understand both sides of the complex issues which arise in often hotly contested disputes is exactly what is required of an NLRB member and chairman."

Anthony Sinicropi, another past president of the academy, writes that Professor Gould enjoys the respect of both the labor and management community and would steer this historically important governmental quasi-judicial body in a direction to meet the challenge of today and tomorrow.

Eva Robins, also a past president of the academy, praises Professor Gould for his personal integrity, knowledge, and his ethical standards.

Dallas Jones, the current president of the academy, lauds Professor Gould's judicial temperament and says he will make an outstanding Chairman of the National Labor Relations Board.

As Professor Gould himself pointed out at his confirmation hearing, you do not get work as an arbitrator if either labor or management thinks you are unfair or biased toward one side or the other. Over and over, both labor and management have placed their trust in Professor Gould to resolve their disputes. That is the most persuasive evidence the Senate could have that he will be a fair and impartial Chairman of the National Labor Relations Board.

In the months since his nomination was announced, the Labor Committee has received a remarkable outpouring of letters in support of his confirmation.

And as these letters made clear, Professor Gould is viewed by those who know him best, and who have dealt with him professionally, as a respon-

sible, a fair, and a practical person who will promote respect for the NLRB and the law, and will generate a much needed atmosphere of evenhandedness in the contentious field of labor management relations.

It is interesting to note—in light of some opponents' claims that Professor Gould is antibusiness—that some of the highest praise he has received is contained in more than two dozen letters the committee has received from representatives of management. Here are typical comments from letters submitted by leading management attorneys:

[His] reputation in the rough and tumble world of labor relations is one of impeccable honesty and integrity and his sense of fair play has produced the highest standard of impartiality and neutrality in labor affairs.—Arthur B. Smith, Jr., Murphy, Smith & Polk, Chicago.

[His] reputation for scholastic excellence and objectivity spans both coasts.—Martin J. Oppenheimer, Poskauer Rose Goetz & Mendelsohn, New York City.

[Gould] is especially attractive to a management lawyer because is firmly in the middle ground between labor and management . . . His reputation for ability, integrity and fairness is beyond question.—Frederick A. Morgan, San Francisco, CA.

Bill understands the need for a neutral to not only be fair but to create a pervasive atmosphere of impartiality . . . Bill will enforce the National Labor Relations Act as it is written and leave amending of the statute, if that is needed, to Congress . . .—Eliot Azoff, Baker & Hostetler, Cleveland.

It is unfortunate that the confirmation of this outstanding nominee has become embroiled in excessively ideological and partisan arguments that have little to do with the real challenges that confront the NLRB in its mandates to apply the labor laws fairly and responsibly to the realities of a changing economy and new developments in the workplace.

Those on the other side of the aisle who seek reassurance that Professor Gould is indeed committed to fair and impartial enforcement of the law can take reassurance from the words of former Republican Congressman Tom Campbell from California, who served in the House from 1989 to 1993.

Tom Campbell is now a colleague of Bill Gould's at Stanford Law School, and he has written to all the members of the Labor Committee to endorse Professor Gould's nomination. He calls Professor Gould "an honest man of superb intelligence and integrity." As Tom Campbell writes:

Professor Gould and I do not always agree on labor law policy. However, I can without the slightest hesitation testify that he has the deepest respect for the rule of law. He will carry out the National Labor Relations Act as it has been interpreted by the courts and as it was enacted by the Congress. Where, as a policy matter, he may wish the Act to be interpreted differently than it has been, I am confident he will proceed in the judicially appropriate fashion . . . Where the precedent is controlling, I have no doubt Professor Gould will follow it, even if it means a policy outcome different from what he might have preferred if he were in a position to draft the statute. He has a brilliant mind and an enviable reputation for tolerance of opposing views.

President Clinton has given us an excellent nominee for Chairman of the National Labor Relations Board. Finally—and this is the icing on the cake—Bill Gould has a lifelong love of baseball, and in particular the Boston Red Sox.

I suspect that the Red Sox may be seeing a little more of Bill Gould in the years ahead—it is a lot easier to get to Fenway Park from Washington than from Stanford.

In sum, Bill Gould has the rare combination of experience, ability, independence, impartiality, and judgment to be an outstanding Chairman of the National Labor Relations Board, and I urge the Senate to confirm him.

Mrs. KASSEBAUM. Madam President, before I yield, I certainly appreciate the Senator from Massachusetts wanting to have an additional fan for the Red Sox. But it is not a question, let me say, of Professor Gould's honesty or integrity. That is not in question. I think he is held in high regard by all. But I would like to particularly respond to the Senator from Massachusetts talking about Professor Gould's role as an arbitrator. An arbitrator's role is very different from that of the chairman of the National Labor Relations Board. An arbitrator takes a very narrow issue and usually, in many ways, splits it in half. I think that the role of chairman on boards such as the NLRB does allow for one's policy views to play a role in the decisionmaking process.

Professor Gould himself has acknowledged that.

So I wanted to comment on the difference that exists between the role of an arbitrator and the role that one would play as chairman of the NLRB.

I yield whatever time the Senator from South Carolina would like to have at this time.

Mr. THURMOND. Madam President, I rise today to oppose the nomination of Mr. William Gould to be the Chairman of the National Labor Relations Board. Based on the views expressed by Professor Gould in his writings, his testimony, and his responses to submitted questions, I cannot support his nomination to be Chairman of the National Labor Relations Board.

As you know, the National Labor Relations Board is an independent agency consisting of five members who act primarily as an adjudicatory body to prevent and remedy unfair labor practices committed by employers and unions. It is also responsible for conducting secret ballot elections of employees to determine whether or not they want to be represented by a labor union.

Madam President, Professor Gould has recently written a book entitled "Agenda for Reform." This ominously titled book does not merely identify, define, and discuss the issues confronting the existing relationship between employers and employees. Instead, it vividly outlines his vision for the future labor relations in America, as he would like it to be.

For example, Professor Gould states in his book that the decline of unions "erodes the fabric of democratic institutions and is thus profoundly worrisome to all who value pluralism and a system of checks and balances in the workplace. * * *"

We must question Professor Gould's concern with the decline of unions in this country. Under our labor relations system, workers have the right to vote for a union or against a union in their workplace. The fact that the vast majority of Americans have rejected a unionized work environment tells me that workers do not place the same value of union representation as does Professor Gould. In contrast to Professor Gould, I trust workers themselves to vote as they see fit.

The Congress has established standards under our Federal labor laws for workers to choose whether they want union representation. I support those standards. But when those workers exercise their free choice and reject a union, I think we should respect that choice without denigrating it.

Professor Gould finds the decline of unions to be worrisome. I hope that he does not plan on taking it upon himself to redress this worrisome condition through the National Labor Relations Board.

Madam President, we must also question whether this nominee will attempt to legislate or define labor policies that are within the jurisdiction of Congress.

Professor Gould clearly stated during his confirmation hearing that he would follow congressional intent if he were confirmed to chair the National Labor Relations Board. However, Professor Gould repeatedly has written that the National Labor Relations Board has the authority to make important labor relations policy. In a 1987 edition of the San Diego Law Review, Professor Gould states that there is an,

* * * obvious but frequently unpalatable truth that federal labor law, framed as it is in broad ambiguous language addressing matters about which Congress has been unable to provide definitive policy judgments, is federal labor policy defined by the NLRB and ultimately the Supreme Court. The Court is deeply divided on many aspects of this ongoing policy debate.

In the Labor Law Journal, in an article entitled "Fifty Years Under the NLRA: A Retrospective View," Professor Gould stated that "new appointments to the Board from 1989 onward can change the law * * *'. In the Stanford Law Review, he also states that he "believe(s) the Board needs to be changed much more than the law—although the law ought to be strengthened."

How can Professor Gould claim that he will be impartial, and that he does not have an agenda for reform when his statements make clear that he favors changing labor law policy through judicial activism.

Obviously, Professor Gould is a very accomplished labor lawyer. He has been a Stanford Law School professor for over 20 years. He impressed members of the Senate Labor Committee with his knowledge of our Federal labor statutes. However, I remain concerned that he will use his position on the Board to put into practice the many labor reform ideas that he has advocated over the years.

Madam President, the National Labor Relations Board is a quasi-judicial body. Both employers and employees must have confidence in the impartiality of the Board in order for it to function effectively. I believe the strong held views and positions Professor Gould has advocated for so long, make a strong case that it will be difficult for him to act as an interpreter of the law and not an advocate.

Therefore, Madam President, I do not intend to support this nomination.

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I yield myself such time as I might take.

Madam President, in my earlier statement, I pointed out the very strong and enthusiastic support of members of the National Academy of Arbitrators, a very prestigious group of men and women who are involved in the field of arbitration. It is highly regarded and respected, and I quoted from a series of letters our committee has received from both the current president and several past presidents of the Academy who all have been very supportive of Professor Gould.

Some question was raised about the relevance of Mr. Gould's experience as an arbitrator. Is this really a useful measurement in terms of demonstrating the impartiality of this nominee? And there was some suggestion that arbitration is really nothing like adjudication of NLRB cases because all the arbitrator is really doing is splitting the difference between the two parties.

Of course, if that was all that arbitration was—that the two parties were divided and the understanding was that the arbitrator was not just going to take the matter at issue and split the difference, you would not need an arbitrator. The parties could do that themselves.

The point of arbitration is that when you have a disagreement between the parties as to how the words of the contract should be applied to the facts of a particular case, the arbitrator performs that function of interpreting the contract and applying it to the facts, just as a judge applies the words of a statute to the facts of a case.

So, Professor Gould's experience and record as an arbitrator is, I think, reflective not just of the ability, professionalism and integrity of the nominee, but also his qualifications to serve on the NLRB.

I would just mention very briefly some of the issues that have been raised by those who have expressed reservations about Mr. Gould's confirmation.

One was the issue of the card check, which is a means of determining the desire of employees to be represented by a union. Of course, the card check was the primary means by which employees obtained union recognition prior to 1947. It was completely legal and commonly utilized. And it is a respected method of determining who then has majority support for a union in a number of other Western countries, including Canada.

The assertion that this is a radical idea is something that I would really question. It was in the 1978 Labor Reform bill. That bill only failed by a few votes because of a filibuster.

So this concept is something that generally those who are familiar with labor law reform have some position on. Some support it; others do not, but it is not a radical idea.

Then there is the issue that has been raised about Professor Gould's support for legislation to ban the permanent replacement of strikers. More than 55 Members of the Senate have expressed their view that there should be a change in current law on this issue. The President of the United States himself has stated his support for banning the permanent replacement of strikers, so his position is the same as that of this nominee. The idea this is evidence of the radical viewpoints of the nominee I find difficult to accept.

The concept of awarding double back pay to workers who are illegally discharged for union activities was part of the 1978 labor law reform bill too. It was debated and considered. It is widely understood and recognized that there is an anomaly in the fact that in cases of employment discrimination on the basis of union activity, the illegal firing of an individual for supporting a union is treated entirely different than we treat illegal discrimination or firing an individual on the basis of gender, race, religion, and ethnicity. In those kinds of discrimination cases, we impose a variety of different penalties on employers, in addition to back pay. The exception is that where the discrimination is on the basis of union activity, the only remedy is back pay.

There is a very substantial body of evidence to suggest that the penalties for labor law violations are generally considered by many in management to be just a cost of doing business. The employers know that if there are certain individuals who are out there trying to organize, they can fire them and stop the organizing campaign in its tracks. Since the worst that can happen is that they may be told to rehire the union supporters later on, after the organizing campaign has been defeated, and gave them some back pay. Many see that as just a cost of doing business. It is worth it to the employer to take that risk if it means they can keep the union out. The view that back pay is not an effective deterrent to illegal conduct by employers is a very widely held view.

So the views of Professor Gould that were just criticized here—really are very much in the mainstream of debate and discussion in terms of labor law reform.

Just to get back to what has been both the stated position of the nominee as well as those who support him, it is his strong commitment as Chairman of the Board to interpret the law as passed by Congress rather than change the law.

Given the extraordinary comments we have received praising of his basic integrity, I think that this country will be very favorably served when his nomination is approved.

I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mrs. KASSEBAUM. Madam President, I am happy to yield to the Senator from Wyoming however much time he would like to speak.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Madam President, I just want to speak briefly.

Prior to confirming Prof. William Gould to be Chairman of the National Labor Relations Board, which I think we will do momentarily, I suggest that my colleagues take a very good look at some of his writings. I have, and I have strong concerns about this nominee.

I have talked with our fine ranking member, Senator KASSEBAUM, and have the deepest respect for her views on things that come before her areas of jurisdiction. I trust her implicitly.

I have gone into my own examination of material on this person who is going to be responsible for leading the regulation of collective bargaining and union organizing activities in the private sector.

I just want to take a few moments just to say that a few weeks before his nomination William Gould published a book called "Agenda For Reform," in which he strongly criticized the way the Board has operated, and described in some great detail how current law, precedents, and Board procedures should be changed.

I took labor law on the GI bill at Colorado University in the summer program, and my professor was Archibald Cox, so naturally my credentials are unimpugnable, and I know either of my colleagues did not know that, and if Arch Cox were listening he would

chuckle about my work in his class. Arch Cox was a great professor of labor law and taught me much during that session of summer school.

In looking at what this man is saying, the views he espouses in his book would take the current balance in labor-management relations and turn it right up on its ear. His extremist, activist approach to labor law certainly bothers me, and I know it bothers others. His views are quite clear and unambiguous. It is virtually impossible to take his message out of context. That excuse simply will not do this time.

He advocates the elimination of secret ballot elections in which employees decide the question of union representation, and inserting in its place signature cards collected by union organizers.

He does not feel that union members should be able to resign from a union during a strike.

He believes that unions should have complete access to company financial information at all times.

He believes that unions should be able to organize a company's management as well as its workers, an extraordinary adventure.

While these are troubling enough, I stumbled across one that really stood out, and that is Professor Gould has been highly critical of the Supreme Court's decision in NLRB versus Wooster Division of Borg-Warner Corp. In this 1959 landmark decision, the Court drew a distinction between "mandatory" and "permissive" subjects of collective bargaining. Employers and unions are required to bargain over mandatory subjects such as wages, hours, and key conditions of employment. Either party may insist on its position, and, if necessary, may use economic force to enforce those demands, such as a strike or lockout.

On the other hand, employers and unions are not required to bargain over "permissive" subjects such as capital investments or discontinuation of a product and things that do not have to do with the basic issues of collective bargaining, which is wages, hours, and conditions of employment. So the parties then can voluntarily incorporate provisions concerning "permissive" subjects into a labor contract, but neither party is obligated to bargain over such provisions and neither party may use economic force to insist on these provisions.

However, Professor Gould advocates eliminating the distinction between "mandatory" and "permissive" subjects of bargaining. On page 178 of his book, "Agenda for Reform", he states, "The demarcation line between mandatory and non-mandatory subject matter should be eliminated and the right to bargain on all issues should be made available to the parties."

I am concerned with those views because the distinction between "mandatory" and "permissive" subjects of bargaining is not found in the National Labor Relations Act itself. Rather, it is a board-created rule of interpretation that the Supreme Court upheld in Borg-Warner. The Board can and does revise such rules, and the courts usually defer if they find the new rule rational and consistent with the act. As the Supreme Court stated in its NLRB versus Curtin Matheson Scientific decision, "a Board rule has precedent even if it represents a departure from the Board's prior policy."

Essentially, Professor Gould's position, if it became Board policy, would tilt current labor law toward permitting more economic strikes by providing more reasons to strike.

With hundreds of millions of dollars at stake in the Board's decision on this issue, all parties must be ensured that their views and arguments are given due consideration. Professor Gould has already prejudged this critical issue.

I would simply add that the Chairman of the National Labor Relations Board is not an arbitrator who is there to split the difference in narrow factual disputes. The NLRB, and particularly its Chairman, have broad authority and discretion to interpret Federal labor law and shape its course. It is absolutely essential that both employers and labor unions have confidence in the impartiality of the Board in order for it to function effectively. William Gould, in my view, has failed to instill any part of that confidence.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mrs. KASSEBAUM. Madam President, I am happy to yield as much time as the Senator from Oklahoma would like.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, parliamentary inquiry. How much time is remaining?

The PRESIDING OFFICER. The Senator from Massachusetts controls 35 minutes. The Senator from Kansas controls 36 minutes and 31 seconds.

Mr. NICKLES. Madam President, I wish to compliment my friend and colleague, Senator KASSEBAUM, from Kansas, and also Senator SIMPSON, from Wyoming, for their statements.

Madam President, I will oppose this nomination of William Gould as Chairman of the National Labor Relations Board. I do not do that with a great deal of joy. I do not like opposing nominations and I have really opposed very few in my career in the Senate.

But I believe that Professor Gould is one of the Nation's leading champions of radical labor law reform. I am really surprised that this administration would name as Chairman of the National Labor Relations Board someone who has no hesitation whatsoever about giving labor union rights higher priority than the rights of individual employees and management.

Madam President, Professor Gould has made clear in his writings his intent to alter long-established national labor policies. His most recent book, "Agenda for Reform"—and I have a copy of that here today—is a manifesto on how he will redirect labor law for this country. The book contains several examples of the vision that William Gould has set forth, which are very troubling to me and should be very troubling to anybody if they believe in consistency in labor law and if they consider that this nominee is appointed to be Chairman of the NLRB.

For instance, the nominee believes that employers should not be allowed to hire permanent replacement workers during an economic strike. Gould stated that the Mackay decision, which holds that it is not an unfair labor practice for an employer to continue operating his business during a strike by hiring permanent replacements for economic strikers, is "badly flawed." On page 202 in his book, "Agenda for Reform," he says:

> The Court and Congress should not be bound by half-century-old opinion. As we move toward the twenty-first century, we should attempt to establish more civilized standards in labor-management relations, a more competitive and cooperative environment inextricably tied to such standards, and an order in which we can compete effectively with Germany, Japan and other countries.

He said we should not be bound by half-century-old opinions, both the court and the Congress. So he is more than willing to use the court and the Congress to change the 50-year-old statute.

Another example is Professor Gould's advocation of the use of authorization cards, a notoriously unreliable indicator of employees' desire to join a union, instead of the current process of secret ballot elections. In addition, Gould recommends expanding the ability of unions to punish workers who choose to continue to work during a strike. These are troublesome restrictions of an individual's right to work at best.

Professor Gould further advocates in "Agenda for Reform" allowing union representation of less than a cohesive group of employees or a minority group of as little as 20 or 30 percent of employees. He says:

> Additionally, the Act (The Labor Relations Act) should be amended so as to allow nonmajority organizations to represent employees and to be consulted and share information about employer decision making that affect employment conditions where 20 to 30 percent of the employees have petitioned the Board to this effect. Under such circumstances consultation and communication should be mandated.

That is on page 141 of the professor's book.

Think of what he just said. He said if 20 or 30 percent of the people sign a

card by petition that that 20 or 30 percent should automatically have recognition. What about a secret ballot? What about a right for a majority of the employees? Does that mean somebody can come by and have an organizational election and walk by and say, "Please sign the petition," and maybe they do because they do not want to offend the person, or for whatever; they really have not thought about it.

What about the right to a secret ballot? What about the individual's rights to really select who should represent them. And should we not have majority reputation?

The professor advances union resurgence by utilizing OSHA reform. In the "Agenda for Reform" on page 94, Mr. Gould states:

> Legislation introduced by Senator Edward Kennedy in 1992 would amend the Occupational Safety and Health Act and mandate employee committees charged with the responsibility in the health and safety area. If this legislation is enacted in the future, another institutional basis for representing worker interest relating to employment conditions independent of union majority rule would exist.

Think of that. This is "another institutional basis for representing worker interest relating to employment conditions independent of union majority rule."

In other words, the majority does not rule. We are going to have a small group come in, and this is another basis for union representing workers interests even if they do not have a majority. Wow. I thought we believed in secret ballots and majority rule.

Professor Gould also advocates controversial changes to the remedies available to a reinstated employee in instances of unfair labor practices. Gould favors double or triple backpay awards to be paid by employers. He also thinks labor reforms should make clear that backpay remedies are not available to all workers.

Let me rephrase that. He also thinks that labor reforms should be made clear, that backpay remedies are available to all workers, whether here in the United States legally or not.

In other words, he favors significant fines and penalties, double and triple penalties, and they should be available to workers, both legal and illegal.

Further, Mr. Gould supports expanding employers' duties to disclose confidential information to the union. He believes there should be disclosure of information regarding decisionmaking that could conceivably have an impact on employment conditions, namely investment, closures, advertising, and basic product decisions.

The Supreme Court has held that the National Labor Relations Board, and particularly its Chairman, have broad authority and discretion to interpret and change Federal law through its interpretations. Therefore, Congress need not amend the National Labor Relations Act to make major changes in labor policy. I am not so sure I concur with the Supreme Court's decision, but that is prior decisions.

The use of the National Labor Relations Board as a platform for major labor law reform will result in uncertainty and disruption, which our economy cannot afford right now. The Board must exhibit impartiality to function effectively. I am afraid, with Professor Gould, we do not have impartiality. I think by his writings he has proved there is not impartiality.

This nomination is opposed by many. It is opposed by the National Association of Manufacturers, the Labor Policy Association, the Society of Human Resource Management—which to my knowledge has never opposed any Presidential nominee—the Chamber of Commerce, and the National Federation of Independent Business. They have all expressed their opposition to this nominee, I think for good reason.

(Mr. KENNEDY assumed the chair.)

Mr. NICKLES. I wish my colleagues had enough time to look at these writings that are in Professor Gould's own words. If they did, if they would really look at the statements he has made, I find it hard to see they could support this nominee. This is not a nominee who is unbiased. This is not a nominee in my opinion who will be fair and impartial in making many decisions. And this person is nominated, again, to be Chairman of the National Labor Relations Board, which is a particularly powerful position, I am afraid, for advancing his agenda for reform.

I compliment my friend and colleague from Massachusetts who is now presiding. I understand part of his statement is supporting his nominee. I notice the nominee supports many pieces of the Senator's legislation and supports them energetically. But I have a problem when we have nominees that want to legislate through a board, or through a commission. Obviously, by some of his writings, he plans to be very active in advancing his agenda for reform, which I hope my colleagues will reject when we vote on this nomination.

I urge my colleagues to oppose Mr. Gould for Chairman of the National Labor Relations Board. I thank my friend from Kansas for yielding me this time. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I rise to support the nomination.

The PRESIDING OFFICER. How much time does the Senator desire?

Mr. WELLSTONE. Mr. President, I think 5 minutes will be just fine.

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

Mr. WELLSTONE. Mr. President, I rise to support President Clinton's nomination of Stanford Law School Prof. William B. Gould IV, to be Chairman of the National Labor Relations Board.

We have heard a number of different comments on the floor, and it is the Senator's first amendment right to express his or her viewpoint. Do not think anybody is fooling anybody. We all have different values and represent, I suppose, different viewpoints.

But the fact of the matter is, Professor Gould by any standard is a nominee of outstanding achievement, outstanding achievement representing business, representing labor, and representing government in labor relations. He is a leading arbitrator and he is a leading scholar and he has been a leading lawyer. Frankly, I think if you review his writings—and we have already essentially presented to the Senate for the RECORD a range of recommendations from distinguished lawyers, crossing the broadest spectrum of political opinion in the United States of America imaginable—what you see is a record of evenhandedness.

It certainly is true that, by definition, not every Senator will agree with every view that Mr. Gould has presented in his writing or presented in his work as a scholar or as a lawyer. On the other hand, if we were to find such a person—and I do not know that we ever really can find such a person—we would not find such a person with such a distinguished career. This is a man who has been enormously successful in many different, but I think very important, walks of life that converge to make him a candidate who will probably end up being one of the great Chairmen of the National Labor Relations Board.

As a former professor, maybe I put more weight on his scholarship. But it is there for all of us to examine. I certainly am impressed with the letters of recommendation and the acclaim he has received from very distinguished lawyers. And I am certainly impressed with the fact that he has such strong recommendations on all sides, as I said before, from labor, from management, from government.

Finally, I want to end with a personal note. I did have an opportunity to be at the Senate Labor and Human Resources Committee when there were some very, I think, difficult, tough, and fair questions—including questions raised by the Senator from Kansas. I deeply respect Senators that ask those tough questions. The Senator from Kansas is a perfect example of someone who takes this job very seriously. But I was equally impressed with the knowledge of this man. I mean, the way in which he handled the questions with grace, his background, the depth of his knowledge. I do not think we can have a better candidate.

I certainly hope my colleagues will vote for William Gould. It is long past time we move forward. I believe what

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historians will write about this man, and I feel strongly about this, is that he will go down in history as a truly evenhanded, highly intelligent, profound thinker, and I think a truly great Chairman of the National Labor Relations Board. I certainly hope he will have strong support by my colleagues in the Senate.

I yield the remainder of my time.

Mr. President, I suggest the absence a quorum.

The PRESIDING OFFICER. Is the request for the time to be charged equally?

Mr. WELLSTONE. Mr. President, that is correct. I suggest the absence a quorum and that the time be charged equally to both sides.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER (Mr. WELLSTONE). The Senator from California.

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

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

Mrs. FEINSTEIN. I ask I be provided time to speak on behalf of Prof. William Gould, nominee as Chairman of the National Labor Relations Board.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. How much time does the Senator require?

Mrs. FEINSTEIN. About 5 to 7 minutes.

Mr. KENNEDY. I yield 7 minutes to the Senator from California.

Mrs. FEINSTEIN. Mr. President, in October of last year I introduced Professor Gould during his confirmation hearing before the Senate Labor and Human Resources Committee. And my support for his candidacy is just as strong now as it was then.

He made clear during his confirmation hearing that he pledged to uphold congressional intent in his performance as Chair, and I have no reason to doubt him in this regard.

Like many others in California who know of Professor Gould's work—he hails from my alma mater, Stanford—I believe he has a balance of scholarly achievement and practical experience in labor law which prepare him very well for the challenges of chairing the National Labor Relations Board.

Having said that, I must also say that to me what seems to be going on in this debate is really a battle over ideology. And the underlying question is, what should the National Labor Relations Board be?

In my view, the National Labor Relations Board should be a centrist board which is reflective and knowledgeable about the needs of working men and women, and also the needs of the management sector.

There is some good evidence that Bill Gould fills this bill. Let me share with you a letter that I have received from a management advocate—not a labor advocate—a management advocate. He is president of the Pacific Maritime Association. That is an association which represents maritime management on the west coast. His name is William Coday. I would like to read this letter, which was written to support the appointment of William Gould IV, labor law professor at Stanford Law School as Chair of the NLRB:

I am a member of the Missouri, St. Louis, and American Bar Associations and a former chairman of the Labor Law Committee of the St. Louis Bar Association. Since my graduation from Washington University Law School in 1956, I have represented management in the field of labor relations and presently represent the maritime industry on the west coast. I have had extensive practice before the NLRB throughout these 37 years.

In the labor law field, Bill is a scholar; that is well-known. Moreover, he is reachable as a person and has a sense of humor. Speaking as one who has always represented the management side, I feel we need someone like Bill to lead the Board back to a more centrist view. In the past decade, the Board has become so conservative as to forfeit its credibility to the labor movement. Management interests are, in turn, jeopardized as we return to a "law of the jungle" mentality.

I realize that Bill has been criticized for some of his writings. This is unfair. All legal scholars have traditionally opined as to what the law should be in addition to analyzing what it is.

As a lawyer and a scholar, he knows the difference between interpreting and effectuating the National Labor Relations Act, versus the Congress' exclusive role of amending.

Bill Gould is a fine choice for this position. He would play a lead role in bringing the NLRB back to the stature it once had. Please support him. Very truly yours, William E. Coday.

Mr. President, I ask unanimous consent that this letter be printed in the CONGRESSIONAL RECORD.

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

PACIFIC MARITIME ASSOCIATION,
San Francisco, CA, December 30, 1993.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
San Francisco, CA.

DEAR SENATOR FEINSTEIN: This letter is written to support the appointment of William B. Gould, IV, Labor Law Professor at Stanford Law School, as Chair of the National Labor Relations Board (NLRB).

I am a member of the Missouri, St. Louis, and American Bar Associations and a former Chairman of the Labor Law Committee of the St. Louis Bar Association. Since my graduation from Washington University Law School in 1956, I have represented management in the field of labor relations and presently represent the Maritime Industry on the West Coast. I have had extensive practice before the NLRB throughout these 37 years.

In the labor law field, Bill is a scholar; that is well-known. Moreover, he is reachable as a person and has a sense of humor. Speaking as one who has always represented the management side, I feel we need someone like Bill to lead the Board back to a more centrist view. In the past decade, the Board has become so conservative as to forfeit its credibility to the labor movement. Management interests are, in turn, jeopardized as we return to a "law of the jungle" mentality.

I realize that Bill has been criticized for some of his writings. This is unfair. All legal scholars have traditionally opined as to what the law should be in addition to analyzing what it is. As a lawyer and a scholar, he knows the difference between interpreting and effectuating the National Labor Relation's act versus the Congress' exclusive role of amending.

Bill Gould is a fine choice for this position. He would play a lead role in bringing the NLRB back to the stature it once had. Please support him.

Very truly yours,

WILLIAM E. CODAY.

Mrs. FEINSTEIN. Mr. President, I would like to also quote from a letter by a Prof. Herman Levy of Santa Clara University School of Law, and William H. Simon, professor, Stanford School of Law, that was printed in the Los Angeles Times. I think it puts to rest some of the charges that we have heard on the floor.

The letter points out that Bill Gould has become the object of "extremist attacks that frequently distort the record." It goes on to say that "Paul Craig Roberts' Column Right, on October 31, was an unsavory example of that."

Then the letter points out that:

Roberts begins by asserting that Gould's views are "similar" to those of a judge whom he states is an apologist for black criminals. Reminding us of the Willie Horton rhetoric of the 1988 Presidential campaign, Roberts suggests that Gould, who would be the first black Chairman of the National Labor Relations Board in its nearly 60 years of existence, is eccentric or radical.

Roberts could not be more off the mark. As a law professor and arbitrator, who has rendered a majority of awards in favor of employers——

A majority of awards in favor of employers.

Gould has been consistently viewed as both moderate and impartial.

Roberts says that Gould will "* * * restrain management's ability to communicate with the work force prior to a union certification vote." In fact, in Gould's recent book——

Which has been widely quoted on this floor.

"Agenda for Reform," he has written that labor law reform should expand employer free speech rights in union organization efforts—not limit them.

This is the problem with quoting from a book. You can take it out of context. Authors say many different things in a book. Here is something which is diametrically opposed which Mr. Gould has said which has not been quoted on this floor.

The letter goes on:

Roberts further asserts that Gould favors compelling all workers to accept union representation where only a minority favor it. In fact, the proposal to which Roberts refers quite clearly applied to "members only" bar-

gaining. Gould suggested that Congress require that, where 20 to 30 percent of the work force so requested, employers bargain collectively, but only with the consenting workers.

Roberts' suggestion that Gould does not support the secret ballot is equally unfounded. Gould favors the secret ballot in all union elections. His proposal that unions be recognized without elections applies only where a supermajority of workers—60 percent—have voluntarily signed authorization cards.

All of these proposals have been advanced as suggestions for legislative revision, not as interpretations of existing law, which Gould, as Chairman, would be sworn to uphold.

And if I might add, Mr. President, as he has said he would uphold. Roberts' suggestion that Gould would betray his duty to enforce enacted law is completely unsupported character assassination.

Then these two law professors who know Bill Gould go on to write:

We know Gould as a man of unimpeachable integrity and as one who has consistently brought a balanced, moderate approach to labor-management relations. His nomination represents one of the best opportunities to diminish conflict and polarization which have plagued labor and management for most of this century.

Signed, Herman Levy, Professor, Santa Clara; William Simon, Professor, Stanford Law School.

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

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

[From the Los Angeles Times, Nov. 15, 1993]

LABOR BOARD NOMINEE

President Clinton has nominated our Colleague and friend, Prof. Bill Gould of Stanford Law School, to be chairman of the National Labor Relations Board. Because Gould's writings support freedom for workers to affiliate with labor organizations of their own choosing and the collective-bargaining process—the explicit goals of the National Labor Relations Act—he has become the object of extremist attacks that frequently distort the record. Paul Craig Roberts' Column Right (Oct. 31) is an especially unsavory example.

Roberts begins by asserting that Gould's views are "similar" to those of a judge whom he states is an apologist for black criminals. Reminding us of the Willie Horton rhetoric of the 1988 presidential campaign, Roberts suggests that Gould, who would be the first black chairman of the National Labor Relations Board in its nearly 60 years of existence, is eccentric or radical.

Roberts could not be more off the mark. As a law professor and arbitrator, who has rendered a majority of awards in favor of employers, Gould has been consistently viewed as both moderate and impartial.

Roberts says that Gould will "* * * restrain management's ability to communicate with the work force prior to a union certification vote." In fact, in Gould's recent book, "Agenda for Reform," he has written that labor law reform should expand employer free speech rights in union organization efforts—not limit them.

Roberts further asserts that Gould favors compelling all workers to accept union representation where only a minority favor it. In fact, the proposal to which Roberts refers quite clearly applied to "members only" bargaining. Gould suggested that Congress require that, where 20% to 30% of the work force so requested, employers bargain collectively, but only with the consenting workers.

Roberts' suggestion that Gould does not support the secret ballot is equally unfounded. Gould favors the secret ballot in all union elections. His proposal that unions be recognized without elections applies only where a super-majority of workers—60%—have voluntarily signed authorization cards.

All of these proposals have been advanced as suggestions for legislative revision, not as interpretations of the existing law, which Gould, as chairman, would be sworn to uphold. Roberts' suggestion that Gould would betray his duty to enforce enacted law is completely unsupported character assassination.

We know Gould as a man of unimpeachable integrity and as one who has consistently brought a balanced, moderate approach to labor-management relations. His nomination represents one of the best opportunities to diminish the conflict and polarization which have plagued labor and management for most of this century.

Mrs. FEINSTEIN. Mr. President, I very much respect some of the opponents on this issue—particularly Senator KASSEBAUM. I in no way, shape, or form attribute any of this to her. But I do think what is at stake here is to try to continue a very conservative bent to a board which I happen to believe should be centrist in nature.

I think William Gould's appointment offers the opportunity to see that this Board does become centrist. From everything I know about this man, his practical application of law would indicate to me that he will carry out the laws, that he will be fair, that he will be moderate, and that he has the ability to bring together people of different persuasions.

It should be no surprise that someone who has represented management—Mr. Coday—has written urging his support. I hope he is confirmed by this body.

Thank you, and I yield the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DOLE. Does the Senator from Kansas have any time left?

The PRESIDING OFFICER. The Senator has 27 minutes.

Mrs. KASSEBAUM. Mr. President, I will be happy to yield whatever time the senior Senator from Kansas would like.

Mr. DOLE. Mr. President, I want to take a few moments to explain why I intend to vote against the nomination of William Gould to be the next Chairman of the National Labor Relations Board.

But before doing that, Mr. President, let me first say a word about the NLRB itself. The NLRB is the Federal Agency charged with enforcing and interpreting our Federal labor laws. In fulfilling this responsibility, the NLRB acts as a quasi-judicial body, deciding issues on a case-by-case basis.

Although the majority of cases that come before the NLRB are straightforward and can be decided with a minimum of controversy, occasions do arise giving the NLRB the opportunity to break new ground and shape labor policy through precedent. This is where the important policy battles are fought. And that is why the composition of the NLRB is so critical to maintaining the careful balance between labor and management that has characterized our system of collective bargaining for nearly 60 years.

In his writings, Professor Gould has unfortunately expressed many controversial views that could become the law of the land solely through the NLRB adjudication process, and without congressional action.

For example, Professor Gould criticizes the Supreme Court's ruling in the patternmakers case, which made clear that union members have a right to resign from the union at any time, even during the course of a strike. In Professor Gould's view, this ruling "Heavily tips the scales in favor of the individual worker's rights," apparently believing that protecting workers' rights, including the right to resign, is a bad thing. Instead, Professor Gould would prohibit union resignations once the decision to call a strike is made. In this way, he would sacrifice individual rights for the solidarity of the union, subjecting dissenters to stiff fines and other forms of union discipline.

Professor Gould has also argued that employers have a duty to disclose financial information to unions that is much broader than the disclosure requirement currently imposed by the NLRB. More specifically, he has urged Congress to overturn the Supreme Court decision prohibiting unlimited union access to company information. If an employer resists union demands for sensitive company data, citing competitive pressures, Professor Gould claims that the NLRB is free to require full disclosure. In Professor Gould's own words, and I quote:

Disclosure of the true basis for the employer's position should not only be required—periodic disclosure without a union request should be obliged, [including] all decision-making that could conceivably have an impact upon employment conditions, namely investment decisions, advertising, and basic product decisions * * *.

Professor Gould would further hamstring business by requiring employers to bargain over all subjects that may somehow affect the employment relationship, not just the traditional mandatory subjects of bargaining such as wages, hours, and other key terms and conditions of employment. In addition, Professor Gould believes the NLRB has the authority to order employers who have committed repeated unfair labor practices to bargain with unions, even if the union has failed to enlist the sup-

port of a majority of employees and has lost a representation election. In other words, Professor Gould would give full bargaining status to a union that has failed to demonstrate that it has won the support of at least a majority of the workers it claims to represent.

Mr. President, Professor Gould has staked out other troubling positions that confirm his prounion bias. For example, he publicly supports a ban on the permanent replacement of economic strikers, thereby overturning the well-established Mackay Radio precedent. He also supports giving unions access to company property during an organizing campaign and questions the current system of secret-ballot elections to determine union representation. Instead, Professor Gould advocates the use of authorization cards, enabling unions to be automatically certified without the benefit of a secret-ballot election. The authorization-card approach is notoriously unreliable, and often subjects workers to threats and other forms of intimidation.

Mr. President, I do not question Professor Gould's intellect, nor do I have any doubts that he will be confirmed later today. Once confirmed, I wish him the very best.

But Professor Gould's writings and his public statements are clear and convincing evidence that he possesses a long-standing prounion bias that renders him incapable of acting impartially as chairman of the NLRB. Quite simply, Professor Gould has a prounion agenda that he will, no doubt, aggressively advance once he assumes his new position at the NLRB. For these reasons, I will vote against confirmation.

Mr. President, I am certain the nomination will be approved, but it should not be approved. I hope those of us who want balance on the NLRB will vote against the nomination.

Mrs. KASSEBAUM. Mr. President, I express appreciation to the Republican leader for his thoughtful comments. This is not an inconsequential nomination, and as the Senator from Massachusetts pointed out earlier, the National Labor Relations Board is a very important body. I hope that our colleagues who have been listening will give careful thought to some of the questions that have been raised today.

I urge those who have reservations about the agenda that has been put forward in the past and the views of William Gould think carefully about his nomination as Chairman of the National Labor Relations Board. I urge that they vote against this nominee.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Could we ask for the yeas and nays?

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

STATEMENT ON THE NOMINATION OF WILLIAM GOULD IV

Mr. KOHL. Mr. President, I rise today in support of the nomination of William B. Gould IV as Chairman of the National Labor Relations Board. William B. Gould, who is currently the Charles A. Beardly Professor of Law at Stanford University, has a rich and distinguished record in the field of labor law. In addition to his impressive academic career, Professor Gould has successfully arbitrated some of the country's most well known and contentious labor disputes, including the 1992 and 1993 salary disputes between the Major League Baseball Players Association and the Major League Baseball Players Relations Committee. In the past, Professor Gould has been a practitioner on all sides of labor issues. He has represented management in labor law disputes with a law firm in New York City, and practiced for the United Auto Workers in Detroit. He also previously served as an attorney for the NLRB. His diverse background and expertise prepare him well for the obstacles facing labor-management relations in an increasingly competitive global market.

Unfortunately, Professor Gould's nomination has become the target of numerous misconceptions. His critics charge that Professor Gould would seek to change striker replacement laws. However, in his confirmation hearings, Professor Gould reaffirmed that his primary responsibility as Chairman of the NLRB would be to interpret—not change—the current labor laws. Opponents also argue that Professor Gould would prevent employees from resigning from unions. On the contrary, Professor Gould certainly respects the fundamental right of an employee to freely participate in labor organizations.

Throughout his career, Professor Gould has been called upon by both employers and unions to arbitrate their disputes, and has established a reputation for being fair and impartial. His unique combination of academics and practical experience would, therefore, make Professor Gould an excellent addition to the NLRB.

STATEMENT ON THE NOMINATION OF WILLIAM GOULD

Mr. HATCH. Mr. President, I will oppose the nomination of William Gould as Chairman of the National Labor Relations Board. I do so reluctantly because I believe Professor Gould to be a fine man and a distinguished scholar.

This nominee, however, has a troubling record. While this record includes 30 years' worth of what many would consider controversial writings, one really need not look back more than a year, to the release of a book by William Gould titled "Agenda for Reform."

The book is truly what its title suggests: It is an agenda for reforming labor relations and labor law in this country.

The distinguished Senator from Kansas, ranking minority member of the Labor and Human Resources Committee, has effectively made out the case.

Supporters of this nominee have argued that Professor Gould's advocacy of radical changes in this Nation's labor laws should not weight against him because this position will give him authority to apply and interpret, but not rewrite, the law.

This argument, however, should not carry the day.

Having reviewed Professor Gould's writings, I am persuaded, and in agreement with Senator KASSEBAUM, that such strongly held views must unavoidably inform and shape the decisions of one who serves in this quasi-judicial position. This is of particular significance in labor law, where the National Labor Relations Act leaves so much room for interpretation to the members of the Board.

Furthermore, it is fairly clear that in certain fundamental areas of the law in which Professor Gould has strongly held views, his views will, in fact, lead to the overturning of many case precedents.

I would hardly expect to be in complete agreement with this administration's nominee to this or any other position.

What is, indeed, troubling to me, however, is that the areas in which it is most clear that Professor Gould will change current caselaw are those involving fundamental protections of the rights of individual employees; the right of employees to choose or not choose a union as their bargaining representative, and the right of employees to engage, but also to refrain from engaging in, union activities.

Professor Gould has suggested a balance between the rights of individual employees and the need for union solidarity. His critique of current law strongly suggests to me that he is prepared to tip that balance much too strongly toward union solidarity and against individual rights.

In conclusion, Mr. President, let me say that I have carefully considered the arguments in favor of this nominee, including his record as an arbitrator. Those arguments, however, are not sufficient to mute the strong views expressed by the nominee himself on major issues in labor law which he will be in a position to significantly influence if confirmed as Chairman of the Board.

THE NOMINATION OF PROF. WILLIAM GOULD IV

Mr. GRASSLEY. Mr. President, I rise today to speak in opposition to the nomination of Prof. William Gould to the National Labor Relations Board. Professor Gould's views on labor law are well documented, so I am confident

that my decision to oppose his nomination is well founded.

Most Americans are not familiar with the work of the National Labor Relations Board. This five-member Board was created by the National Labor Relations Act of 1935. The board administers the Nation's labor law and is vested with the authority to prevent or remedy unfair labor practices committed by employers and unions and to safeguard employees' rights to organize and have union representation.

The Board functions much like a judicial body. It acts when formally requested to do so. Individuals, employers and unions can all bring cases to the Board. It decides issues on a case-by-case basis rather than issuing regulations. These decisions and their precedents have a strong impact on the laws governing the workplace and the relationship between labor and management. So, you can see why it is important that the Board be impartial.

Professor Gould's nomination runs counter to this notion. His views regarding past Board decisions and labor law, in general, are well documented and clearly defined. I find his views troubling, if not alarming. On the eve of his nomination to the Board, his book, "Agenda for Change," was published. This book outlines not only his controversial views regarding labor law but also his opinions regarding the many past decisions rendered by the National Labor Relations Board. In his book, Professor Gould advocates substantial changes to current law, which has been in place for nearly 50 years. He even advocates overturning a number of previous Board decisions.

Many of my colleagues have already provided examples of Professor Gould's views, so will not speak at great length about them. However, in brief, Professor Gould believes that employers should not be able to hire permanent replacement workers during a strike. This body has failed to pass legislation permitting this practice, but Professor Gould has written that under the authority of the Board, the NRLB could prevent employers from hiring replacement workers, with or without legislation.

Professor Gould also advocates a change in the law which governs the process by which employees vote for union representation. Under current law union representation can be gained, if the majority of workers vote for representation. This election is supervised by the National Labor Relations Board and is a two-step process. A majority of workers must first sign authorization cards inviting organization activity but union certification is achieved only after a secret ballot. This two-step process protects individual rights by allowing workers two opportunities to either support or reject union representation. Professor Gould advocates an amendment to the National Labor Relations Act which would significantly change this process.

Professor Gould advocates the use of authorization cards alone as a way to elect union representation. Unfortunately, authorization cards have not been a reliable indicator of a worker's desire for union representation. There have been numerous examples of abuse of authorization cards in the union organizing effort. Only a secret ballot protects the rights of workers to accept or deny union representation. I am fearful that Professor Gould rejects the concept of individual rights as well as the right to work laws which govern many of our States, including my own State of Iowa.

Professor Gould's nomination to the National Labor Relations Board tarnishes the impartiality of the Board. His views are well known and it appears clear that he will pursue his agenda to change and influence current labor law, if confirmed. It is disturbing to me that as we try to foster a better relationship between labor and management we are about to confirm an individual who seems unwilling to fairly evaluate this relationship.

STATEMENT ON THE NOMINATIONS OF WILLIAM B. GOULD IV, MARGARET A. BROWNING, CHARLES I. COHEN, AND FRED FEINSTEIN

Mr. DURENBERGER. Mr. President, the National Labor Relations Board must prevent and remedy unfair labor practices by employers and labor organizations, and conduct fair employee representation elections. As such, it is charged with the supremely difficult task of assuring the peaceful resolution of labor-management disputes, protecting the rights of both employees and employers, and ensuring that American industry is prepared to meet the challenges of the competitive global marketplace.

I have reviewed Prof. William Gould's background and writings. I have met personally with Professor Gould. And I have been very impressed by his scholarship, his substantive knowledge of labor relations law, and his profound commitment to public service. While I certainly do not agree with all his views and writings, Professor Gould is clearly qualified to serve on the National Labor Relations Board and I believe he should be confirmed.

Professor Gould is a nominee of outstanding achievement in the labor relations field. As a practicing attorney, he has represented business, labor, and Government in labor relations matters, and he has attained national prominence as a leading arbitrator and scholar. I am convinced, from his record and from his testimony before the Senate Labor Committee, that Professor Gould will enforce the law in a fair and impartial manner.

Professor Gould's record as an arbitrator, in particular, satisfies me that he will decide cases that come before him so as to promote stability and cooperation between labor and management. The president of the National Academy of Arbitrators has stated that Professor Gould's record as an arbitrator demonstrates that he "possess[es] a judicial temperament" and has earned "the acceptance of both the labor and management communities."

Mr. President, I know that some of my friends and colleagues in this body believe that Professor Gould should not be confirmed because of his writings on how our labor laws might be changed. But I think it is important that we separate Professor Gould's role as an academic, from the adjudicative role he would serve on the NLRB. Throughout the confirmation process, Professor Gould made clear that as a member of the Board, he would be bound to apply current law, as written, and that he would not substitute his policy preferences for those expressed by Congress.

Indeed, the professor explained during hearings before the Senate Labor Committee that, in his view, one of the most important steps to achieving stable and cooperative labor-management relations is to provide both workers and businesses with the assurance that current law will be faithfully enforced.

Mr. President, in October I joined with Senator KASSEBAUM and my Republican colleagues on the Labor and Human Resources Committee in withholding my complete support for Professor Gould's nomination until President Clinton consulted with us and with the business community regarding the remaining nominees for the Board.

At that time, I made it clear that I supported Professor Gould's nomination. But I also said it was my belief that we should confirm Professor Gould only after the President had sent to Congress a complete package of nominees for the remaining open positions on the Board.

Because it is essential that both labor and management have confidence in the Board's ability to address grievances in a fair, consistent, and even-handed manner, I was troubled by the fact that the business community did not support Professor Gould's nomination. It was my hope that they would support the nominee for at least one of the positions yet to be filled on the Board.

Subsequently, President Clinton did consult with several of my Republican colleagues and with the business community regarding the remaining Board nominations. After seeking our input, the President selected Charles Cohen to fill one of the Board vacancies. Mr. Cohen was recommended and endorsed by me and by other Republican members of the Labor Committee, including our distinguished ranking member, Senator KASSEBAUM. He was also recommended and endorsed by the business community.

Mr. Cohen is a lawyer. He has represented management clients in private practice here in Washington, DC, for nearly 15 years. He currently serves as managing partner of the Washington, DC, office of Ogletree, Deakins, Nash, Smoak & Stewart. Before entering private practice, he held numerous positions with the NLRB for 8 years during the 1970's.

Margaret Browning, the nominee for the other vacant seat on the Board, has represented labor unions in private law practice since 1979. She and Mr. Cohen bring to the NLRB combined experience of 36 years in the labor law field.

Both these nominees bring a wealth of experience and knowledge that will be very beneficial to the Board.

Frederick Feinstein, who has been nominated for the position of general counsel, has served as staff director and counsel to the House Labor Subcommittee under three different chairmen since 1977. Before coming to the Hill, he worked as a field attorney for 2 years with the NLRB's regional office in Winston-Salem, NC. I believe Mr. Feinstein is knowledgeable and well-qualified to serve as the NLRB's general counsel.

Mr. President, all these distinguished nominees share with me the very strong belief that we need to reform the decisionmaking process at the NLRB. In testimony before the Labor Committee and in private meetings, all have stressed their strong conviction that steps must be taken to expedite the adjudication of unfair labor practice charges at the Board.

Mr. President, the current system that we have created for processing unfair labor practice claims is protracted, burdensome, untimely, and therefore fails to provide meaningful relief to parties involved in labor disputes. Last year, I introduced a bill—S. 598, the Justice for Permanently Displaced Striking Workers Act of 1993, that would set strict timetables on the NLRB's processing of certain unfair labor practice claims. It is my hope and belief that these nominees will do whatever is in their power under current law to decide ULP cases as quickly and efficiently as possible.

Mr. President, as I mentioned earlier, I am not in total philosophical agreement with all these nominees. But I strongly believe that the President of the United States is entitled to some deference in his choice of nominees as long as they are qualified. I am now satisfied that the President has made every effort to install a qualified and even-handed decisionmaking body at the Board.

In this regard, I urge my colleagues to confirm Professor Gould, Mr. Cohen, Ms. Browning, and Mr. Feinstein to serve on the NLRB in a bipartisan manner.

I yield the floor.

Ms. MOSELEY-BRAUN. Mr. President, I rise today to express my strong support for the nomination of William B. Gould IV to be the Chairman of the National Labor Relations Board. My reasons for supporting this nomination are simple and straightforward. William Gould is a nominee of exceptional ability who will bring to the NLRB not just the thoughtness and intelligent that come from spending more than 20 years as a law professor, but also the practical experience of having served as an attorney and arbitrator. His nomination is an example of President Clinton's continued commitment to excellence in his appointments.

I would like a brief moment to enumerate just a few of the qualifications that distinguish this nominee. Professor Gould comes before the Senate with the unique experience of having represented, at one time or another, all perspectives that appear before the NLRB. Professor Gould began his career in 1961 as an attorney for the United Auto Workers. He left that job in 1962 to serve for 3 years as an attorney for the NLRB. Following his tenure with the NLRB, Professor Gould represented management for 3 years at a distinguished law firm in New York City. Never before has a nominee for the NLRB possessed such a breadth of experience in the labor field, experience that will serve him well during his tenure.

Of course, Professor Gould's career didn't end in the 1960's, a Member of the prestigious National Academy of arbitrators since 1970, Professor Gould has arbitrated more than 200 labor disputes, including the 1992 salary disputes in major league baseball. During that time, he has earned the respect of labor and management alike for his sound judicial temperament.

Finally, William Gould has served as a professor at one of the Nation's most prestigious law schools, Stanford Law School, since 1972. He has taught labor law to hundreds of students while writing six books and more than 60 scholarly articles in the field. His work establishes him as a leading expert on a wide variety of labor issues, including the National Labor Relations Act and NLRB practice and procedure.

However, despite this distinguished record, some opponents have tried to paint Mr. Gould as a radical nominee who, once in office, will seek to undo the very foundations of our Nation's labor laws. The fact of the matter is that nothing could be further from the truth. Has Mr. Gould, in the past, suggested possible legislative changes in current labor relations law? Of course he has. As a professor at Stanford University and a noted labor law scholar, that was his job. As stated by former Republican NLRB member John Raudabaugh—who, I might add, was a management attorney and Bush appointee—Professor Gould's writings indicate that he "was simply doing what academics do best—writing and theorizing about structural changes that might improve the state of labor relations.

But the mere fact that Professor Gould has, while serving as professor, suggested changes in current labor law does not mean that he would use his position on the NLRB to make such changes. In fact, Mr. President, the record clearly demonstrates that the opposite is true.

While appearing before the Senate Labor Committee, Mr. Gould stated in response to specific questions that, if confirmed, he would concern himself "Solely with the interpretation of the law as it is presently written." He went on to state that "Both as an arbitrator and as chairman of the board, my role is to decide cases based upon the facts and relevant law. In neither capacity is the fashioning of legislation part of the job description. That is the appropriate role for Congress." Clearly, these are not the words of a wild-eyed radical just waiting to get his hands on the Nation's labor laws.

But of course, Mr. President, you need not take my word for it. You can look to the statements that have poured in to the Senate Labor Committee from unions and management alike in support of Professor Gould's nomination. I would like to take a moment to read just a sampling of these statements of support.

According to the current president of the National Academy of Arbitrators, Professor Gould's record as an arbitrator demonstrates that he "Possess[es] a judicial temperament that has earned him the acceptance of both the labor and management communities." More than 75 labor relations academics have supported his nomination, calling him an "Outstanding leader in labor relations * * * uniquely qualified for this critical position."

A management attorney from Cleveland, OH, states that Professor Gould will "Enforce the National Labor Relations Act as it is written and leave amending of the statute * * * to congress * * *"

Another management attorney from San Francisco, CA, states Professor Gould is "Especially attractive to a management lawyer because he is firmly in the middle ground between labor and management * * * his reputation for ability, integrity, and fairness is beyond question."

Mr. President, I could continue ad nauseam with examples of such statements because, as I stated, the Labor Committee has received an outpouring of support for this nomination. However, in the interest of time, I will ask that the lengthy list of individuals and organizations who support this nomination be entered into the RECORD following my remarks.

In conclusion, Mr. President, I want to state for the record who Professor Gould is. Despite the efforts of some

opponents to paint him as such, Professor Gould is not the ardent advocate of radical labor law reform who is simply waiting for the opportunity to dismantle the NLRB. Rather, he is a prominent arbitrator, a distinguished academic, and an individual of the highest integrity who has stated he will, if confirmed as Chairman of the NLRB, concern himself solely with interpreting the present law. He is an individual who has earned the respect and trust of both management and labor.

And finally, in the words of Tom Campbell, a fellow labor law academic and former Republican Member of Congress, Professor Gould is an individual who is "Superbly qualified * * * has the deepest respect for the rule of law * * * has a brilliant mind * * * [and] will carry out the National Labor Relations Act as it has been interpreted by the courts and as it was enacted by the Congress."

Mr. President, I can think of no individual more qualified to serve as Chair of the NLRB than the individual who has been nominated by the President, Prof. William Gould. I am proud to speak in support of his nomination, and I urge that he be swiftly confirmed.

There being no objection, the list of supporters previously referred to was ordered to be printed in the RECORD, as follows:

SUPPORTERS OF PROF. WILLIAM GOULD

ACADEMIA

Robert N. Covington, Professor of Law, Vanderbilt University, Nashville, TN. Dated August 5, 1993.

Charles B.Craver, Merrifield Research Professor, The George Washington University, Washington, D.C. Dated September 2, 1993.

Jack H. Friedenthal, Dean, The George Washington University, The National Law Center, Washington, D.C. Dated September 9, 1993.

Alvin L. Goldman, Salmon Professor of Law, University of Kentucky, Lexington, KT. Dated August 23, 1993.

Herman M. Levy, Professor of Law, Santa Clara University, Santa Clara, CA. Dated August 25, 1993. (Letter signed with 75 other supporters): Dean Roger Ian Abrams, Rutgers Law School; Peter L. Adomeit, Western New England College, School of Law; Reginald H. Alleyne, U.C.L.A. School of Law; Florian Bartosic, University of California, Davis, School of Law; Robert Belton, Vanderbilt University, School of Law; Herbert N. Bernhardt, University of Baltimore, School of Law; Merton C. Bernstein, Washington University, School of Law; and Ronald C. Brown, University of Hawaii.

Norman L. Cantor, Rutgers Law School; Robert N. Covington Vanderbilt University, School of Law; Charles B. Craver, George Washington University, National Law Center; Kenneth G. Dau-Schmidt, Indiana University, School of Law, Bloomington; William F. Dolson, University of Louisville, School of Law; R. Wayne Estes, Pepperdine University, School of Law; Samuel Estreicher, New York University, School of Law; David E. Feller, University of California, Berkeley, School of Law; and Barbara J. Fick, Notre Dame Law School.

Joel William Friedman, Tulane University, School of Law; Jennifer Friesen, Loyola Law School; Julius G. Getman, University of Texas, School of Law; Raymond Goetz, University of Kansas, School of Law; Dean Michael J. Goldberg, Widener University, School of Law; Stephen B. Goldberg, Northwestern University, School of Law; Richard A. Gonzales, University of California, Hastings, College of Law; Dean Robert A. Gorman, University of Pennsylvania, Law School; and Joseph Grodin, University of California, Hastings, College of Law.

Michael Harper, Boston University, School of Law; Roger Hartley, Catholic University, School of Law; Dean Timothy J. Heinsz, University of Missouri, School of Law; Stanley D. Henderson, University of Virginia; James E. Jones, Jr., University of Wisconsin, Law School; Leo Kanowitz, University of California, Hastings, College of Law; Thomas C. Kohler, Boston College, Law School; Robert F. Koretz, Syracruse University, College of Law; and Douglas Leslie, University of Virginia, School of Law.

Lance M. Liebman, Columbia University, School of Law; Robert F. Koretz, Syracuse University, College of Law; J. Keith Mann, Professor of Law Emeritus, Stanford University, School of Law; Stephen A. Mazurak, University of Detroit, Mercy School of Law; John P. McCrory, Vermont Law School; William F. McHugh, Florida State University, College of Law; Robert G. Meiners, California Western, School of Law; Leroy S. Merrifield, George Washington University, National Law Center; and Gary Minda, Brooklyn Law School.

Charles J. Morris, Professor Emeritus, Southern Methodist University; William P. Murphy, University of North Carolina, School of Law; Walter E. Oberer, University of Utah, College of Law; Quentin O. Ogren, Loyola Law School; Cornelius J. Peck, University of Washington, School of Law; Daniel H. Pollitt, University of North Carolina, School of Law; David Rabban, University of Texas, School of Law; John E. Sanchez, Nova University, Shepard Broad Law Center; and Eric J. Schmertz, Hofstra University, School of Law.

Don W. Sears, University of Colorado, School of Law; Eileen Silverstein, University of Connecticut, School of Law; Clyde W. Summers, University of Pennsylvania, Law School; Donald T. Weckstein, University of San Diego, School of Law; Steve L. Willborn, University of Nebraska, College of Law; Calvin William Sharpe, Case Western Reserve University, Law School; William H. Simon, Stanford Law School; and Madelyn C. Squire, Howard University, School of Law.

Theodore, J. St. Antoine, University of Michigan, Law School; Katherine Van Wezel Stone, State University of New York at Buffalo; W. Gray Vause, Stetson University, College of Law; Lea Vander Velde, University of Iowa, College of Law; Paul Weiler, Harvard University, Law School; June M. Weisberger, University of Wisconsin, Law School; Marley Weiss, University of Maryland, School of Law; Dean Harry H. Wellington, New York Law School; and Martha S. West, University of California, Davis, School of Law.

Willard Wirtz, University of San Diego, School of Law; Donald H. Wollect, McGeorge School of Law, University of the Pacific; Stephen G. Wood, Brigham Young University, Law School; Jayne Zanglein, Texas Technology University, School of Law; and Michael J. Zimmer, Seton Hall University, School of Law.

Jean T. McKelvey, Professor and Coordinator of Off-Campus Graduate Credit Courses, Cornell University-NY State School of Industrial and Labor Relations, New York, NY. Dated September 8, 1993.

ARBITRATORS

Board of Arbitration, U.S. Steel Corporation and United Steelworkers of America, Pittsburgh, PA. Alfred C. Dybeck, Chairman. Dated September 10, 1993.

Kagel and Kagel, San Francisco, CA. John Kagel, Neutral Arbitrator. Dated September 13, 1993.

National Academy of Arbitrators Ann Arbor, MI, Dallas L. Jones, President, Dated September 14, 1993.

Frances Bairstow, Arbitrator, Clearwater, FL, Dated August 15, 1993.

Richard Mittenthal, Labor-Management Arbitrator, Bingham Farms, MI, Dated August 3, 1993.

Riley and Roumell, Detroit, MI, George T. Roumell, Jr., Labor Arbitrator, Dated September 24, 1993.

Eva Robins, Arbitrator, Attorney at Law, New York, NY, Dated September 2, 1993.

Arthur Stark Arbitration, New York, NY, Arthur Stark, Member and Former President of the National Academy of Arbitrators (NAA), Dated August 2, 1993.

CURRENT AND FORMER MEMBERS OF CONGRESS

Tom Campbell, Professor of Law, Stanford Law School, CA, (Former Representative in California's 12th Congressional District, 1989–1993), Dated September 15, 1993.

Representative William L. Clay, Michigan's 1st Congressional District, Dated September 7, 1993.

JUDGES

U.S. Court of Appeals, Sixth Circuit, Kentucky, Tennessee, Ohio, and Michigan, Judge Damon J. Keith, Dated September 21, 1993.

U.S. District Court, Eastern District of Michigan, Ann Arbor, MI, Judge Charles W. Joiner, District Judge, Dated September 9, 1993.

U.S. District Court, Southern District of New York, New York, NY, Judge Morris E. Lasker, Dated September 1, 1993.

NATIONAL BAR ASSOCIATION, INC., WASHINGTON, DC

Paulette Brown, President, Dated August 24, 1993.

MANAGEMENT REPRESENTATIVES

Elliot S. Azoff, Attorney; Baker & Hostetler, Cleveland, OH, Dated September 23, 1993.

Arthur P. Menard, Attorney; Cuddy, Lynch & Bixby, Boston, MA, Dated September 8, 1993.

Stanley E. Tobin, Attorney; Hill Farrer & Burrill, Los Angeles, CA, Dated September 10, 1993.

Basil A. Paterson, Attorney; Meyer, Suozzi, English & Klein, P.C., Mineola, NY, Dated September 23, 1993.

Frederick A. Morgan, Partner in the Labor Department; Frederick A. Morgan, San Francisco, CA, Dated September 14, 1993.

William J. Emanuel, Attorney; Morgon, Lewis & Bockius, Los Angeles, CA, Dated September 13, 1993.

Arthur B. Smith, Jr., Attorney; Murphy, Smith & Polk, Chicago, IL, Dated September 14, 1993.

Robert McAlpine, Director Policy & Government Relations; National Urban League, Inc., Washington, D.C., Dated September 22, 1993.

Stuart H. Bompey, Attorney; Orrick Herrington & Sutcliffe, New York, NY. Dated September 14, 1993.

Martin J. Oppenheimer, Chairman of the Labor and Employment Department; Proskauer Rose Goetz and Mendelsohn, New York, NY. Dated September 8, 1993.

Saul G. Kramer, Co-chairperson of the Labor and Employment Department;

Kroskauer Rose Goetz & Mendelsohn, New York, NY. Dated September 14, 1993.

Edward Silver, Member of the Firm; Proskauer Rose Goetz & Mendelsohn, New York, NY. Dated September 9, 1993.

R. Lawrence Ashe, Jr., Attorney; R. Lawrence, Jr., Atlanta, GA. Dated September 13, 1993.

Morton H. Orenstein, Attorney; Schachter, Kristoff, Orenstein & Berkowitz, San Francisco, CA. Dated September 2, 1993.

Richard Martin Lyon, Attorney; Seyfarth, Shaw, Fairweather & Geraldson, Chicago, IL. Dated September 9, 1993.

Dr. Edward J. Miller, Senior Vice President; Tri Valley Growers, Modesto, CA. Dated September 7, 1993.

Neal Sullins, Senior Attorney; Weyerhaeuser, Takoma, WA. Dated September 13, 1993.

Arnold E. Perl, Management Labor Attorney; Young & Perl, P.C., Memphis, TN. Dated September 13, 1993.

PROFESSIONAL SPORTS REPRESENTATIVES

Boston Red Sox, Boston, MA, James "Lou" Gorman, Senior Vice President General Manager. Dated August 20, 1993.

Golden State Warriors, Oakland, CA, Al Attles, Vice President and Assistant General Manager. Dated September 7, 1993.

Major League Baseball Player Relations Committee, New York, NY. Louis Melendez, Associate Counsel. Dated August 23, 1993.

The Oakland Athletics Baseball Company, Oakland, CA, Richard L. Alderson, President and General Manager. Dated September 10, 1993.

San Francisco 49ers, San Francisco, CA, Carmen A. Policy, President. Dated September 1, 1993.

Seattle Mariners, Seattle, WA, Charles G. Armstrong, President. Dated August 24, 1993.

UNIONS

Council of GSA Locals, Council 236, American Federation of Government Employees, Aubum, WA, Bruce G. Williams, Executive Vice President, Council #236. Dated August 18, 1993.

United Food & Commercial Workers International Union, AFL-CIO & CLC (UFCW), Washington, D.C., William H. Wynn, International President. Dated July 2, 1993.

Gwend Johnson, Member of Communications Workers of America and the Coalition of Black Trade Unionists, Washington, D.C. Dated September 24, 1993.

ADDITIONAL SUPPORTERS OF PROF. WILLIAM GOULD.

ACADEMIA

R. Wayne Estes, Professor of Law, Pepperdine University, Malibu, CA, Dated September 21, 1993.

Jay S. Siegel, Harvard University Center for Business and Government, Boston, MA, Dated September 22, 1993.

ARBITRATORS

Anthony V. Sinicropi, LaQuinta, CA, Dated October 1, 1993.

ATTORNEYS

David A. Cathcart, Los Angeles, CA, Dated October 15, 1993.

CIVIL RIGHTS ORGANIZATIONS—JOINT LETTER OF SEPTEMBER 30, 1993.

National Association for the Advancement of Colored People; National Association for the Advancement of Colored People Legal Defense and Educational Fund, Inc.; National Council of La Raza; National Urban League; and Women's Legal Defense Fund.

MANAGEMENT REPRESENTATIVES

Lloyd C. Loomis, Los Angeles CA, Dated September 27, 1993.

Maureen E. McClain; Kauff, McClain & McGuire, San Fransisco, Dated September 10, 1993.

Patrick N. McTeague; McTeague, Higbee, Libner, MacAdam, Case, & Watson, Topsham, ME, Dated October 1, 1993.

George E. Preonas; Seyfarth, Shaw, Fairweather & Geraldson, Los Angeles, CA, Dated September 22, 1993.

UNIONS

AFSCME Council 31, Chicago, IL, Rosetta Daylie, Associate Director, Dated October 7, 1993.

AFSCME/OHIO, Worthington, OH, Jacqueline L. McClellan, IUR. Dated October 1, 1993.

Amalgamated Service and Allied Industries, Washington, D.C., Clayola Brown Manager/Secretary-Treasurer. Dated September 27, 1993.

American Federation of State, County, and Municipal Employees. AFL-CIO, Indianapolis, IN, Stephan Fantauzzo, Executive Director. Dated September 28, 1993.

Coalition of Black Trade Unionists, Baltimore Chapter, Baltimore, MD, Mary Jones, Chairperson. Dated September 30, 1993.

Coalition of Black Trade Unionists Central Alabama Chapter, Birmingham, AL, Frank Paige, Chairperson. Dated October 4, 1993.

Coalition of Black Trade Unionists, Buffalo Chapter, Buffalo, NY, Robert Massey, Chairperson, Dianne Flakes, Vice Chair, Ron Wofford, Communications Chair. Dated October 8, 1993.

Coalition of Black Trade Unionists, Columbus Chapter, Columbus, OH, Danny N. Martin and Marlene Hill-Powell. Dated October 1, 1993.

Coalition of Black Trade Unionists, Joliet Chapter, Lockport, IL, Eveleyna U. Washington, President. Dated October 11, 1993.

Coalition of Black Trade Unionists, Midwest Region 6, IN, IL, MN, WI, Cordelia Lewis, Representative. Dated September 29, 1993.

Coalition of Black Trade Unionists, Toledo Chapter, Toledo, OH, Anita R. Barton, Chapter Chairperson. Dated October 7, 1993.

Coalition of Black Trade Unionists, Washington, DC, William H. Simons, Treasurer. Dated September 27, 1993.

DC 1707, New York, NY, Bettye W. Roberts, President. Dated October 1, 1993.

Local 743, Chicago IL, Robert T. Simpson, Jr., President. Dated October 6, 1993.

United Food and Commercial Workers, New York, NY, Robert H. Wilson, President. Dated September 27, 1993.

UFCW, Washington, D.C, William H. Wynn, International President. Dated October 18, 1993.

POLITICAL CAUCUSES

The National Black Caucus of State Legislators, Washington, D.C., Senator Regis F. Groff of Colorado, President. Dated September 24, 1993.

National Black Chamber of Commerce, Inc., Indianapolis, IN, Harry C. Alford, Chairman & CEO. Dated September 27, 1993.

PROFESSIONAL SPORTS REPRESENTATIVES

Milwaukee Brewers Baseball Club, Milwaukee, WI, Allan H. Selig, Chairman-CEO. Dated September 28, 1993.

Mr. PELL. Mr. President, I am very pleased President Clinton chose to nominate someone of Mr. Gould's stature and experience to the post of Chairman of the National Labor Relations Board. If I recall, it has been quite some time since the NLRB has been led by someone with his balanced experience. I am sure this past experience is an indication of the openmindedness he will bring to his new post.

Over the years, Mr. Gould has been involved in all facets of labor relations. After over a decade of what some might call business-oriented control of the NLRB, it is refreshing to have a nominee to this post with experience in both labor and management.

I would also note that Bill Gould began his distinguished career as an undergraduate at the University of Rhode Island.

While I received numerous letters supporting Bill Gould's nomination, many quite enthusiastic in fact, one letter in particular sticks out in my mind. Along with his many professional qualifications, Lou Gorman, general manager of the Boston Red Sox, felt compelled to note Mr. Gould's longtime devotion to the Red Sox. While not directly connected to the position of Chair of the NLRB, being a Red Sox fan for 47 years certainly indicates a sense of diligence and dedication, two attributes he may find useful in Federal service.

Mrs. BOXER. Mr. President, I would like to express my unqualified support for the nomination of William Gould IV to chair the National Labor Relations Board.

I am excited at the intelligence and sense of fairness that he will bring to the National Labor Relations Board, which needs new leadership to guide its mission in resolving labor-management conflict and to do its part to promote the economic well-being of all Americans.

You will hear a lot about Mr. Gould and his views—he is a prolific author of many scholarly and popular press articles—but the one theme that stands out is his fundamental belief in the strengths, for both management and labor, of democracy in the workplace.

He has had a career that has provided him varied vantage points from which to view the development of labor-management relations since his graduation from Cornell Law School and study at the London School of Economics in the early 1960's.

He worked as assistant general counsel for the United Auto Workers, served as a staff attorney for the NLRB, and represented management at a private law firm in New York.

He has served as a distinguished professor of law at Stanford University since 1972.

A member of the National Academy of Arbitrators, Mr. Gould has presided over 200 arbitration cases in nearly a quarter of a century. He was first admitted to the academy at the age of 33, one of the youngest members ever to join. That broad experience has taught him how to find the delicate balance between competing interests. He has helped to settle more than 200 labor disputes, across a broad array of occupations.

He has demonstrated a fair hand. In fact, as an arbitrator, he has ruled in favor of employers in 59 percent of the cases. He realizes the critical role labor-management cooperation will play as our industries face the restructuring needed to flourish in the international economy.

He supports easing restrictions preventing companies from forming more labor-management committees to work out their differences before they lead to strikes and in order to promote workplace efficiencies.

He knows, as a baseball fan and as an arbitrator in the 1992 salary disputes in major league baseball, that management cannot hit a home run without players willing to run the bases.

Mr. Gould has studied all aspects of our labor laws and their effects on this Nation. Within this single nomination, you have combined the openmindedness of the scholar and the practical experience of the negotiator.

I am also impressed that he understands the role of the Chairman of the National Labor Relations Board. He knows this job is not to set policy but to follow the law as passed by this Congress.

As he said at his confirmation hearing: as Chairman,

> My charge is to interpret existing law as it is written * * * my role is to decide cases based upon the facts and relevant law. In neither capacity is the fashioning of legislation part of the job description. That is an appropriate role for Congress.

His priorities as Chairman of the NLRB are: One, to establish a more efficient administrative agency where it does not take an average of 300 days from filing of a charge of unfair labor practice to a determination by the Board. We cannot afford administrative logjams contributing to already difficult conflict resolution.

Two, as an avid proponent of informal dispute resolution, Bill Gould will extend this remedy to the time before the complaint of unfair labor practice is issued by the Board's general counsel.

His third priority, as he said at his confirmation hearing, is above all others, and that is—

> * * * to eliminate or substantially diminish the polarization between the parties and to make the Board into an agency which as the full confidence or both labor and management, the Federal judiciary, as well as the general public.

Mr. President, I can think of no more appropriate job description for the Chairman of the National Labor Relations Board.

I think the comments of a bay area lawyer quoted in a story on Mr. Gould in the San Francisco Chronicle summed it up the best when he said:

> What you're going to see is somebody whose fundamental interest is protecting employee rights, but that's counterbalanced by the reality that if you don't have employers you don't have employees.

I urge my colleague to confirm William Gould to serve as Chairman of the National Labor Relations Board.

Mr. KENNEDY. I expect that we will move toward a vote in the very near future. I will just make a final few comments and then suggest the absence of a quorum so that the leader can move us into a vote situation.

Mr. President, I would like to comment very briefly on a couple of matters that have been raised by some in the Chamber this afternoon as issues which should give some pause to support this nomination.

My good friend, Senator NICKLES, was pointing out that Mr. Gould supported legislation to require joint safety and health committees to develop cooperation between employers and employees to deal with the issue of health and safety in the workplace.

It is true that we have legislation before our committee to require this. But this is a process now which is already followed in a number of States, including the State of Washington and the State of Oregon, and the business communities in those States have been wholly enthusiastic in support of that concept.

What we have seen in those States has been a significant reduction in workmen's compensation and lost time from workplace injury and illness, increased safety, and less regulation imposed on many of those industries. So this is something that we will have an opportunity to debate, hopefully, in this Congress.

Second, Mr. President, Joe Dear, the Assistant Secretary of Labor who is running the OSHA program at the Labor Department and who was formerly Commissioner of Labor in the State of Washington, testified before our committee that rather than being an instrument to promote unionism, requiring safety and health committees had a contrary effect; that one of the elements that causes employees to support creating a union is an unsafe workplace, and that where there is a safety and health committee that employees can use to get a safe workplace, there is less pressure for them to move towards unionization.

Now, the fact that Mr. Gould supports safety and health committees does not seem to me a very radical idea, and it is again an idea that the administration supports, and, hopefully, we will have bipartisan support when we are able to consider the legislation in the Chamber.

Third, a question was raised about whether Professor Gould would change the law with regard to what is or is not construed a mandatory subject of bargaining. That question was put to Mr. Gould specifically at his confirmation hearing before the Labor and Human Resources Committee: "Would you place any limit on the subject matter of bargaining under your view of labor law?"

Mr. Gould's answer, which is part of the hearing record, at page 37 was:

> The elimination of the distinction between mandatory and permissive subjects for bargaining is not a policy that is open to the Board, and any legislative modifications of the current law would come to the Board in the context of concrete legislation which would reflect legislatively determined standards in this area.

He recognized quite completely that if there was going to be some changes in that aspect of the law, it has to be done legislatively and not by the NLRB.

Finally, Mr. President, there has been at least some attempt—hopefully not persuasively—to characterize Mr. Gould as being some kind of "radical" in terms of his understanding of labor law issues.

I have a copy of a law review article by Prof. Charles Fried, of the Harvard Law School, entitled, "Individual and Collective Rights in Work Relations. Reflections on the Current State of Labor Law and Its Prospects."

As the Members here would know, Professor Fried was Solicitor General in the Reagan administration and has what I think could fairly be described as quite conservative views in the labor law area. In fact, in this article Professor Fried is extremely critical of what he describes as certain "radical left legal scholars" and their views on U.S. labor law. It is interesting to note that Professor Fried has a footnote, footnote 17, in which he cites a particular article written by Professor Gould where he goes out of his way to make clear that Professor Gould is not one of the so-called radical scholars he is criticizing.

For a discussion of such and such an issue, he writes in the footnote, "see generally Gould." And then he adds in parentheses, "Not a radical legal scholar!" And he actually has an exclamation point here for emphasis.

So here we have a distinguished scholar with strong conservative, Republican credentials who has actually studied and is familiar with Gould's academic writing emphatically rejecting the notion that Bill Gould is somehow out of the main stream. I think this demonstrates that the exaggerated statements that have been made to the effect that there is something extreme or outside the mainstream about Professor Gould's views really do not hold water.

Mr. President, I thank the Members for their attention.

Let me finally just point out that when these nominees are confirmed, there will be two Bush appointees still on the Board and then there will be three of President Clinton's three nominees, who include Charles Cohen, who is a Republican. I think the Board will be ably and capably led by Professor Gould, who has demonstrated extraordinary integrity and professional competency, and a fundamental com-

mitment to the rule of law over a long and distinguished career, and I very much hope that the Senate will approve his nomination.

Mr. President, I yield back the remainder of my time.

Mrs. KASSEBAUM. I yield back the remainder of my time.

The PRESIDING OFFICER. Under the previous order, the question is, shall the Senate advise and consent to the nomination of William B. Gould IV, of California, to be a member of the National Labor Relations Board? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio [Mr. GLENN] and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

I also announce that the Senator from Maryland [Ms. MIKULSKI] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER] is necessarily absent.

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

The result was announced—yeas 58, nays 38, as follows:

[Rollcall Vote No. 49 Ex.]

YEAS—58

Akaka	Feinstein	Mitchell
Baucus	Ford	Moseley-Braun
Biden	Graham	Moynihan
Bingaman	Harkin	Murray
Boren	Hatfield	Nunn
Boxer	Heflin	Packwood
Bradley	Hollings	Pell
Breaux	Inouye	Reid
Bryan	Jeffords	Riegle
Bumpers	Johnston	Robb
Byrd	Kennedy	Rockefeller
Campbell	Kerrey	Sarbanes
Chafee	Kerry	Sasser
Conrad	Kohl	Shelby
Daschle	Lautenberg	Simon
DeConcini	Leahy	Specter
Dodd	Levin	Wellstone
Dorgan	Lieberman	Wofford
Exon	Mathews	
Feingold	Metzenbaum	

NAYS—38

Bennett	Faircloth	McCain
Bond	Gorton	McConnell
Brown	Gramm	Murkowski
Burns	Grassley	Nickles
Coats	Gregg	Pressler
Cochran	Hatch	Roth
Cohen	Helms	Simpson
Coverdell	Hutchison	Smith
Craig	Kassebaum	Stevens
D'Amato	Kempthorne	Thurmond
Danforth	Lott	Wallop
Dole	Lugar	Warner
Domenici	Mack	

NOT VOTING—4

Durenberger	Mikulski
Glenn	Pryor

So, the nomination was confirmed.

Mr. KENNEDY. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the following nominations which the clerk will report.

NATIONAL LABOR RELATIONS BOARD

The legislative clerk read the nomination of Margaret A. Browning, of Pennsylvania, to be a member; the nomination of Frederick L. Feinstein, of Maryland, to be general counsel; and the nomination of Charles I. Cohen, of Maryland, to be a member; and the nomination of William B. Gould, IV, of California, to be a member.

The PRESIDING OFFICER. Under the previous order, the nominees are confirmed en bloc, the motions to reconsider are laid upon the table en bloc, and the President will be immediately notified of the Senate's action.

The nominations considered and confirmed en bloc are as follows:

NATIONAL LABOR RELATIONS BOARD

Margaret A. Browning, of Pennsylvania, to be a member of the National Labor Relations Board for the remainder of the term expiring December 16, 1997;

Frederick L. Feinstein, of Maryland, to be general counsel of the National Labor Relations Board for a term of 4 years; and

Charles I. Cohen, of Maryland, to be a member of the National Labor Relations Board for the term of 5 years expiring August 27, 1996; and William B. Gould, IV, of California, to be a Member of the National Labor Relations Board for the remainder of the term expiring August 27, 1993.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. BYRD. I thank the Chair.

Mr. President, may I ask the distinguished Senator from Virginia how lengthy a statement he wishes to make.

Mr. WARNER. Mr. President, I inform my good friend, the President pro tempore, I would like to introduce two bills, taking about 6 minutes for each, but I will adjust this to suit the accommodation of the Senate and the Senator.

Mr. BYRD. Mr. President, I thank the distinguished Senator. I intend to speak on the immigration bill which was introduced by Senator SIMPSON earlier today. I am a cosponsor of this legislation. I would like to make a statement.

I do not want to discommode the distinguished Senator from Virginia by keeping him waiting. If he could limit his statement to——

Mr. WARNER. Mr. President, what I would like to do is return at a more appropriate time and allow the senior Senator from West Virginia to proceed, and then I can return a little later today. There is no great urgency.

Mr. BYRD. I thank the distinguished Senator. I would be happy to yield for 5 or 6 or 7 minutes. I do need to proceed as soon as I can but I am happy to yield.

Mr. WARNER. If the Senator will yield me 5 minutes I will introduce the bills.

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Virginia [Mr. WARNER] for no longer than 6 minutes—there is no controlled time—but that I may do that without losing my right to the floor.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Virginia is recognized.

Mr. WARNER. I thank the Chair.

(The remarks of Mr. WARNER pertaining to the introduction of S. 1886 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. I thank the Chair.

(The remarks of Mr. WARNER pertaining to the introduction of S. 1887 located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. WARNER. I thank the Chair. I thank my distinguished colleague from West Virginia, and I yield the floor.

Mr. BYRD. I thank my friend from Virginia, Mr. WARNER.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. I thank the Chair.

(The remarks of Mr. BYRD pertaining to the introduction of S. 1884 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SIMPSON. Mr. President, I was here especially to listen to the remarks of my senior colleague from West Virginia because he has joined me throughout my legislative activities with regard to immigration reform.

Senator BYRD, some may not recall, was on the Judiciary Committee for many years, and was on the committee when I came to join the Judiciary Committee of the Senate in 1979. He extended to me every courtesy, and was a great source of learning for a new, freshman Senator.

Then he watched as I was appointed by President Carter to the Select Commission on Immigration and Refugee Policy, and would say to me often: How are you coming with your work? Do you have a good staff? Will you be presenting some legislation to us?

And we did. The Commission responded with the fabric of two bills; one to control illegal immigration and one to control legal immigration. I think probably the Senator from West

Virginia would have a better institutional knowledge, but I do not know many commissions appointed by the President that actually can say that they did what they were supposed to do in the form of legislation. They often compile their reports and their staff volumes, and then they gather dust somewhere. But we went forward.

Father Ted Hesburgh of Notre Dame was our President. We began our work, and throughout all those years there was always one vital ally, through the best and the worst times of immigration reform, legal and illegal immigration reform. There was an initial question that Senator BYRD had—he expressed it to me with regard to his State—that had to do with the H-2 worker programs with regard to agriculture. We resolved those not just for that State but with my own State and other States, and then we moved forward with the reform.

I can tell you, in my years of conference committees and activities of being in the majority and the minority, especially in conference committees in the early times when Senator BYRD was a member of the committee, I always felt a great lightness of step when I would have his proxy in my pocket on immigration reform. And it was always lodged tightly there as he would send me off.

Senator BYRD has been a real warrior in the fray, an extraordinary ally, a very constructive observer, a most adroit advocate, and a loyal friend. And now has chosen to serve me once again and assist me—it is more assistance in every way—as an original cosponsor of a sweeping piece of legislation which he has just well described. But it deals with the entire spectrum of asylum reform, deportation proceedings reform, public assistance reform, some type of, obviously, better verification system.

I showed you graphically how anyone can obtain those documents, this morning. I will not go into that again. But I thank the Senator from West Virginia for his extraordinary consistency and support in a very difficult issue which, if you are not very cautious, can often find its way off in the channels of emotion, guilt, fear, and racism. He has never allowed that to happen. I have not allowed it to happen.

Now we go forward with a consensus in a good, strong, bipartisan bill. That is the way I have always dealt with this issue. I think it portends well for the Senate to have a very good bill coming out of here within the next few months, in time for the House—the House will be dealing with theirs—in time to go to conference.

There are some fine people on both sides of the aisle in the House and the Senate that are ready to go forward with sensible, realistic, nonnativist immigration reform. I thank the Senator from West Virginia. He has been a superb friend throughout.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. BYRD. 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. BYRD. Mr. President, I have been asked by the distinguished majority leader to ask unanimous consent that the Senate now proceed with a period for the transaction of morning business, and that Senators may be permitted to speak therein for not to exceed 10 minutes each.

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

ON THE SHOOTING OF FOUR STUDENTS IN NEW YORK CITY

Mr. MOYNIHAN. Mr. President, I rise to draw the attention of the Senate to a terrible crime committed yesterday in New York City. At 10:54 a.m. yesterday, on an on-ramp to the Brooklyn Bridge, a lone gunman driving a blue Chevrolet opened fire on a van carrying 15 to 16 Hasidic students. The students were returning to Brooklyn after visiting the spiritual leader of the Lubavitcher sect, Menachem Mendel Schneerson, who was recovering from minor surgery at Manhattan Eye, Ear, and Throat Hospital.

The gunman pursued the van onto the bridge, reportedly firing at least 11 shots from one or more semiautomatic weapons.

Four young men were injured; two critically. A 15-year-old, Aaron Halberstam, the personal student of the Lubavitcher Rebbe, has been declared "clinically brain dead" by doctors at St. Vincent's Hospital in Manhattan, where all four victims have been receiving care.

A second victim, Nachum Sossonkin, 18, was also struck in the head by gunfire, and is given little hope of recovery. The third victim, Levi Wilhem, 18, is in stable condition after undergoing surgery to remove a bullet from his abdomen. The fourth victim, Yaakov Shapiro, also 18, was treated for minor wounds to his hands and released.

According to New York Police Commissioner William Bratton, who spoke at a press conference at 3:45 p.m. this afternoon, a suspect apprehension is, of course, a tribute to the abilities of the New York City Police Department, many of whom worked through the night on the investigation that led to the suspect's arrest.

The suspect, Assad Baz, 28, is a Lebanese National who came to the United States in 1984. His current immigration status is being investigated. He has been charged with 15 counts of attempted murder, 3 counts of assault in the first degree, 1 count of assault in the second degree, and numerous weapons charges.

Police have recovered a Glock 9mm semiautomatic handgun, a Luger semiautomatic submachine pistol, a .380 caliber semiautomatic handgun, and a Street Sweeper, which is a semiautomatic shotgun capable of firing 12 shotgun shells in 3 seconds.

It is not yet known with absolute certainty whether the gunman targeted his victims because they were Jewish. It seems unlikely that they were chosen at random.

Mr. President, this is beyond our worst nightmares. We have come to a point where people are killed not for what they say or do, which is awful enough, but merely for who they are or what they believe. Just 2½ years ago, Yankel Rosenbaum was stabbed to death in Crown Heights because he was Jewish. I said at the time that it was a lynching.

Earlier today, New York Mayor Giuliani called me to discuss the latest developments in the case. An individual committed this crime. One person has been charged thus far, no more than that. What we must condemn is the crime; in no way do we condemn the nationality or religion of the person or persons responsible.

Mayor Giuliani is surely to be commended for his handling of this, his first such incident since taking office in January.

Mr. President, our prayers are with the young men who were shot and with their families. I ask unanimous consent that an article from today's New York Post about young Aaron Halberstam be printed in the RECORD.

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

[From the New York Post, March 2, 1994]

VICTIM WAS REBBE'S CHOSEN ONE

When Aaron Halberstam was 3, the man known by many in Crown Heights as the messiah hoisted him upon his knee.

"Aleph, bet . . .," the holy man began.

It was a simple lesson the Hebrew alphabet—one every yeshiva boy learns as soon as he can walk. But to Ari Halberstam, it was something more.

At the age of 3, he alone was chosen to be the personal student of Rebbe Menachem Schneerson. "He's the only boy the rebbe sat on his leg," a friend told me with admiration.

In Crown Heights, where Lubavitcher boys study from sunup to long past sundown, Ari Halberstam was known to all as someone special.

Last night, the gravely injured boy would need every prayer the community could muster as he fought for his life.

Ari grew up in a family that orbited the inner rung of the rebbe's circle, a boy fiercely devoted to the holy man who gave him language. And so it was fitting yesterday that Ari rose at 5 a.m., to accompany his

mentor to the hospital. That he should be sacrificed as a result of the small act of kindness weighed heavy on the hearts of the boys studying late into the night at yeshiva Ohelei Torah.

"He felt such love for the rebbe," a classmate said. "He felt he must be there with him."

Last night, long after dark, a time when ordinary youngsters have settled down in front of the TV, yeshiva Ohelei Torah was alive with the serious words of study and the rhythmic melody of prayer. Like most young men his age. Ari spent most of his waking hours in this run-down school of chipped paint and ancient wooden desks on Troy Avenue.

There are no fancy computers here, no jazzy texts. Yet the constant flow of eager-faced boys, draped in prayer shawls, talking excitedly, ignites a life into these grim surroundings you don't often see in the most modern of institutions.

As the school hummed with purpose, it was as if the very building awaited Ari's return.

Atop a wooden desk, Ari's textbook sat, open to the page of Talmudic study where he had left off just a day earlier. It is jammed with looseleaf sheats, all covered in the neat, even letters that Ari learned so carefully from the rebbe.

"Because he stole from a high priest, he has to give it back," reads one entry on Talmudic law.

There also are things that the rebbe could not have taught him—the doodles and daydreams of a boy of 16. Ari may be special, but he is a boy.

There is a hand-drawn picture of a youth trying to sneak into class. "You're late," someone yells. There also is a caricature of a bearded, bespectacled man—Ari's teacher? On one entire page, Ari has practiced his signature, the letters getting taller and dreamier with each try.

Another page is halting. "If he is not breathing," Ari wrote, "you take him out because even if there are broken bones it doesn't matter because he will die."

It turns out to be a lesson in first aid. One of the last lessons he has written.

The boys of Ari's class passed around the book last night, as if it offered some connection to the missing boy. They were careful not to disturb the pages, in case the owner should need them.

The students talked of Ari, with respect and with sadness. His father, they told me, was the driver for the rebbe's late wife, a position of great prominence in this community. And when the woman died, it was Ari who was bequeathed her prayer book, a holy artifact in these parts.

But Ari also was an athlete, a scholar and a regular guy. "He didn't boast," said Moishe Levin, 15. "He was not a big showoff."

Moishe was at school last night, instead of the hospital, for one simple reason: He did not wake up early enough to accompany the rebbe to Manhattan. Like virtually every other Jew in Crown Heights, he was convinced the shooting of his friends and classmates was the work of those out to kill Jews in retaliation for events in Israel.

And it could happen again.

"It is very scary," a boy named Yitzhak said. "It could happen anywhere."

So the wave of international terror has been felt in this rundown building on Troy Avenue, where a boy's book sits, open, to the words he learned from a holy man. Yet here, there is no talk or revenge. Just of a boy. A special boy.

I ask Moishe if he wants to fight back. He said no.

"All you can do is pray," he said. "Violence is not the way to go."

MARINE TOYS FOR TOTS

Mr. WARNER. Mr. President, I draw my colleagues' attention to an extremely disturbing article which appeared recently on the front page of the Washington Post. The article, entitled "Marines Toys for Tots Spent Millions on Itself; Donations Used to Run Charity, Not Buy Gifts," reported that the highly respected Toys for Tots Program had collected nearly $10 million in the past 2 years, none of which was used to purchase toys for underprivileged children.

Mr. President, I find that headline somewhat misleading. The story failed to make clear that underprivileged children were not the only victims of this scenario—the U.S. Marine Corps Reserve, long committed to the Toys for Tots Program, also has been damaged. I would like to take this opportunity to set the record straight.

The Marine program is not at fault—the charitable foundation augmenting the program went astray.

The article describes a problem with national charities which I have been trying to correct legislatively, without success, for 2 years. I raise this case as a signal to all of that intent to relentlessly press on until this body joins me in addressing the issue. Unfortunately, this case is another sequel to the tragic problems that hurt the United Way.

Marine reservists lend their name, commitment and untold volunteer hours to this project, collecting toys across the country to distribute to needy children who might otherwise find the holidays a dismal prospect. Like all endeavors in which the corps participates, the Toys for Tots drive gained great success, transformed from a small, local drive into a respected nationwide endeavor. Ironically, success spelled the program's downfall.

The program's rapid growth took it far beyond the management scope of Marine Corps Reserve volunteers. In a single season alone, 7.5 million toys were distributed to 3.5 million needy children. To ensure effective management of this burgeoning success, the Toys for Tots Foundation, a civilian enterprise separate and distinct from Marine Reserve forces or the Marine Corps itself, was created to help hard-working marines collect large sums of money to purchase needed toys. The corps continued to associate its name with the program it had created, believing that the foundation would provide relief from the complex management problems associated with charitable fundraising on such a large level. Marine reservists would then be freed to do what they do best: collecting and distributing toys for deserving youngsters during the holidays.

Unfortunately, that happy ending does not fit this story.

By now, my colleagues will be aware of legislation I have introduced to require heightened disclosure from tax-exempt and charitable organizations. When I initially introduced the measure some year and a half ago, I was responding to a situation I hoped to be fairly isolated: the much ballyhooed high-flying lifestyle of the then-head of the United Way, William Aramony. Regrettably, that situation was not isolated. Abuses and mismanagement of donated funds continue at an alarming rate within some charitable organizations, including the Toys for Tots Foundation. Indeed, the past civilian president of the foundation is being investigated for financial improprieties.

I am aware that many charities are run in an organized manner, with full disclosure and excellent use of charitable contributions. These are obviously not the organizations I am targeting. Further, these well-run organizations should welcome my efforts; heightened disclosure will reassure donors that their contributions are being well-spent, and that will fare well and instill renewed confidence in all charitable organizations.

In light of situations such as these, it is evident that my legislation remedy continues to be both needed and timely. I find it somewhat ironic that, had my measure been enacted shortly after it was first introduced, the recent Toys for Tots incident might have been avoided.

Toys for Tots is a worthwhile effort. Thousands of Marine Corps reservists committed to the program deserve our thanks and commendation. It is unfair and unacceptable for their reputations to have been tarnished by actions for which they bear no fault.

We also owe a debt of gratitude to the even greater numbers of generous Americans who contributed to the Toys for Tots Program.

What will it take to stop this train? How many times must I come to the Senate floor to implore my colleagues to stop looking the other way, to demand accountability from charitable organizations who take money from inherently goodhearted Americans?

Mr. President, this is another in a series of articles that really began with the United Way tragedy where the press have exposed the fact that certain well-recognized, well-accepted, well-funded, well-supported charities have taken these donations and used them in such a manner inconsistent with the objectives publicly stated by the charity. In this instance all of the money basically went to run the charity.

Mr. President, I have introduced in this session of the Congress S. 565, together with the distinguished senior Senator from North Carolina, legislation to begin to require these charities to make greater public disclosure of their internal operations of the dollars raised and how they are used.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 565

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

SECTION 1. IMPROVED DISCLOSURE TO DONORS BY TAX-EXEMPT ORGANIZATIONS.

(A) IN GENERAL.—Section 6033 of the Internal Revenue Code of 1986 (relating to returns by exempt organizations) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) ADDITIONAL REQUIREMENT FOR TAX-EXEMPT ORGANIZATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any organization described in section 501(c)(3) or 501(c)(4) and any separate segregated fund described in section 527(f)(3) maintained by such organization, which is subject to the requirements of subsection (a) shall—

"(A) advise each contributor of the availability of a disclosure statement described in paragraph (3), and

"(B) shall furnish such statement upon written request to—

"(i) such contributor, or

"(ii) any potential contributor,

within 30 days of such request.

"(2) EXCEPTION.—Paragraph (1) shall not apply to—

"(A) any organization described in clause (ii) or (iii) of section 170(b)(1)(A)), or

"(B) any organization the gross receipts of which in each taxable year are normally not more than $100,000.

"(3) DISCLOSURE STATEMENT.—The disclosure statement described in this paragraph is a statement for the most recent taxable year for which a return under subsection (a) has been field, which contains the information described in—

"(A) paragraphs (1), (2), and (3) of subsection (b), and

"(B) paragraphs (6) and (7) of subsection (b), but only with respect to—

"(i) the 5 highest compensated individuals of the organization for such taxable year, and

"(ii) any other individual whose total compensation and other payments from such organization for such taxable year exceeds $100,000.

"(4) PROCESSING FEES.—Any organization furnishing a disclosure statement under this subsection may require that a self-addressed, stamped envelope and a fee not to exceed $2 to cover the costs of copying and mailing such statement be included in the written request for such statement.".

"(b) PENALTY FOR FAILURE TO MEET REQUIREMENTS.—Paragraph (1) of section 6652(c) of the Internal Revenue Code of 1986 (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

"(E) DISCLOSURE STATEMENT.—In the case of a failure to comply with the requirements of section 6033(e)(1) (relating to disclosure statements provided upon request), there shall be paid by the person failing to meet such requirements $50 for each day during which such failure continues.".

"(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1994.

MARINES' TOYS FOR TOTS SPENT MILLIONS ON ITSELF

(By Liz Spayd)

The Marine Toys for Tots Foundation, the chief fund-raising arm for the Marine Reserve's Christmas gift drive, has collected nearly $10 million in the last two years through a direct-mail campaign, but foundation officials acknowledge that none of the money has gone to buy toys for needy children.

The charity also is the target of a federal probe into whether its former president diverted money from the nonprofit organization and engaged in other financial improprieties for his personal benefit, according to foundation officials and others familiar with the investigation.

Marine Reserve officials said they are scrambling to correct the problems, but said they are worried that the foundation's questionable management practices will jeopardize the success of the annual gift drive, which began more than 40 years ago.

While toys donated to individual reserve units across the country are reaching children who need them, most of the money donated through the reserve's three-year-old foundation is not.

Of all the money the foundation raised in its most recent fiscal year—including corporate gifts and those from federal workers through the Combined Federal Campaign—10 percent went to buy toys, foundation officials said. The rest was spent on management, fund-raising expenses and materials used to promote the reserve's toy appeal.

And for the second year in a row, the donations mailed in by more than 200,000 people across the country did not cover the cost of running the foundation's massive direct-mail effort, according to the charity's records.

"This foundation has been an embarrassment," said retired Lt. Gen. Matthew T. Cooper, who took over the nonprofit's reins five months ago. "But we are trying to put the train on the track, working seven days a week to assure the public's money goes where it should."

Foundation officials said the most serious problems stem from their former president and chairman, Jerry L. King, who was dismissed last summer after the Buffalo News reported that King had been convicted of tax evasion and conspiring to deal in counterfeit money.

Cooper said the foundation is cooperating with investigators from the Justice Department and the U.S. attorney's office in Buffalo in their efforts to determine whether King took money from the charity.

Both of those offices said they do not confirm or deny investigations. King, reached at his home outside Buffalo, declined to comment yesterday.

After King left, Cooper said, numerous questions began to arise about how the foundation's records were kept and whether King was funneling money into toy companies in which he had a financial interest.

A newly completed audit by a Bethesda accounting firm, Whelan, Barsky and Associates, said that so many invoices, purchase orders and other records were missing that the auditors could not document whether hundreds of thousands of dollars worth of transactions were authentic.

The financial report also raised questions about whether the foundation paid for goods and services that were not actually received. It questioned the foundation's relationship with the two toy companies in which King had a financial interest.

Foundation officials said they have moved swiftly to put the charity back on track: They installed a new president, expanded the board of directors, instituted tighter financial controls and moved the headquarters from Amherst, N.Y., near Buffalo, to rent-free space at the Marine Base in Quantico, 30 miles south of Washington.

But questions about their operations remain.

In a report issued this week by the Better Business Bureau, the foundation is cited as violating six of the consumer watchdog group's 22 standards for charitable organizations. Among the group's concerns are the amount of money spent on fund-raising and management and the lack of complete financial data on the foundation's operations.

"It is unfortunate that so much of their money is being consumed by fund-raising costs and overhead," said Bennett Weiner, who oversees the bureau's charity division. "I would think that should be a serious concern of contributors."

Cooper, who makes $100,000, and his operations manager, who receives $45,000, are the only employees on the payroll. The biggest expenses, records show, have been printing costs and consulting fees paid to Steve Cram and Associates, a Fairfax company that runs the foundation's direct-mail appeal.

Cooper declined to discuss the terms of that agreement, except to say that it is being reviewed so that the charity can receive more favorable terms.

[From the Washington Post, Feb. 10, 1994]

MARINE CHARITY'S FORMER PRESIDENT IS TARGET OF U.S. PROBE

"My goal, and it is an optimistic one, is to have 75 percent of the money raised in the next mailing go toward program expenses, with most of that going to buy toys," Cooper said.

Part of the problem, according to the foundation, is that it is very expensive to initiate a direct-mail campaign.

Fund-raising specialists agree that prospecting for new donors through the mail can be a money-losing proposition at first. But they also questioned why a charity that had sent more than 14 million pieces of mail wouldn't have generated some money for its cause.

"To have done that much mailing and not have anything to show for it makes me think something is wrong. That's not typical," said Hal Malchow, a direct-mail consultant to several national nonprofit organizations.

Foundation officials also defended the fact that only a small percentage of donations received has gone to buy toys. Part of their organization's purpose, they said, is to educate the public on the needs of poor children and to encourage them to donate toys to individual reserve units.

Even with those expenses, the foundation said it still was able to add 500,000 toys to the 8 million collected by reserve units across the country last Christmas. The money for those toys came from corporate donations and sources other than the direct-mail campaign.

Washington area residents contributed 160,000 of the toys, which the local reserve unit says went directly to needy families in the area.

Sgt. Joseph Steigerwald, who heads the local toy drive, said he has heard only rumor about the problems at the foundation and was never told there was a federal investigation or problems involving its operations.

As is practice, money donated in Washington is sent to the foundation. Steigerwald said that money has been available when he needs to buy toys.

Officials at the Marine Reserve's headquarters in New Orleans said they are concerned about the problems at the foundation and are conducting an annual review of the program to ensure that the toy drive is operating efficiently and is not jeopardized by the foundation's problems.

"We are reviewing the whole program, particularly in light of the foundation and the investigation into it," said Maj. Betsy Sweatt, director of public affairs for the Marine Reserve.

"But Toys for Tots is a good program that has been serving the community for years, and we want to make sure it stays that way," she said.

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

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

TO CONDEMN THE MASSACRE IN HEBRON

Mr. LEVIN. Mr. President, I send a resolution to the desk for myself, Senator BOXER, Senator PELL, and Senator METZENBAUM.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 184) to condemn the massacre in Hebron, and urge all parties in the Middle East peace process to renew energy to achieve a just peace.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. LEVIN. Mr. President, this resolution has now been cleared by all Senators. In my remarks, I will state basically what the resolution states because I think the words here are important to reflect the sentiment, hopefully, of all Senators.

Immediately after Prime Minister Rabin and Chairman Arafat shook hands on the White House lawn last September, extremists on both sides vowed that the declaration of principles that were signed that day would never come to fruition. That is what we say in our first "whereas" clause.

We then point out that since the signing of the declaration of principles in September 1993, many innocent people have been the victims of vicious acts of terrorism, and that the massacre that took place on February 25, 1994, at the Tomb of the Patriarchs in Hebron was an act of murderous terrorism directed at innocent persons at prayer.

We further point out that the purpose of these acts of terrorism, both at Hebron and all of the other acts of terrorism which have taken place, was to derail the Middle East peace talks.

Then we point out that as diplomats have inched their way toward fulfilling each article of the declaration, extremists have just as painstakingly plotted disruption, preyed on innocents and haphazardly killed and mauled innocent people.

Then we say that if the chances for peace in the Middle East are harmed by the act of terror in Hebron or other acts of terrorism, then these acts of terrorism will have achieved their purpose; and that to prevent terrorism from achieving its purpose, all parties must now redouble their efforts to gain success in those peace talks.

The Senate resolution says the following:

We, the Senate, express our condemnation of the massacre perpetrated in Hebron as violative of all standards of civilized human behavior, and violative of the policies of the Government of Israel and every other government that has spoken out against this atrocity.

And we further resolve that the Senate condemns all acts of terror intended to disrupt the peace process or for any other purpose.

We further resolve that the Senate commends the Government of Israel for its strong condemnation of the Hebron killings, for reaching out to the victims' families, and for taking swift and appropriate action to respond to the threat posed by extremists.

We finally resolve that the Senate urges all parties and others involved in the Middle East peace talks to apply renewed energy to achieve the prompt and just conclusion which is the only way—the only way—to obtain long-term security for all people in the area and as the best way in the short term to deny terror any measure of success.

Mr. President, the terrorist act at Hebron, as are all terrorist acts, was an abomination. Such acts violate our very sense of what life should be, and those acts are an affront to life and to hope itself. The President of Israel, Ezer Weizman, insisted that the shooting at Hebron was anti-Jewish and anti-Israel, and it was. It was also antihope, antipeace, anticivilization. It was simply inhuman, and it must not succeed, and other acts of terror must not succeed. In order to deny any success to that act of terror, or to any other acts of terror, now all parties to the Middle East peace talks must apply renewed energy to achieve the prompt and just conclusion, which is, again, the only way we are going to obtain long-term security for people of the region.

Denying terrorism any measure of success is the only way we are going to stamp out terrorism. Terrorism must not and cannot achieve its goal, and to frustrate those acts in the Middle East, the peace talks now must succeed.

So we in this resolution on behalf of the Senate call upon the parties to redouble their efforts to reach a just conclusion to those peace talks. That is the answer to the terrorists who would derail those talks. It is the best answer, the most dramatic answer and, obviously, it is also the best answer for all the peoples of the Middle East.

In closing, Mr. President, I want to thank Senators on both sides of the aisle, who have been involved in the drafting of this resolution. I particularly want to thank Senator BOXER, who really thought of the appropriateness of this resolution, that the Senate speak out on this subject. It has been a real pleasure working with her on this matter.

I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized..

Mrs. BOXER. It truly is an honor to have a chance to work with my friend from Michigan, Senator LEVIN. When we learned of the massacre in Hebron, we talked and shared our grief and our feelings and our concern that this act could in fact derail the peace process, as would all acts of terrorism. We decided it would be a good idea for the Senate to go on record to express its outrage at this particular act of terrorism and to point out that terrorism from every quarter must be condemned and must be stopped.

We knew when we saw that wonderful moment in history at the White House, when we saw Yasser Arafat and Rabin shake hands, we knew that the Middle East peace process would be frought with hope, as well as fear, and that it would be a dangerous time. But we also knew that, in the end, people in the world want peace; people in the world want their leaders to sit in those rooms and work it out.

Yes, there are minorities on all sides, minorities in the Arab community, the Palestinian community and, unfortunately, as we saw in Israel, who would want to derail this process. I think it is important for us to stand up for this peace process and to go on record today very clearly in support of this peace process, and in a fair and just peace for Israel and the Palestinians and the Arab nations. No one wants it more than they do—a fair and just peace. We urge them to not let these acts, these individual acts of terrorism deter them from their goal.

The peace talks are too important, not only to Arabs and Jews and Palestinians, but to every one of us. We all hold our breath, and we really pray that the tragedy in Hebron will galvanize us on all sides to stand up for peace, to pray for peace, and with the passage of this resolution, of which I am so proud to be a cosponsor, to say to the world that the U.S. Senate stands against terrorism from every quarter and for peace for all people of the Middle East.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the resolution?

The question is on agreeing to the resolution.

The resolution (S. Res. 184) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 184

Whereas immediately after Prime Minister Rabin and Chairman Arafat shook hands on the White House lawn last September, extremists on both sides vowed that the Declaration of Principles signed that day would never come to fruition, and

Whereas since the signing of the Declaration of Principles on September 13, 1993, many innocent people have been the victims of vicious acts of terrorism, and

Whereas the massacre that took place on February 25, 1994 at the Tomb of the Patriarchs in Hebron was an act of murderous terrorism directed against innocent persons at prayer, and

Whereas the purpose of these acts of terror was to derail the Middle East peace talks, and

Whereas as diplomats have inched their way towards fulfilling each article of the Declaration, extremists have just as painstakingly plotted disruptions, preyed on innocents and haphazardly killed and maimed people, and

Whereas if the chances for peace in the Middle East are harmed by the act of terror in Hebron or other acts of terrorism, then these acts will have achieved their purpose, and

Whereas to prevent terrorism from achieving its purpose, all parties must now redouble their efforts to gain success in those talks: Now, therefore, be it

Resolved, That the Senate expresses its condemnation of the massacre perpetrated in Hebron as violative of all standards of civilized human behavior, and as violative of the policies of the government of Israel and every other government that has spoken on this atrocity, and

Be it further resolved, That the Senate condemns all acts of terror intended to disrupt the peace process or for any other purpose, and be it further

Resolved, That the Senate commends the government of Israel for its strong condemnation of the Hebron killings, for reaching out to the victims' families, and for taking swift and appropriate action to respond to the threat posed by extremists, and be it further

Resolved, That the Senate urges all parties and others involved in the Middle East peace talks to apply renewed energy to achieve the prompt and just conclusion which is the only way to obtain long term security for all people in the area and as the best way in the short term to deny terror any measure of success.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, again I thank and commend Senator BOXER for here leadership here. It is her expression of feelings and emotions as to the events at Hebron that really led to this resolution.

I think the Senate and Nation is in her debt for getting the Senate to express our feelings about the fact that terrorism must not succeed and that peace must succeed.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

GOALS 2000: EDUCATE AMERICA ACT

Mr. LEVIN. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (H.R. 1804) to improve learning and teaching by providing a national framework for education reform; to promote the research, consensus building, and systemic changes needed to ensure equitable educational opportunities and high levels of educational achievement for all American students; to provide a framework for reauthorization of all Federal education programs; to promote the development and adoption of a voluntary national system of skill standards and certifications, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 1804) entitled "An Act to improve learning and teaching by providing a national framework for education reform; to promote the research, consensus building, and systemic changes needed to ensure equitable educational opportunities and high levels of educational achievement for all American students; to provide a framework for reauthorization of all Federal education programs; to promote the development and adoption of a voluntary national system of skill standards and certifications; and for other purposes", with the following amendment:

In lieu of the matter inserted by said amendment, insert:

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—GOALS 2000: EDUCATE AMERICA ACT

Sec. 101. Purpose.

PART A—NATIONAL EDUCATION GOALS

Sec. 111. Purpose.
Sec. 112. National education goals.

PART B—NATIONAL EDUCATION REFORM, LEADERSHIP, STANDARDS, AND ASSESSMENTS

SUBPART 1—NATIONAL EDUCATION GOALS PANEL

Sec. 121. Purpose.
Sec. 122. National Education Goals Panel.
Sec. 123. Duties.
Sec. 124. Powers of the Goals Panel.
Sec. 125. Administrative provisions.
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Sec. 127. Early childhood assessment.

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Sec. 139. Opportunity-to-learn development grant.
Sec. 140. Assessment development and evaluation grants.
Sec. 141. Evaluation.

SUBPART 3—AUTHORIZATION OF APPROPRIATIONS

Sec. 145. Authorization of appropriations.

PART C—STATE AND LOCAL EDUCATION SYSTEMIC IMPROVEMENT

Sec. 151. Congressional findings.
Sec. 152. Purpose.
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Sec. 154. Allotment of funds.
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Sec. 157. Secretary's review of applications; payments.
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Sec. 159. Subgrants for local reform and professional development.
Sec. 160. Availability of information and training.
Sec. 161. Waivers of statutory and regulatory requirements.
Sec. 162. Progress reports.
Sec. 163. National leadership.
Sec. 164. Assistance to the outlying areas and to the Secretary of the Interior.

PART D—NATIONAL SKILL STANDARDS BOARD

Sec. 171. Purpose.
Sec. 172. Establishment of National Board.
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PART E—MISCELLANEOUS

Sec. 181. Definitions.
Sec. 182. Limitations.
Sec. 183. Assessment of educational progress activities.
Sec. 184. Compliance with Buy American Act.
Sec. 185. Sense of Congress; requirement regarding notice.
Sec. 186. Prohibition of contracts.

PART F—PARENTAL INFORMATION AND RESOURCES

Sec. 191. Parental information and resources
Sec. 192. Eligibility.
Sec. 193. Uses of funds.
Sec. 194. Technical assistance.
Sec. 195. Experimental centers.
Sec. 196. Reports.
Sec. 197. Authorization of appropriations.

TITLE II—EDUCATIONAL RESEARCH, DEVELOPMENT, AND DISSEMINATION EXCELLENCE ACT

Sec. 201. Findings.

PART A—GENERAL PROVISIONS REGARDING OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

Sec. 211. General provisions.
Sec. 212. Assistant Secretary for Educational Research and Improvement.
Sec. 213. Savings provision.
Sec. 214. Existing grants and contracts.

PART B—NATIONAL EDUCATIONAL RESEARCH POLICY AND PRIORITIES BOARD

Sec. 221. Establishment within Office of Educational Research and Improvement.

PART C—NATIONAL RESEARCH INSTITUTES
Sec. 231. Establishment within Office of Educational Research and Improvement.
PART D—NATIONAL EDUCATION DISSEMINATION SYSTEM
Sec. 241. Establishment within Office of Educational Research and Improvement.
PART E—NATIONAL LIBRARY OF EDUCATION
Sec. 251. Establishment within Office of Educational Research and Improvement.
TITLE III—SAFE SCHOOLS ACT OF 1994
Sec. 301. Safe schools program authorized.
Sec. 302. Eligible applicants.
Sec. 303. Applications and plans.
Sec. 304. Grants and use of funds.
Sec. 305. National leadership.
Sec. 306. Reports.
Sec. 307. Definitions.

TITLE I—GOALS 2000: EDUCATE AMERICA ACT

SEC. 101. PURPOSE.

The purpose of this Act is to provide a framework for meeting the National Education Goals established by title I of this Act by—

(1) promoting coherent, nationwide, systemic education reform;

(2) improving the quality of learning and teaching in the classroom and in the workplace;

(3) defining appropriate and coherent Federal, State, and local roles and responsibilities for education reform and lifelong learning;

(4) establishing valid, reliable, and fair mechanisms for—

(A) building a broad national consensus on American education reform;

(B) assisting in the development and certification of high-quality, internationally competitive content and student performance standards;

(C) assisting in the development and certification of opportunity-to-learn standards; and

(D) assisting in the development and certification of high-quality assessment measures that reflect the internationally competitive content and student performance standards;

(5) supporting new initiatives at the Federal, State, local, and school levels to provide equal educational opportunity for all students to meet high standards and to succeed in the world of employment and civic participation;

(6) providing a framework for the reauthorization of all Federal education programs by—

(A) creating a vision of excellence and equity that will guide all Federal education and related programs;

(B) providing for the establishment of high-quality, internationally competitive content and student performance standards that all students will be expected to achieve;

(C) providing for the establishment of high quality, internationally competitive opportunity-to-learn standards that all States, local educational agencies, and schools should achieve;

(D) encouraging and enabling all State educational agencies and local educational agencies to develop comprehensive improvement plans that will provide a coherent framework for the implementation of reauthorized Federal education and related programs in an integrated fashion that effectively educates all children enabling them to participate fully as workers, parents, and citizens; and

(E) providing resources to help individual schools, including those serving students with high needs, develop and implement comprehensive improvement plans;

(7) stimulating the development and adoption of a voluntary national system of skill standards and certification to serve as a cornerstone of the national strategy to enhance workforce skills; and

(8) assisting every elementary and secondary school that receives funds under this Act to actively involve parents and families in supporting the academic work of their children at home and in providing parents with skills to advocate for their children at school.

PART A—NATIONAL EDUCATION GOALS

SEC. 111. PURPOSE.

The purpose of this title is to establish national education goals.

SEC. 112. NATIONAL EDUCATION GOALS.

The Congress declares that the National Education Goals are the following:

(1) SCHOOL READINESS.—(A) By the year 2000, all children in America will start school ready to learn.

(B) The objectives for this goal are that—

(i) all children will have access to high-quality and developmentally appropriate preschool programs that help prepare children for school;

(ii) every parent in America will be a child's first teacher and devote time each day to helping his or her preschool child learn, and parents will have access to the training and support they need; and

(iii) all children will receive the nutrition and health care needed to arrive at school with healthy minds and bodies, and to maintain the mental alertness necessary to be prepared to learn, and the number of low-birthweight babies will be significantly reduced through enhanced prenatal health systems.

(2) SCHOOL COMPLETION.—(A) By the year 2000, the high school graduation rate will increase to at least 90 percent.

(B) The objectives for this goal are that—

(i) the Nation must dramatically reduce its dropout rate, and 75 percent of those students who do drop out will successfully complete a high school degree or its equivalent; and

(ii) the gap in high school graduation rates between American students from minority backgrounds and their non-minority counterparts will be eliminated.

(3) STUDENT ACHIEVEMENT AND CITIZENSHIP.—(A) By the year 2000, all students will leave grades 4, 8, and 12 having demonstrated competency over challenging subject matter including English, mathematics, science, foreign languages, civics and government, arts, history, and geography, and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

(B) The objectives for this goal are that—

(i) the academic performance of all students at the elementary and secondary level will increase significantly in every quartile, and the distribution of minority students in each level will more closely reflect the student population as a whole;

(ii) the percentage of all students who demonstrate the ability to reason, solve problems, apply knowledge, and write and communicate effectively will increase substantially;

(iii) all students will be involved in activities that promote and demonstrate good citizenship, community service, and personal responsibility;

(iv) all students will have access to physical education and health education to ensure they are healthy and fit;

(v) the percentage of all students who are competent in more than one language will substantially increase; and

(vi) all students will be knowledgeable about the diverse cultural heritage of this Nation and about the world community.

(4) TEACHER EDUCATION AND PROFESSIONAL DEVELOPMENT.—(A) By the year 2000, the Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.

(B) The objectives of this goal are that—

(i) every State will establish opportunity-to-learn standards and create an integrated strategy to attract, recruit, prepare, retrain, and support the continued professional development of teachers, administrators, and other educators, so that there is a highly talented workforce of professional educators to teach challenging standards;

(ii) subgrants for preservice teacher education and professional development activity will be made to local educational agencies, institutions of higher education, private nonprofit organizations, or consortia of such organizations, to support continuing, sustained, professional development activities for all educators; and

(iii) partnerships shall be established, whenever possible, between local educational agencies, institutions of higher education, local labor, business, and professional associations to provide and support programs for the professional development of educators, particularly in the area of emerging new technologies in education.

(5) MATHEMATICS AND SCIENCE.—(A) By the year 2000, United States students will be first in the world in mathematics and science achievement.

(B) The objectives for this goal are that—

(i) math and science education, including the metric system of measurement, will be strengthened throughout the system, especially in the early grades;

(ii) the number of teachers with a substantive background in mathematics and science, including the metric system of measurement, will increase by 50 percent; and

(iii) the number of United States undergraduate and graduate students, especially women and minorities, who complete degrees in mathematics, science, and engineering will increase significantly.

(6) ADULT LITERACY AND LIFELONG LEARNING.—(A) By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

(B) The objectives for this goal are that—

(i) every major American business will be involved in strengthening the connection between education and work;

(ii) all workers will have the opportunity to acquire the knowledge and skills, from basic to highly technical, needed to adapt to emerging new technologies, work methods, and markets through public and private educational, vocational, technical, workplace, or other programs;

(iii) the number of quality programs, including those at libraries, that are designed to serve more effectively the needs of the growing number of part-time and midcareer students will increase substantially;

(iv) the proportion of those qualified students, especially minorities, who enter college, who complete at least two years, and who complete their degree programs will increase substantially;

(v) the proportion of college graduates who demonstrate an advanced ability to think critically, communicate effectively, and solve problems will increase substantially; and

(vi) schools, in implementing comprehensive parent involvement programs, will offer more adult literacy, parent training and life-long learning opportunities to improve the ties between home and school, and enhance parents' work and home lives.

(7) SAFE, DISCIPLINED, AND DRUG-FREE SCHOOLS.—(A) By the year 2000, every school in

America will be free of drugs and violence and will offer a disciplined environment conducive to learning.

(B) The objectives for this goal are that—

(i) every school will implement a firm and fair policy on use, possession, and distribution of drugs and alcohol;

(ii) parents, businesses, and community organizations will work together to ensure the rights of students to study in a safe and secure environment that is free of drugs and crime;

(iii) every school district will develop a comprehensive K–12 drug and alcohol prevention education program. Drug and alcohol curricula should be taught as an integral part of health education. In addition, community-based teams should be organized to provide all students and teachers with needed support; and

(iv) every school district will develop and implement a policy to ensure that all schools are free of weapons and violence.

(8) SCHOOL AND HOME PARTNERSHIP.—(A) By the year 2000, every school and home will engage in partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

(B) The objectives for this goal are that—

(i) every State will develop policies to assist local schools and local educational agencies to establish programs for increasing partnerships that respond to the varying needs of parents and the home, including parents of children who are disadvantaged, bilingual, or disabled;

(ii) every school will actively engage parents and families in a partnership which supports the academic work of children at home and shared educational decision making at school;

(iii) every home will be responsible for creating an environment of respect for education and providing the physical and emotional support needed for learning; and

(iv) parents and families will help to ensure that schools are adequately supported and will hold schools and teachers to high standards of accountability.

PART B—NATIONAL EDUCATION REFORM, LEADERSHIP, STANDARDS, AND ASSESSMENTS

Subpart 1—National Education Goals Panel

SEC. 121. PURPOSE.

It is the purpose of this part to establish a bipartisan mechanism for—

(1) building a national consensus for education improvement;

(2) reporting on progress toward achieving the National Education Goals; and

(3) reviewing the voluntary national content and student performance standards and opportunity-to-learn standards certified by the National Education Standards and Improvement Council, as well as the criteria for their certification, and the criteria for the certification of State assessments by the National Education Standards and Improvement Council with the option of disapproving such standards and criteria not later than 60 days after receipt from such Council.

SEC. 122. NATIONAL EDUCATION GOALS PANEL.

(a) ESTABLISHMENT.—There is established in the executive branch a National Education Goals Panel (referred to in this Act as the "Goals Panel") to advise the President, the Secretary, and the Congress.

(b) COMPOSITION.—The Goals Panel shall be composed of eighteen members (referred to in this part as "members"), including—

(1) two members appointed by the President;

(2) eight members who are Governors, three of whom shall be from the same political party as the President and five of whom shall be of the opposite political party of the President, appointed by the Chairperson and Vice Chairperson of the National Governors' Association, with each appointing representatives of his or her respective political party, in consultation with each other;

(3) four Members of Congress appointed as follows—

(A) one member appointed by the majority leader of the Senate from among the Members of the Senate;

(B) one member appointed by the minority leader of the Senate from among the Members of the Senate;

(C) one member appointed by the majority leader of the House of Representatives from among the Members of the House of Representatives; and

(D) one member appointed by the minority leader of the House of Representatives from among the Members of the House of Representatives; and

(4) four members of State legislatures appointed by the President of the National Conference of State Legislatures, of whom not more than two may be of the same political party as the President of the United States.

(c) SPECIAL APPOINTMENT RULES.—(1) The members appointed pursuant to subsection (b)(2) shall be appointed as follows:

(A) If the Chairperson of the National Governors' Association is from the same political party as the President, the Chairperson shall appoint three individuals and the Vice Chairperson shall appoint five individuals.

(B) If the Chairperson of the National Governors' Association is from the opposite political party as the President, the Chairperson shall appoint five individuals and the Vice Chairperson shall appoint three individuals.

(2) If the National Governors' Association has appointed a panel that meets the requirements of subsections (b) and (c), except for the requirements of subsection (b)(4), prior to the date of enactment of this title, then the members serving on such panel shall be deemed to be in compliance with subsections (b) and (c) and shall not be required to be reappointed pursuant to such subsections.

(3) To the extent feasible, the membership of the Goals Panel shall be geographically representative and reflect the racial, ethnic, and gender diversity of the United States.

(d) TERMS.—The terms of service of members shall be as follows:

(1) Members appointed under subsection (b)(1) shall serve at the pleasure of the President.

(2) Members appointed under subsection (b)(2) shall serve a two-year term, except that the initial appointments under such paragraph shall be made to ensure staggered terms with one-half of such members' terms concluding every two years.

(3) Members appointed under subsection (b)(3) and (4) shall serve a term of two years.

(e) DATE OF APPOINTMENT.—The initial members shall be appointed not later than sixty days after the date of enactment of this Act.

(f) INITIATION.—The Goals Panel may begin to carry out its duties under this part when ten members of the Goals Panel have been appointed.

(g) VACANCIES.—A vacancy on the Goals Panel shall not affect the powers of the Goals Panel, but shall be filled in the same manner as the original appointment.

(h) TRAVEL.—Each member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(i) CHAIRPERSON.—From among the members, the President shall appoint the Chairperson who shall serve a one-year term and shall alternate between political parties.

(j) CONFLICT OF INTEREST.—A member of the Goals Panel who is an elected official of a State which has developed content, student performance, or opportunity-to-learn standards may not participate in Goals Panel consideration of such standards.

(k) EX OFFICIO MEMBER.—If the President has not appointed the Secretary of Education as 1 of the 2 members he appoints pursuant to subsection (b)(1), then the Secretary shall serve as a nonvoting ex officio member of the Goals Panel.

SEC. 123. DUTIES.

(a) DUTIES.—The Goals Panel shall—

(1) report to the President, the Secretary, and the Congress regarding the progress the Nation and the States are making toward achieving the National Education Goals established under title I of this Act, including issuing an annual report;

(2) report on State opportunity-to-learn standards and the progress of States in meeting such standards;

(3) review, after taking into consideration the public comments received pursuant to section 136, with the option of disapproving by a two-thirds majority vote of the full membership not later than 60 days after receipt of the—

(A) criteria developed by the National Education Standards and Improvement Council for the certification of content and student performance standards, assessments, and opportunity-to-learn standards; and

(B) voluntary national content and student performance standards and opportunity-to-learn standards certified by the National Education Standards and Improvement Council;

(4) report on promising or effective actions being taken at the national, State, and local levels, in the public and private sectors, to achieve the National Education Goals; and

(5) help build a nationwide, bipartisan consensus for the reforms necessary to achieve the National Education Goals.

(b) REPORT.—(1) The Goals Panel shall annually prepare and submit to the President, the Secretary, the appropriate committees of Congress, and the Governor of each State a report that shall—

(A) report on the progress of the United States toward achieving the National Education Goals;

(B) identify actions that should be taken by Federal, State, and local governments to enhance progress toward achieving the National Education Goals and State opportunity-to-learn standards; and

(C) report on State opportunity-to-learn standards and the progress of States in meeting such standards.

(2) Reports shall be presented in a form, and include data, that is understandable to parents and the general public.

SEC. 124. POWERS OF THE GOALS PANEL.

(a) HEARINGS.—(1) The Goals Panel shall, for the purpose of carrying out this part, conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Goals Panel considers appropriate.

(2) In carrying out this part, the Goals Panel shall conduct hearings to receive reports, views, and analyses of a broad spectrum of experts and the public on the establishment of voluntary national content and student performance standards, assessments, and opportunity-to-learn standards.

(b) INFORMATION.—The Goals Panel may secure directly from any department or agency of the United States information necessary to enable the Goals Panel to carry out this part. Upon request of the Chairperson of the Goals Panel, the head of a department or agency shall furnish such information to the Goals Panel to the extent permitted by law.

(c) POSTAL SERVICES.—The Goals Panel may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(d) USE OF FACILITIES.—The Goals Panel may, with consent, use the research, equipment, services, and facilities of any agency or instrumentality of the United States, or of any State or political subdivision thereof.

(e) ADMINISTRATIVE ARRANGEMENTS AND SUPPORT.—(1) The Secretary shall provide to the Goals Panel, on a reimbursable basis, such administrative support services as the Goals Panel may request.

(2) The Secretary shall, to the extent appropriate, and on a reimbursable basis, make contracts and other arrangements that are requested by the Goals Panel to help it compile and analyze data or carry out other functions necessary to the performance of such responsibilities.

SEC. 125. ADMINISTRATIVE PROVISIONS.

(a) MEETINGS.—The Goals Panel shall meet on a regular basis, as necessary, at the call of the Chairperson of the Goals Panel or a majority of its members.

(b) QUORUM.—A majority of the members shall constitute a quorum for the transaction of business.

(c) VOTING.—No individual may vote, or exercise any of the powers of a member, by proxy.

(d) PUBLIC ACCESS.—The Goals Panel shall ensure public access to its proceedings (other than proceedings, or portions of proceedings, relating to internal personnel and management matters) and make available to the public, at reasonable cost, transcripts of such proceedings.

SEC. 126. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

(a) DIRECTOR.—The Chairperson of the Goals Panel shall, without regard to the provisions of title 5, United States Code, relating to the appointment and compensation of officers or employees of the United States, appoint a Director to be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule.

(b) APPOINTMENT AND PAY OF EMPLOYEES.—(1)(A) The Director may appoint not more than four additional employees to serve as staff to the Goals Panel without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(B) The employees appointed under paragraph (1)(A) may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, but shall not be paid a rate that exceeds the maximum rate of basic pay payable for GS–15 of the General Schedule.

(2) The Director may appoint additional employees to serve as staff to the Goals Panel consistent with title 5, United States Code.

(c) EXPERTS AND CONSULTANTS.—The Goals Panel may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

(d) STAFF OF FEDERAL AGENCIES.—Upon the request of the Goals Panel, the head of any department or agency of the United States may detail any of the personnel of such agency to the Goals Panel to assist the Goals Panel in its duties under this part.

SEC. 127. EARLY CHILDHOOD ASSESSMENT.

(a) GENERAL.—(1) The Goals Panel shall support the work of its Resource and Technical Planning Groups on School Readiness (referred to in this section as the Groups) to improve the methods of assessing the readiness of children for school that would lead to alternatives to currently used norm-referenced early childhood assessments.

(2) The Groups shall—

(A) create clear guidelines regarding the nature, functions, and uses of early childhood assessments, including a model of school readiness that addresses a broad range of early childhood developmental needs;

(B) monitor and evaluate early childhood assessments, including the ability of existing assessments to provide valid information on the readiness of children for school; and

(C) monitor and report on the long-term collection of data on the status of young children to improve policy and practice, including the need for new sources of data necessary to assess the broad range of early childhood developmental needs.

(b) ADVICE.—The Groups shall advise and assist the Congress, the Secretary, the Goals Panel, and others regarding how to improve the assessment of young children and how such assessments can improve services to children.

(c) REPORT.—The Goals Panel shall provide reports on the work of the Groups to the Congress, the Secretary, and the public.

Subpart 2—National Education Standards and Improvement Council

SEC. 131. PURPOSE.

The purpose of this part is to establish a mechanism to—

(1) certify and regularly review voluntary national content and student performance standards that define what all students should know and be able to do;

(2) certify content and student performance standards submitted by States on a voluntary basis, if such standards are of equal or higher quality to the voluntary national content and student performance standards certified by the National Education Standards and Improvement Council;

(3) certify and regularly review voluntary national opportunity-to-learn standards that describe the conditions of teaching and learning necessary for all students to have a fair opportunity to achieve the knowledge and skills described in the voluntary national content and student performance standards certified by the National Education Standards and Improvement Council;

(4) certify opportunity-to-learn standards submitted by States on a voluntary basis, if such standards are of equal or higher quality as compared with the voluntary national opportunity-to-learn standards; and

(5) certify assessment systems submitted by States on a voluntary basis, if such systems are aligned with State content standards certified by the National Education Standards and Improvement Council and if such systems are valid, reliable, and consistent with relevant, nationally recognized, professional and technical standards for assessment when used for their intended purposes.

SEC. 132. NATIONAL EDUCATION STANDARDS AND IMPROVEMENT COUNCIL.

(a) ESTABLISHMENT.—There is established in the executive branch a National Education Standards and Improvement Council (referred to in this title as the "Council").

(b) COMPOSITION.—The Council shall be composed of twenty members (referred to in this part as "members") who shall be appointed as follows:

(1) 8 members (2 from each of subparagraphs (A) through (D) of subsection (c)(1)) shall be appointed by the President;

(2) 4 members (1 from each of subparagraphs (A) through (D) of subsection (c)(1)) shall be appointed by the Speaker of the House of Representatives, in consultation with the majority and minority leaders of the House;

(3) 4 members (1 from each of subparagraphs (A) through (D) of subsection (c)(1)) shall be appointed by the majority leader of the Senate, in consultation with the minority leader of the Senate; and

(4) 4 members (1 from each of subparagraphs (A) through (D) of subsection (c)(1)) shall be appointed by the National Education Goals Panel.

(c) QUALIFICATIONS.—(1) The members of the Council shall include—

(A) 5 professional educators, including elementary and secondary classroom teachers, preschool educators and other school-based professionals, local district or State administrators, related service personnel, and other educators;

(B) 5 representatives of business and industry, organized labor, and postsecondary educational institutions, including at least 1 representative of postsecondary educational institutions, at least 1 representative of organized labor, and at least 1 representative of business who is also a member of the National Skill Standards Board;

(C) 5 representatives of the public, including representatives of advocacy, civil rights and disability groups, parents, civic leaders, and local and State education policymakers (including State, local, or tribal school boards); and

(D) 5 education experts, including experts in measurement and assessment, curriculum, school finance and equity, and school reform.

(2) To the extent feasible, the membership of the Council shall be geographically representative of the United States and reflect the diversity of the United States with regard to race, ethnicity, gender, and disability characteristics.

(3) One-third of the Council shall consist of individuals with expertise in the educational needs of children who are from low-income families, minority backgrounds, have limited-English proficiency, or have disabilities.

(d) TERMS.—(1) Members shall be appointed for 3-year terms, with no member serving more than 2 consecutive terms.

(2) The Council shall establish by lot initial terms for individuals of one, two, or three years in order to establish a rotation in which one-third of the members are selected each year.

(e) DATE OF APPOINTMENT.—The initial members shall be appointed not later than 120 days after the date of enactment of this Act.

(f) INITIATION.—The Council shall begin to carry out the duties of the Council under this part when all 20 members have been appointed.

(g) RETENTION.—In order to retain an appointment to the Council, a member must attend at least two-thirds of the scheduled meetings of the Council in any given year.

(h) VACANCY.—A vacancy on the Council shall not affect the powers of the Council, but shall be filled in the same manner as the original appointment.

(i) COMPENSATION.—Members of the Council who are not regular full-time employees of the United States may, while attending meetings or hearings of the Council, be provided compensation at a rate fixed by the Secretary, but not exceeding the maximum rate of basic pay payable for GS–15 of the General Schedule.

(j) CONFLICT OF INTEREST.—(1) A member of the Council may not concurrently serve as a member of the Goals Panel.

(2) Section 208 of title 18 of the United States Code shall apply to members of the Council except that, for the purposes of making written determinations under subsection (b)(1), the Government official responsible for the appointment of any member of the Council is deemed to be the Director of the Office of Government Ethics.

(3) A member of the Council who resides in a State which has developed standards and assessments may not participate in Council consideration of such standards and assessments.

(k) TRAVEL.—Each member of the Council may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(l) OFFICERS.—The members of the Council shall select officers from among its members. The officers of the Council shall serve for one-year terms.

SEC. 133. DUTIES.

(a) VOLUNTARY NATIONAL CONTENT STANDARDS.—(1) The Council shall—

(A) identify areas in which voluntary national content standards need to be developed;

(B) certify voluntary national content and student performance standards using the criteria developed under paragraph (2)(A)(i), that define what all students should know and be able to do;

(C) forward such voluntary national content and student performance standards to the Goals Panel for review, except that the Goals Panel shall have the option of disapproving such standards by a two-thirds majority vote of the full membership not later than 60 days after receipt of such standards; and

(D) develop a process for regularly reviewing any national voluntary content, student performance, and opportunity-to-learn standards that have been certified.

(2)(A) The Council shall—

(i) identify and develop criteria to be used for certifying the voluntary national content and student performance standards; and

(ii) before applying such criteria, forward them to the Goals Panel for review, except that the Goals Panel shall have the option of disapproving such criteria by a two-thirds majority vote of the full membership not later than 60 days after receipt of such criteria.

(B) The criteria developed by the Council shall address—

(i) the extent to which the proposed standards are internationally competitive and comparable to the best in the world;

(ii) the extent to which the proposed content and student performance standards reflect the best available knowledge about how all students learn and about how the content area can be most effectively taught;

(iii) the extent to which the proposed content and student performance standards have been developed through an open and public process that provides for input and involvement of all relevant parties, including teachers, related services personnel, and other professional educators, employers and postsecondary education institutions, curriculum and subject matter specialists, parents, advocacy groups, and the public; and

(iv) other factors that the Council deems appropriate.

(C) In developing the criteria, the Council shall work with entities that are developing, or have already developed, content and student performance standards, and any other entities that the Council deems appropriate, to identify appropriate certification criteria.

(b) VOLUNTARY STATE CONTENT STANDARDS.—The Council may certify content and student performance standards presented on a voluntary basis by States, using the criteria developed under subsection (a)(2)(A)(i), if such standards are of equal or higher quality to the voluntary national content and student performance standards certified by the Council.

(c) VOLUNTARY NATIONAL OPPORTUNITY-TO-LEARN STANDARDS.—(1) The Council shall certify exemplary, voluntary national opportunity-to-learn standards that will establish a basis for providing all students a fair opportunity to achieve the knowledge and skills set out in the voluntary national content standards certified by the Council.

(2) The voluntary national opportunity-to-learn standards certified by the Council shall address—

(A) the quality and availability of curricula, instructional materials, and technologies, including distance learning, to all students;

(B) the capability of teachers to provide high-quality instruction to meet diverse learning needs in each content area to all students;

(C) the extent to which teachers, principals, and administrators have ready and continuing access to professional development, including the best knowledge about teaching, learning, and school improvement;

(D) the extent to which curriculum, instructional practices, and assessments are aligned to content standards;

(E) the extent to which school facilities provide a safe and secure environment for learning and instruction and have the requisite libraries, laboratories, and other resources necessary to provide an opportunity to learn;

(F) the extent to which schools utilize policies, curricula, and instructional practices which ensure nondiscrimination on the basis of gender; and

(G) other factors that the Council deems appropriate to ensure the students receive a fair opportunity to achieve the knowledge and skills described in the voluntary content and student performance standards certified by the Council.

(3) In carrying out this subsection, the Council shall—

(A) identify what countries with rigorous content standards do to—

(i) provide their children with opportunities to learn;

(ii) prepare their teachers; and

(iii) provide continuing professional development opportunities for their teachers; and

(B) develop criteria to be used for certifying the voluntary national and State opportunity-to-learn standards and, before applying such criteria, forward them to the Goals Panel for review, except that the Goals Panel shall have the option of disapproving such standards by a two-thirds majority vote of the full membership not later than 60 days after receipt of such criteria.

(4) The Council shall assist in the development of the voluntary national opportunity-to-learn standards developed by the consortium under section 139 by—

(A) making recommendations to the Secretary regarding priorities and selection criteria for the award made under section 139 and

(B) coordinating with the consortium receiving an award under section 139 to ensure that the opportunity-to-learn standards the consortium develops are appropriate for the needs of all students, are of high quality, and are consistent with the criteria developed by the Council for the certification of such standards.

(5) The Council shall forward the voluntary national opportunity-to-learn standards it certifies to the Goals Panel for review, except that the Goals Panel shall have the option of disapproving such standards by a two-thirds majority vote of the full membership not later than 60 days after receipt of such standards.

(d) VOLUNTARY STATE OPPORTUNITY-TO-LEARN STANDARDS.—The Council may certify opportunity-to-learn standards submitted voluntarily by a State, using the criteria developed under subsection (c)(3)(B), if such standards are of equal or higher quality as compared to the voluntary national opportunity-to-learn standards.

(e) GENERAL PROVISION REGARDING VOLUNTARY NATIONAL STANDARDS.—The Council may certify voluntary national content, student performance, and opportunity-to-learn standards if such standards are sufficiently general to be used by any State without restricting State and local control of curriculum and prerogatives regarding instructional methods to be employed.

(f) ASSESSMENTS.—(1)(A) The Council may certify an assessment system that is submitted voluntarily by a State, using the criteria developed under paragraph (2)(A), if such system is aligned with the State's content standards certified by the Council.

(B) Assessment systems shall be certified by the Council for the purposes of—

(i) informing students, parents, teachers, and related services personnel about the progress of all students toward the standards;

(ii) improving classroom instruction and improving the learning outcomes for all students;

(iii) exemplifying for students, parents, and teachers the kinds and levels of achievement that should be expected of all students, including the identification of student performance standards;

(iv) measuring and motivating individual students, schools, districts, States, and the Nation to improve educational performance; and

(v) assisting education policymakers in making decisions about education programs.

(C) The Council shall certify an assessment system only if—

(i) the State has established or adopted opportunity-to-learn standards;

(ii) such system will not be used to make decisions regarding graduation, grade promotion, or retention of students for a period of five years from the date of enactment of this Act; and

(iii) the State has submitted—

(I) a description of the purposes for which the assessment system has been designed;

(II) the methodologies and process used to develop, select, validate, and use such assessment systems;

(III) a copy of the test instrument and, as appropriate, other measures that will make up the system; and

(IV) evidence that the test or tests which are part of the assessment system are valid, reliable measures of their intended purposes, are aligned with the State content standards, are capable of assessing the progress of all students toward learning the material in the State content standards, and are consistent with relevant nationally recognized professional and technical standards.

(D) The Council shall, at the request of a State prior to developing an assessment system for a proposed use, review and provide guidance to such State on a proposed package of measures, including tests that would be included in such a system.

(2)(A) The Council shall develop and, no sooner than three years or later than four years after the enactment of this Act, begin utilizing criteria for the certification of assessment systems for the purposes indicated in paragraph (1)(B). Before using such criteria, the Council shall forward the criteria to the Goals Panel for review, except that the Goals Panel shall have the option of disapproving such criteria by a two-thirds majority vote of the full membership not later than 60 days after receipt of such criteria.

(B) The certification criteria developed by the Council shall address the extent to which the assessment system—

(i) is aligned with State content standards certified by the Council; and

(ii) is to be used for a purpose for which it is valid, reliable, free of discrimination, and is consistent with relevant, nationally recognized professional and technical standards for assessment.

(C) In determining appropriate certification criteria, the Council shall—

(i) consider standards and criteria being developed by other national organizations, research on assessment, and emerging new State and local assessments;

(ii) recommend needed research;

(iii) encourage the development and field testing of assessment systems; and

(iv) provide a public forum for discussing, debating, and building consensus for the criteria to be used for the certification of assessment systems.

(D) Prior to determining the certification criteria, the Council shall seek public comment regarding the proposed criteria.

(E) The Council shall certify an assessment system only if such system includes all students.

(g) PERFORMANCE OF DUTIES.—In carrying out its responsibilities under this title, the Council shall—

(1) provide for a process of broad public input as part of the process of developing criteria for standards and assessments;

(2) work with Federal and non-Federal agencies and organizations which are conducting research, studies, or demonstration projects to determine internationally competitive standards and assessments, and may establish subject matter and other panels to advise it on particular content, student performance, and opportunity-to-learn standards and on assessments;

(3) establish cooperative arrangements with the National Skill Standards Board to promote the coordination of the development of content and student performance standards under this title with the development of skill standards under title IV of this Act;

(4) recommend studies to the Secretary that are necessary to carry out the Council's responsibilities;

(5) inform the public about what constitutes high quality, internationally competitive, content, student performance, and opportunity-to-learn standards, and assessment systems;

(6) on a regular basis, review and update criteria for certifying content, student performance, and opportunity-to-learn standards, and assessment systems; and

(7) periodically recertify, as appropriate, the voluntary national content and student performance standards, and the voluntary national opportunity-to-learn standards and the assessments that it certifies under this section.

(h) UNCONDITIONED STATE PARTICIPATION.—No State shall be required to obtain certification of standards or assessments developed under subsection (b), (d), or (f) of this section or to participate in programs under title III of this Act, as a condition of participating in any Federal education program under this or any other Act.

SEC. 134. ANNUAL REPORTS.

Not later than one year after the date the Council concludes its first meeting, and in each succeeding year, the Council shall prepare and submit a report to the President, the Secretary, the appropriate committees of Congress, the Governor of each State, and the Goals Panel regarding its work.

SEC. 135. POWERS OF THE COUNCIL.

(a) HEARINGS.—(1) The Council shall, for the purpose of carrying out its responsibilities, conduct such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Council considers appropriate.

(2) In carrying out this part, the Council shall conduct public hearings in different geographic areas of the United States, both urban and rural, to receive the reports, views, and analyses of a broad spectrum of experts and the public on the establishment of voluntary national content, student performance, and opportunity-to-learn standards, and assessment systems.

(b) INFORMATION.—The Council may secure directly from any department or agency of the United States information necessary to enable the Council to carry out this part. Upon request of the Chairperson of the Council, the head of a department or agency shall furnish such information to the Council to the extent permitted by law.

(c) POSTAL SERVICES.—The Council may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(d) USE OF FACILITIES.—The Council may, with their consent, use the research, equipment, services, and facilities of any agency or instrumentality of the United States, or of any State or political subdivision thereof.

(e) ADMINISTRATIVE ARRANGEMENTS AND SUPPORT.—(1) The Secretary shall provide to the Council, on a reimbursable basis, such administrative support services as the Council may request.

(2) The Secretary shall, to the extent appropriate, and on a reimbursable basis, make contracts and other arrangements that are requested by the Council to help it compile and analyze data or carry out other functions necessary to the performance of its responsibilities.

SEC. 136. PUBLICATION FOR PUBLIC COMMENT.

(a) TRANSMITTAL.—For the purpose of obtaining public comment through publication in the Federal Register, the Council shall transmit to the Secretary—

(1) proposed criteria for certifying national and State content and performance standards;

(2) proposed criteria for certifying national and State opportunity-to-learn standards;

(3) proposed criteria for certifying State assessment systems; and

(4) proposed national content, performance, and opportunity-to-learn standards.

(b) PUBLICATION.—The Secretary shall publish such proposed procedures, standards, and criteria in the Federal Register.

SEC. 137. ADMINISTRATIVE PROVISIONS.

(a) MEETINGS.—The Council shall meet on a regular basis, as necessary, at the call of the Chairperson of the Council, or a majority of its members.

(b) QUORUM.—A majority of the members shall constitute a quorum for the transaction of business.

(c) VOTING.—The Council shall take all action of the Council by a majority vote of the total membership of the Council, ensuring the right of the minority to issue written views. No individual may vote or exercise any of the powers of a member by proxy.

(d) PUBLIC ACCESS.—The Council shall ensure public access to its proceedings (other than proceedings, or portions of proceedings, relating to internal personnel and management matters) and make available to the public, at reasonable cost, transcripts of such proceedings.

SEC. 138. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

(a) DIRECTOR.—The Chairperson of the Council shall, without regard to the provisions of title 5, United States Code, relating to the appointment and compensation of officers or employees of the United States, appoint a Director to be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule.

(b) APPOINTMENT AND PAY OF EMPLOYEES.—(1)(A) The Director may appoint not more than four additional employees to serve as staff to the Council without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

(B) The employees appointed under subparagraph (A) may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, but shall not be paid a rate that exceeds the maximum rate of basic pay payable for GS–15 of the General Schedule.

(2) The Director may appoint additional employees to serve as staff of the Council consistent with title 5, United States Code.

(c) EXPERTS AND CONSULTANTS.—The Council may procure temporary and intermittent services under section 3019(b) of title 5, United States Code.

(d) STAFF OF FEDERAL AGENCIES.—Upon the request of the Council, the head of any department or agency of the United States may detail any of the personnel of such department or agency to the Council to assist the Council in its duties under this part.

SEC. 139. OPPORTUNITY-TO-LEARN DEVELOPMENT GRANT.

(a) OPPORTUNITY-TO-LEARN DEVELOPMENT GRANT.—(1) The Secretary is authorized to make a grant, on a competitive basis, to a consortium of individuals and organizations to develop voluntary national opportunity-to-learn standards consistent with the provisions of section 123(c).

(2) To the extent possible, such consortium shall include the participation of—

(A) State-level policymakers, such as Governors, State legislators, chief State school officers, and State school board members;

(B) local policymakers and administrators, such as local school board members, superintendents, and principals;

(C) teachers (especially teachers involved in the development of content standards);

(D) parents and individuals with experience in promoting parental involvement in education;

(E) representatives of business;

(F) experts in vocational-technical education;

(G) representatives of regional accrediting associations;

(H) individuals with expertise in school finance and equity, the education of at-risk students, and the preparation and training of teachers and school administrators;

(I) curriculum and school reform experts;

(J) student and civil rights advocacy groups;

(K) representatives of higher education; and

(L) secondary school students.

(3) In developing voluntary national opportunity-to-learn standards, such consortium shall—

(A) draw upon current research about student achievement and the necessary conditions for effective teaching and learning; and

(B) provide for the development of several consecutive drafts of standards which incorporate the comments and recommendations of educators and other knowledgeable individuals across the Nation.

(4) One-third of the consortium shall consist of individuals with expertise in the educational needs and assessment of children who are from low-income families, minority backgrounds, have limited-English proficiency, or have disabilities.

(5) The membership of the consortium shall be geographically representative and reflect the racial, ethnic, and gender diversity of the United States.

(b) APPLICATIONS.—(1) Any consortium that desires to receive a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require.

(2) In awarding such grant, the Secretary shall give priority to applications from consortia which involve individuals and organizations with the greatest diversity of perspectives and points of view.

(3) In establishing additional priorities and selection criteria for such grant, the Secretary shall give serious consideration to the recommendations made by the Council pursuant to section 123(c)(4)(A).

(c) REPORT.—After the development of the voluntary national opportunity-to-learn standards, the consortium funded under this section shall submit a report to the Secretary which discusses the background, important issues, and rationale regarding such standards.

SEC. 140. ASSESSMENT DEVELOPMENT AND EVALUATION GRANTS.

(a) GENERAL.—(1) The Secretary is authorized to make grants to States and local educational agencies or consortia of such agencies to help

defray the cost of developing, field testing, and evaluating assessment systems, to be used for some or all of the purposes indicated in section 123(f)(1)(B), that are aligned to State content standards certified by the Council.

(2) The Secretary shall reserve a portion of the funds authorized under section 141(d) for grants to State educational agencies and local educational agencies for purposes of developing such assessments in languages other than English.

(b) APPLICATIONS.—A State, local educational agency, or consortium of such agencies that desires to receive a grant under subsection (a)(1) shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require.

(c) REQUIREMENTS.—(1) A recipient of a grant under this section shall—

(A) examine the validity and reliability of an assessment system for the particular purposes for which such assessment system was developed;

(B) ensure that an assessment system is consistent with relevant, nationally recognized professional and technical standards for assessments; and

(C) devote special attention to how an assessment system, treats all students, especially with regard to the race, gender, ethnicity, disability, and language proficiency.

(2) An assessment system developed and evaluated with funds under this section may not be used for decisions about individual students relating to program placement, promotion, or retention, graduation, or employment for a period of five years from the date of enactment of this Act.

SEC. 141. EVALUATION.

(a) GRANT.—From funds reserved under section 154(a)(2), the Secretary annually shall make a grant, in an amount not to exceed $500,000, to the Commission on Behavioral and Social Sciences and Education of the National Academy of Sciences or to the National Academy of Education to—

(1) evaluate—

(A) the technical quality of the work performed by the Goals Panel and the Council;

(B) the process the Council uses to develop criteria for certification of standards and assessments;

(C) the process the Council uses to certify voluntary national standards as well as standards and assessments voluntarily submitted by States; and

(D) the process the Goals Panel uses to approve certification criteria and voluntary national standards;

(2) periodically provide to the Goals Panel and the Council, as appropriate, information from the evaluation under paragraph (1); and

(3) report on the activities authorized under sections 139 and 140.

(b) REPORT.—The grant recipient shall periodically report to the Congress, the Secretary, and the public regarding findings and shall make a final report not later than January 1, 1998.

Subpart 3—Authorization of Appropriations

SEC. 145. AUTHORIZATION OF APPROPRIATIONS.

(a) NATIONAL EDUCATION GOALS PANEL.—There are authorized to be appropriated $3,000,000 for fiscal year 1994 and such sums as may be necessary for each of the four succeeding fiscal years to carry out part A of this title.

(b) NATIONAL EDUCATION STANDARDS AND IMPROVEMENT COUNCIL.—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 1998 to carry out part B of this title.

(c) OPPORTUNITY-TO-LEARN DEVELOPMENT GRANT.—There are authorized to be appropriated $3,000,000 for fiscal year 1994 and such sums as may be necessary for fiscal year 1995 to carry out the Opportunity-to-Learn Development Grant Program established under section 139 of this title.

(d) ASSESSMENT DEVELOPMENT AND EVALUATION GRANTS.—There are authorized to be appropriated $5,000,000 for fiscal year 1994 and such sums as may be necessary for each of the fiscal years 1995 through 1998 to carry out the Assessment Development and Evaluation Grants Program established under section 140 of this title.

PART C—STATE AND LOCAL EDUCATION SYSTEMIC IMPROVEMENT

SEC. 151. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) all students can learn and achieve high standards and must realize their potential if the United States is to prosper;

(2) the reforms in education of the last 15 years have achieved some good results, but these efforts often have been limited to a few schools or to a single part of the educational system;

(3) leadership must come both from teachers, related services personnel, principals, and parents in individual schools and from policymakers at the local, State, tribal, and national levels, in order for lasting improvements in student performance to occur;

(4) simultaneous top-down and bottom-up education reform is necessary to spur creative and innovative approaches by individual schools to help all students achieve internationally competitive standards;

(5) strategies must be developed by communities and States to support the revitalization of all local public schools by fundamentally changing the entire system of public education through comprehensive, coherent, and coordinated improvement in order to increase student learning;

(6) parents, teachers, and other local educators, and business, community, and tribal leaders must be involved in developing systemwide improvement strategies that reflect the needs of their individual communities;

(7) State and local education improvement efforts must incorporate strategies for providing all students and families with coordinated access to appropriate social services, health care, nutrition, and child care to remove preventable barriers to learning and enhance school readiness for all students;

(8) States and local educational agencies, working together, must immediately set about developing and implementing such systemwide improvement strategies if the Nation is to educate all children to meet their full potential and achieve the National Education Goals listed in title I of this Act;

(9) State and local systemic improvement strategies must provide all students with effective mechanisms and appropriate paths to the workforce as well as to higher education;

(10) business should be encouraged to enter into partnerships with schools, provide information and guidance to schools on the needs of area business for properly educated graduates in general and on the need for particular workplace skills, that the schools may provide necessary material and support, and continue the lifelong learning process throughout the employment years of an individual, and schools should provide information to business regarding how the business community can assist schools in meeting the goals of this Act;

(11) institutions of higher education should be encouraged to enter into partnerships with schools to provide information and guidance to schools on the skills and knowledge graduates need in order to enter and successfully complete postsecondary education, and schools should provide information and guidance to institutions of higher education on the skills, knowledge, and preservice training teachers need, and the types of professional development educators need in order to meet the goals of this Act;

(12) the appropriate and innovative use of technology, including distance learning, can be very effective in helping to bring all students the opportunity to learn and meet high standards; and

(13) Federal funds should be targeted to support local and State initiatives, and to leverage State and local resources for designing and implementing system-wide improvement plans.

SEC. 152. PURPOSE.

The purpose of this title is to improve the quality of education for all students by improving student learning through a long-term, broad-based effort to promote coherent and coordinated improvements in the system of education throughout the Nation at the local and State levels. This title provides new authorities and funding for the Nation's school systems without replacing or reducing funding for existing Federal education programs. It is the intention of the Congress that no State or local educational agency will reduce its funding for education or for education reform on account of receiving any funds under this title.

SEC. 153. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this title, there are authorized to be appropriated $393,000,000 for the fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998.

SEC. 154. ALLOTMENT OF FUNDS.

(a) RESERVATIONS OF FUNDS.—From funds appropriated under section 153, the Secretary—

(1) shall reserve a total of one percent to provide assistance, in amounts determined by the Secretary—

(A) to the outlying areas; and

(B) to the Secretary of the Interior to benefit Indian students in schools operated or funded by the Bureau of Indian Affairs (referred to in this Act as the "Bureau"); and

(2) may reserve a total of up to 6 percent for—

(A) national leadership activities under section 163;

(B) the costs of peer review of State improvement plans and applications under this title; and

(C) evaluation activities under section 141.

(b) STATE ALLOTMENTS.—The Secretary shall allot the remaining amount appropriated under section 153 for each fiscal year to the States (which for the purposes of this subsection does not include the outlying areas) as follows:

(1) 50 percent of such remaining amount shall be allocated in accordance with the relative amounts such State received under chapter 1 of title I of the Elementary and Secondary Education Act of 1965 for the preceding fiscal year.

(2) 50 percent of such remaining amount shall be allocated in accordance with the relative amounts each such State received under part A of chapter 2 of title I of the Elementary and Secondary Education Act of 1965 for the preceding fiscal year.

(c) REALLOTMENTS.—If the Secretary determines that any amount of a State's allotment for any fiscal year under subsection (b) will not be needed for such fiscal year by the State, the Secretary shall reallot such amount to other States that need additional funds, in such manner as the Secretary determines is appropriate.

SEC. 155. STATE APPLICATIONS.

(a) GENERAL.—(1) If a State desires to receive a grant under this title, the State educational agency shall submit an application to the Secretary at such time and in such manner as the Secretary may determine.

(2) In addition to the information described in subsections (b) and (c), each such application shall include—

(A) an assurance that the State educational agency will cooperate with the Secretary in carrying out the Secretary's responsibilities under section 162, and will comply with reasonable requests of the Secretary for data related to the State's progress in developing and implementing its State improvement plan under this title;

(B) an assurance that State law provides adequate authority to carry out each component of the State's improvement plan developed, or to be developed under section 156, or that such authority will be sought;

(C) an assurance that the standards developed for student achievement are not less rigorous than student achievement standards used prior to the date of enactment of this Act;

(D) an assurance that the State will provide for broad public participation in the planning process; and

(E) such other assurances and information as the Secretary may require.

(b) FIRST YEAR.—A State's application for the first year of assistance under this title shall—

(1) describe the process by which the State will develop a school improvement plan that meets the requirements of section 156; and

(2) describe how the State educational agency will use funds received under this title for such year, including how the State educational agency will make subgrants to local educational agencies and for teacher training.

(c) SUBSEQUENT YEARS.—A State's second application under this title shall—

(1) cover the second through fifth years of its participation;

(2) include a copy of the State's improvement plan that meets the requirements of section 156 or, if the State plan is not complete, a statement of the steps it will take to complete the plan and a schedule for doing so; and

(3) include an explanation of how the State will use funds received under this title, including how it will make subgrants to local educational agencies and for teacher training under section 159(b)(1).

SEC. 156. STATE IMPROVEMENT PLANS.

(a) BASIC SCOPE OF PLAN.—Any State educational agency that wishes to receive a grant under this title after its first year of participation shall develop and implement a plan for the fundamental restructuring and improvement of elementary and secondary education in the State. This plan must address—

(1) in accordance with subsection (c), the establishment or adoption of challenging content and student performance standards for all students and the use of curricula, instructional practices, assessments, technology, parental involvement programs, and professional preparation and development approaches appropriate to help all students reach such standards;

(2) in accordance with subsection (d), the establishment or adoption of opportunity-to-learn standards that will define the conditions of teaching and learning that provide all students the opportunity to meet the challenging content and student performance standards;

(3) in accordance with subsection (e), needed changes in the governance and management of the education system in order to effectively focus schools on, and assist them in, preparing all students to meet the challenging State standards;

(4) in accordance with subsection (f), comprehensive strategies to involve communities, including parents, businesses, libraries, institutions of higher education, employment and training agencies, health and human service agencies, advocacy groups, cultural institutions, and other public and private agencies that provide social services, health care, child care, early childhood education, and nutrition to students, in helping all students meet the challenging State standards;

(5) in accordance with subsection (g), strategies for ensuring that all local educational agencies and schools within the State are involved in developing and implementing needed improvements within a specified period of time;

(6) in accordance with subsection (h), strategies for ensuring that comprehensive, systemic reform is promoted from the bottom up in communities, local educational agencies, and schools; and

(7) the needs of the children, ages 5 through 18, who are out of school and the extent to which such children can be brought back into the education system and meet the standards set forth in this Act.

(b) PLAN DEVELOPMENT.—(1) A State improvement plan under this title must be developed by a broad-based panel (referred to in this title as the "panel") in cooperation with the State educational agency and the Governor. The panel shall include—

(A) the Governor and the chief State school officer, or their designees;

(B) the chairman of the State board of education and the chairmen of the appropriate authorizing committees of the State legislature, or their designees;

(C) teachers, principals, and administrators who have successfully improved student performance and deans of colleges of education;

(D) representatives of teacher organizations, parents, institutions of higher education, business and labor leaders, community-based organizations, Indian tribes, local boards of education, State and local officials responsible for health, social services, and other related services, and others, as appropriate;

(E) representatives from rural and urban local educational agencies in the State; and

(F) experts in educational measurement and assessment.

(2) The Governor and the chief State school officer shall each appoint half the members of the State panel. The full panel shall establish the procedures regarding the operation of the panel, including the designation of the panel chairperson.

(3) To the extent feasible, the membership of the panel shall be geographically representative of the State and reflect the diversity of the population of the State with regard to race, ethnicity, gender, and disability characteristics.

(4) One-third of the panel members shall be individuals with expertise in the educational needs and assessments of children who are from low-income families, minority group backgrounds, have limited-English proficiency, or have disabilities.

(5) The panel shall consult the Governor, the chief State school officer, the State board of education, and relevant committees of the State legislature in developing the plan.

(6) The panel shall be responsible for conducting a statewide, grassroots outreach process, including conducting public hearings, to involve educators, related services personnel, parents, secondary school students, local officials, private nonprofit elementary and secondary schools, community and business leaders, Indian tribes, citizens, children's advocates, and others with a stake in the success of students and their education system, and who are representative of the diversity of the State and its student population, in the development of the State plan and in a continuing dialog regarding the need for and nature of challenging standards for all students and local and State responsibilities for helping all students achieve them.

(7) The panel shall develop a continuing process for interacting with local educational agencies and individual schools engaged in systemic reform, especially including local educational agencies and schools which receive subgrants under section 159 of this Act, to ensure that the development and implementation of the State plan reflects their needs and experiences.

(8) The panel shall develop a State plan, provide opportunity for public comment, and submit the State plan to the State educational agency for approval.

(9) The State educational agency shall submit the original State improvement plan developed by the panel and the State improvement plan if modified by such agency, together with an explanation of any changes made by such agency to the plan developed by the panel, to the Secretary for approval.

(10) If any portion of the State plan addresses matters that, under State or other applicable law, are not under the authority of the State educational agency, the State educational agency shall obtain the approval of, or changes to, such portion, with an explanation from the Governor or other official responsible for that portion before submitting the plan to the Secretary.

(11) After approval of the State plan by the Secretary, the panel, in close consultation with teachers, principals, administrators, school boards, advocacy groups, advocates of children with disabilities and parents in local educational agencies and schools receiving funds under this title, shall monitor the implementation and effectiveness of the State plan to determine if revisions are appropriate, and shall periodically report its findings to the public.

(c) TEACHING, LEARNING, STANDARDS, AND ASSESSMENTS.—Each State plan shall establish strategies and a timetable for improving teaching and learning, including—

(1) a process for developing or adopting challenging content and student performance standards for all students which includes coordinating the standards developed pursuant to section 115 of the Carl D. Perkins Vocational and Applied Technology Education Act of 1990;

(2) a process for providing assistance and support to local educational agencies and schools to give them the capacity and responsibility to provide all students the opportunity to increase education achievement and meet challenging State content and student performance standards;

(3) assessing the effectiveness and equity of the school finance program of the State to identify disparities in the resources available to each local educational agency and school in such State and how such disparities affect the ability of the State educational agency and local educational agencies to develop and implement plans under this title;

(4) a process for developing, adopting, or recommending instructional materials, including gender equitable and multicultural materials, and technology to support and assist local educational agencies and schools to provide all students the opportunity to meet the challenging State content and student performance standards;

(5) a process for developing and implementing a valid and nondiscriminatory assessment system or set of locally-based assessment systems which are consistent with relevant, nationally recognized, professional and technical standards for assessment, and are capable of providing coherent information about student attainments relative to the State content standards;

(6) a process for monitoring the implementation of such system or systems and the impact on improved instruction for all students;

(7) a process for improving the State's system of teacher and school administrator preparation, licensure, and continuing professional development so that all teachers, related services personnel, and administrators develop the subject matter and pedagogical expertise needed to prepare all students to meet the challenging standards under paragraph (1);

(8) a process for providing appropriate and effective professional development, including the

use of technology, distance learning, and gender-equitable methods, necessary for teachers, school administrators, and others to help all students meet the challenging standards under paragraph (1); and

(9) a process to ensure widespread participation of classroom teachers in developing the portions of the plan described in this subsection.

(d) OPPORTUNITY-TO-LEARN STANDARDS.—Each State plan shall establish a strategy and timetable for—

(1) adopting or establishing opportunity-to-learn standards that are consistent with the challenging content and student performance standards that have been adopted or established;

(2) ensuring that every school in the State is making demonstrable progress toward meeting the State's opportunity-to-learn standards;

(3) ensuring that the State's opportunity-to-learn standards address the need of all students;

(4) providing for periodic assessments of the extent to which opportunity-to-learn standards are being met throughout the State; and

(5) periodically reporting to the public on the extent of the State's improvement in achieving such standards and providing all students with a fair opportunity to achieve the knowledge and skill levels that meet the State's content and student performance standards.

(e) GOVERNANCE AND MANAGEMENT.—Each State plan shall establish strategies for improved governance and management of its education system, such as—

(1) aligning responsibility, authority, and accountability throughout the education system, so that decisions regarding content and student performance standards are coordinated and decisions regarding the means for achieving such standards are made closest to the learners;

(2) creating an integrated and coherent approach to attracting, recruiting, preparing and licensing, appraising, rewarding, retaining, and supporting the continued professional development of teachers (including vocational teachers), administrators, and other educators, including bilingual educators and special education providers, so that there is a highly talented workforce of professional educators capable of preparing all students to reach challenging standards, with special attention to the recruitment, training, and retention of qualified minorities into the education profession within the State to ensure that the profession reflects the racial and ethnic diversity of the student population;

(3) providing incentives for high performance, such as—

(A) working with employers and institutions of higher education to devise strategies to reward student achievement;

(B) incentives for classroom teachers, principals, and other professional educators to participate in professional development activities; and

(C) school-based incentives for schools and local educational agencies to improve student performance;

(4) increasing the proportion of State and local funds allocated to direct instructional purposes; and

(5) increasing flexibility for local educational agencies and schools by, for example—

(A) waiving State regulations and other requirements that impede educational improvement;

(B) focusing accountability on educational outcomes rather than monitoring compliance with input requirements; and

(C) fostering conditions that allow teachers, principals, and parents in the school community to be creative in helping all students meet challenging standards.

(f) PARENTAL AND COMMUNITY SUPPORT AND INVOLVEMENT.—Each State plan shall describe strategies for how the State will involve parents and other community members in planning, designing, and implementing its plan, including such strategies as—

(1) educating the public about the need for higher standards, systemic improvement, and awareness of diverse learning needs;

(2) involving parents, communities, and advocacy groups in the standard-setting and improvement process;

(3) linking the family and school in supporting students to meet the challenging student content and performance standards established;

(4) reporting, on an ongoing basis, to parents, educators, and the public on the progress in implementing the plan and improving student performance;

(5) focusing public and private community resources and public school resources on prevention and early intervention to address the needs of all students by—

(A) identifying and removing unnecessary regulations and obstacles to coordination;

(B) improving communication and information exchange; and

(C) providing appropriate training to agency personnel; and

(6) increasing the access of all students to social services, health care, nutrition, related services, and child care services, and locating such services in schools, cooperating service agencies, community-based centers, or other convenient sites designed to provide "one-stop shopping" for parents and students.

(g) MAKING THE IMPROVEMENTS SYSTEM-WIDE.—To help provide all students throughout the State the opportunity to meet challenging State standards, each State plan shall describe strategies such as—

(1) ensuring that the improvement efforts expand from the initial local educational agencies, schools, and educators involved to all local educational agencies, schools, and educators in the State education system through such approaches as teacher and administrator professional development, technical assistance, whole school projects, intensive summer training, and networking of teachers and other educators, consortia of schools, and local educational agencies undertaking similar improvements;

(2) developing partnerships among preschools, elementary and secondary schools, institutions of higher education, cultural institutions, health and social service providers, and employers to improve teaching and learning at all levels of the education system for all students and to foster collaboration and continuous improvement;

(3) developing strategies to provide for the close coordination of standards development and improvement efforts among institutions of higher education and secondary, and elementary schools;

(4) conducting parental involvement activities and outreach programs aimed at parents whose language is a language other than English, individuals with disabilities, and other special populations, including American Indians, Alaskan Natives, and Native Hawaiians, to involve all segments of the community in the development of the State plan;

(5) developing partnerships with Indian tribes and schools funded by the Bureau, where appropriate, to improve consistency and compatibility in curriculum among public and such schools funded by the Bureau at all grade levels;

(6) allocating all available local, State, and Federal resources to achieve system-wide improvement;

(7) providing for the development of objective criteria and measures against which the success of local plans will be evaluated;

(8) providing for the availability of curricular materials, learning technologies, including distance learning, and professional development in a manner ensuring equal access by all local educational agencies in the State;

(9) taking steps to ensure that all local educational agencies, schools, and educators in the State benefit from successful programs and practices supported by funds made available to local educational agencies and schools under this title; and

(10) providing assistance to students, teachers, schools, and local educational agencies that are identified through the assessment system developed under subsection (c)(5) as needing such assistance.

(h) PROMOTING BOTTOM-UP REFORM.—Each State plan shall include strategies for ensuring that comprehensive, systemic reform is promoted from the bottom up in communities, local educational agencies, and schools, as well as guided by coordination and facilitation from State leaders, including strategies such as—

(1) ensuring that the State plan is responsive to the needs and experiences of local educational agencies, schools, teachers, the community, and parents;

(2) establishing mechanisms for continuous input from local schools, communities, advocacy groups, institutions of higher education, and local educational agencies into, and feedback on, the implementation of the State plan;

(3) providing discretionary resources that enable teachers and schools to purchase needed professional development and other forms of assistance consistent with their improvement plan from high-quality providers of their choice;

(4) establishing collaborative networks of teachers centered on content standards and assessments for the purpose of improving teaching and learning;

(5) providing flexibility to individual schools and local educational agencies to enable them to adapt and integrate State content standards into courses of study appropriate for individual schools and communities;

(6) facilitating the provision of waivers from State rules and regulations that impede the ability of local educational agencies or schools to carry out local education improvement plans; and

(7) facilitating communication among educators within and between local educational agencies for the purpose of sharing innovative and effective practices, including, through the use of telecommunications, distance learning, site visits, and other means.

(i) COORDINATION WITH SCHOOL-TO-WORK PROGRAMS.—If a State has received Federal assistance for the purpose of planning for, expanding, or establishing a school-to-work program, then a State shall include in the State plan a description of how such school-to-work program will be incorporated into the school reform efforts of the State. In particular, the State plan shall include a description of how secondary schools will be modified in order to provide career guidance, the integration of academic and vocational education, and work-based learning, if such programs are proposed in the State's school-to-work plan.

(j) BENCHMARKS AND TIMELINES.—Each State plan shall include specific benchmarks of improved student performance and of progress in implementing the improvement plan, and timelines against which the progress of the State in carrying out its plan, including the elements described in subsections (c) through (h), can be measured.

(k) COORDINATING STRATEGIES.—Each State plan shall include strategies for coordinating the integration of academic and vocational instruction pursuant to the Carl D. Perkins Vocational and Applied Technology Education Act.

(l) PROGRAM IMPROVEMENT AND ACCOUNTABILITY.—Each State shall describe—

(1) how the State will monitor progress towards implementing the State and local plans; and

(2) procedures the State will use to ensure schools and school districts meet State opportunity-to-learn and content standards within the established time lines.

(m) PROHIBITION ON FEDERAL MANDATES, DIRECTION, AND CONTROL.—Nothing in this section shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State and local resources.

(n) PEER REVIEW AND SECRETARIAL APPROVAL.—(1) The Secretary shall review each State improvement plan prepared under this section, and each application submitted under section 155, with the assistance and advice of State and local education policymakers, educators, classroom teachers, related services personnel, experts on educational innovation and improvement, parents, advocates for children with disabilities, representatives of other advocacy groups, and other appropriate individuals. The peer review process shall be performed by individuals representative of the diversity of the United States with regard to geography, race, ethnicity, gender, and disability. The review of each State plan shall include at least one site visit to each State.

(2) The Secretary shall approve a State's plan when the Secretary determines, after considering the peer reviewers' comment, that it—

(A) reflects a widespread commitment within the State;

(B) holds reasonable promise of enabling all students to achieve at the high levels called for by this Act;

(C) meets the requirements of subsections (a) through (k); and

(D) allows local schools, local educational agencies and communities the flexibility to implement local improvement plans in a manner which reflects local needs and requirements in order to promote a 'bottom up' system of school reform.

(3) The Secretary shall not decline to approve a State's plan, or any State application submitted under section 155, before offering the State—

(A) an opportunity to revise its plan or application; and

(B) a hearing.

(o) REGULAR REVIEW.—Each State plan shall include a process for regularly reviewing and updating any State content, student performance, and opportunity-to-learn standards and assessment systems.

(p) AMENDMENTS TO PLAN.—(1) Each State shall periodically review its plan and revise it, as appropriate, in accordance with the process described in subsection (b).

(2) The Secretary shall review major amendments to a State's plan through the same process, described in subsection (j), used to review the original plan.

(q) PREEXISTING STATE PLANS AND PANELS.—(1) If a State has developed a comprehensive and systemic improvement plan to help all students meet challenging standards, or any component of such a plan, that otherwise meets the requirements of this section, the Secretary may approve such plan or component notwithstanding that it was not developed in accordance with subsection (b), if the Secretary determines that such approval would further the purposes of State systemic education improvement.

(2) If, before the enactment of this Act, a State has made substantial progress in developing a plan that otherwise meets, or is likely to meet, the requirements of this section, but was developed by a panel that does not meet the requirements of paragraphs (1), (2), and (3) of subsection (b), the Secretary may, at the request of the Governor and the State educational agency, treat such panel as meeting the requirements of this title if the Secretary determines that there has been statewide involvement of educators, parents, students, advocacy groups, other interested members of the public in the development of the plan.

SEC. 157. SECRETARY'S REVIEW OF APPLICATIONS; PAYMENTS.

(a) FIRST YEAR.—The Secretary shall approve the initial year application of a State educational agency under section 155(b) if the Secretary determines that—

(1) such application meets the requirements of this title; and

(2) there is a substantial likelihood that the renewal application of the State will be able to develop and implement an education improvement plan that complies with section 156.

(b) SECOND THROUGH FIFTH YEARS.—The Secretary shall approve a renewal application of a State educational agency under section 155(c) for the second through fifth years only if—

(1)(A) the Secretary has approved the State's improvement plan under section 156(l); or

(B) the Secretary determines that the State has made substantial progress in developing such plan; and

(2) such application meets the other requirements of this title.

(c) PAYMENTS.—For any fiscal year for which a State has an approved application under this title, the Secretary shall make a grant to the State educational agency in the amount determined under section 154(b).

SEC. 158. STATE USE OF FUNDS.

(a) FIRST YEAR.—In the first year for which a State educational agency receives a grant under this title, the State—

(1) shall use at least 75 percent of such funds to make subgrants, in accordance with section 159(a), to local educational agencies for the development or implementation of local improvement plans and to make subgrants, in accordance with section 159(b), to improve educator preservice programs and for professional development activities consistent with the State plan, if the amount allocated to States under section 154(b) for such year is at least $50,000,000. The State may use such funds for such subgrants if such amount is less than $50,000,000; and

(2) shall use the remainder of such funds to develop, revise, expand, or implement an education improvement plan described in section 156.

(b) SUCCEEDING YEARS.—A State that receives assistance under this title for any year after the first year of participation shall—

(1) use at least 90 percent of such assistance in each succeeding year to make subgrants—

(A) to local educational agencies, in accordance with section 159(a), for the implementation of the State improvement plan and of local improvement plans; and

(B) in accordance with section 159(b), to improve educator preservice programs and for professional development activities that are consistent with the State improvement plan; and

(2) use the remainder of such assistance for State activities designed to implement its improvement plan, such as—

(A) supporting the development or adoption of State content and student performance standards, State opportunity-to-learn standards, and assessments linked to the standards, including through consortia of States, and in conjunction with the National Education Standards and Improvement Council established under part B of title II of this Act;

(B) supporting the implementation of high-performance management and organizational strategies, such as site-based management, shared decisionmaking, or quality management principles, to promote effective implementation of such plan;

(C) supporting the development and implementation, at the local educational agency and school building level, of improved human resource development systems for recruiting, selecting, mentoring, supporting, evaluating, and rewarding educators;

(D) providing special attention to the needs of minority, limited-English proficient, disabled, and female students, including instructional programs and activities that encourage such students in elementary and secondary schools to aspire to enter post secondary education or training;

(E) supporting the development, at the State or local level, of performance-based accountability and incentive systems for schools;

(F) outreach related to education improvement to parents, Indian tribal officials, classroom teachers, related services personnel, and other educators, and the public;

(G) providing technical assistance and other services to increase the capacity of local educational agencies and schools to develop and implement local systemic improvement plans, implement new assessments, and develop curricula consistent with the content and student performance standards of the State;

(H) promoting public magnet schools, public "charter schools", and other mechanisms for increasing choice among public schools; and

(I) collecting and analyzing data.

(c) LIMIT ON ADMINISTRATIVE COSTS.—In each year, a State may use not more than four percent of its annual allotment under this title, or $100,000, whichever is greater, for administrative expenses, not including the activities of the panel established under section 156(b)(1).

SEC. 159. SUBGRANTS FOR LOCAL REFORM AND PROFESSIONAL DEVELOPMENT.

(a) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—(1)(A) Each State educational agency shall make subgrants to local educational agencies (or consortia of such agencies) consistent with subsections (a)(1) and (b)(1)(A) of section 158 through a competitive process.

(B) In making such subgrants, the State educational agency shall award not less than 1 subgrant in each fiscal year to an urban local educational agency and not less than 1 subgrant in each fiscal year to a rural local educational agency, except that this provision shall not apply to the District of Columbia. Rural local educational agencies may include or be represented as a fiscal agent by an education service agency.

(C) Each subgrant shall be for a project of sufficient duration and of sufficient size, scope, and quality to carry out the purpose of this title effectively.

(2) A local educational agency wishing to receive a subgrant under this title for the purpose of developing a comprehensive local plan shall submit an application to the State educational agency. Such application shall contain assurances that the local educational agency intends to develop a plan that meets the requirements of this section.

(3) Each local educational agency wishing to receive a subgrant for the purpose of implementing a plan under this subsection shall submit a local plan to the State educational agency which—

(A) is developed by a broad-based panel that—

(i) is appointed by the local educational agency and is representative of the diversity of students and community with regard to race, language, ethnicity, gender, disability, and socioeconomic characteristics and includes teachers, parents, advocacy groups, school administrators, business representatives, and others, as appropriate; and

(ii) shall, following the selection of its members, establish the procedures regarding the op-

eration of the panel, including the designation of the chairperson;

(B) includes a comprehensive local plan for districtwide education improvement, directed at enabling all students to meet the challenging content and student performance standards of the State, including specific goals and benchmarks, consistent with the State improvement plan (either approved or under development) and includes a strategy for—

(i) implementing opportunity-to-learn standards;

(ii) improving teaching and learning;

(iii) improving governance and management;

(iv) generating and strengthening parental and community involvement; and

(v) expanding improvements throughout the local educational agency;

(C) promotes the flexibility of local schools in developing plans which address the particular needs of their school and community and are consistent with the local plan;

(D) describes a process of broad-based community participation in the development, implementation, and evaluation of the local plan;

(E) describes how the local educational agency will encourage and assist schools to develop comprehensive school improvement plans that focus on helping all students reach challenging content and student performance standards and that address relevant elements of the improvement plan of the local educational agency identified in subparagraph (B);

(F) describes how the local educational agency will implement specific programs aimed at ensuring improvements in school readiness and the ability of students to learn effectively at all grade levels by identifying the most pressing needs facing students and their families with regard to social services, health care, nutrition, and child care, and by entering into partnerships with public and private agencies to increase the access of students and families to coordinated services in a school setting or at a nearby site;

(G) describes how the subgrant will be used by the local educational agency, and the procedures to be used to make funds available to schools in accordance with paragraph (6)(A);

(H) identifies, with an explanation, any State or Federal requirements that the local educational agency believes impede educational improvement and that such local educational agency requests be waived in accordance with section 161 (such requests shall promptly be transmitted to the Secretary by the State educational agency); and

(I) contains such other information as the State educational agency may reasonably require.

(4) A local educational agency which has approved a local plan shall submit such plan to the State for approval together with a description of modifications to such plan and any comments from the local panel regarding such plan.

(5) The panel appointed under paragraph (3)(A) shall, after approval by the State educational agency of the application of the local educational agency, monitor the implementation and effectiveness of the local improvement plan in close consultation with teachers, related services personnel, principals, administrators, community members, and parents from schools receiving funds under this title, to determine if revisions to the local plan should be recommended to the local educational agency. The panel shall make public its findings.

(6)(A) A local educational agency that receives a subgrant under this subsection shall—

(i) in the first year, use not more than 25 percent of subgrant funds to develop a local improvement plan or to implement any local educational activities approved by the State educational agency which are reasonably related to carrying out the State or local improvement plans, and not less than 75 percent of such funds to support individual school improvement initiatives directly related to providing all students in the school the opportunity to meet challenging State content and student performance standards; and

(ii) in subsequent years, use subgrant funds for any activities approved by the State educational agency which are reasonably related to carrying out the State or local improvement plans, except that at least 85 percent of such funds shall be made available to individual schools to develop and implement comprehensive school improvement plans which are tailored to meet the needs of their particular student populations and are designed to help all students meet challenging State content standards.

(B) At least 50 percent of the funds made available by a local educational agency to individual schools under this section in any fiscal year shall be made available to schools with a special need for such assistance, as indicated by a high number or percentage of students from low-income families, low student achievement, or other similar criteria developed by the local educational agency.

(C) A local educational agency may not use more than five percent of its annual allotment under this Act for administrative expenses.

(7) The State educational agency shall give priority in awarding a subgrant to—

(A) a consortium of local educational agencies; or

(B) a local educational agency that makes assurances that funds will be used to assist a consortium of schools that has developed a plan for school improvement.

(b) SUBGRANTS FOR PRESERVICE TEACHER EDUCATION AND PROFESSIONAL DEVELOPMENT ACTIVITIES.—(1)(A) Each State educational agency shall make subgrants to consortia of local educational agencies, institutions of higher education, private nonprofit organizations, or combinations thereof, consistent with subsections (a)(1) and (b)(1) of section 158 through a competitive, peer-reviewed process to—

(i) improve preservice teacher education programs consistent with the State plan, including how to work effectively with parents and the community; and

(ii) support continuing, sustained professional development activities for educators which will increase student learning and are consistent with the State plan.

(B)(i) In order to apply for a subgrant described in subparagraph (A)(i), a consortium must include at least one local educational agency and at least one institution of higher education.

(ii) In order to apply for a subgrant described in subparagraph (A)(ii), a consortium must include at least one local educational agency.

(2) A consortium that wishes to receive a subgrant under this subsection shall submit an application to the State educational agency which—

(A) describes how the applicant will use the subgrant to improve teacher preservice and school administrator education programs or to implement educator professional development activities consistent with the State plan;

(B) identifies the criteria to be used by the applicant to judge improvements in preservice education or the effects of professional development activities consistent with the State plan; and

(C) contains any other information that the State educational agency determines is appropriate.

(3) A recipient of a subgrant under this subsection shall use the subgrant funds for activities supporting—

(A) the improvement of preservice teacher education and school administrator programs so that such programs equip educators with the subject matter and pedagogical expertise necessary for preparing all students to meet challenging standards; or

(B) the development and implementation of new and improved forms of continuing and sustained professional development opportunities for teachers, principals, and other educators at the school or district level that equip educators with such expertise, and with other knowledge and skills necessary for leading and participating in continuous education improvement.

(4) A recipient may use the subgrant funds under this subsection for costs related to release time for teachers to participate in professional development activities.

(5) Professional development shall include related services personnel as appropriate.

(6) In awarding subgrants under this subsection, the State educational agency shall give priority to local educational agencies that form partnerships with collegiate educators to establish professional development school sites.

(c) SPECIAL AWARD RULE.—(1) Each State educational agency shall award at least 50 percent of subgrant funds under subsection (a) in each fiscal year to local educational agencies that have a greater percentage or number of disadvantaged children than the statewide average percentage or number for all local educational agencies in the State.

(2) The State educational agency may waive the requirement of paragraph (1) if such State does not receive a sufficient number of applications to comply with such requirement.

SEC. 160. AVAILABILITY OF INFORMATION AND TRAINING.

(a) INFORMATION AND TRAINING.—Proportionate to the number of children in a State or in a local educational agency who are enrolled in private elementary or secondary schools—

(1) a State educational agency or local educational agency which uses funds under this title to develop goals, content standards, curricular materials, and assessments shall, upon request, make information related to such goals, standards, materials, and assessments available to private schools; and

(2) a State educational agency or local educational agency which uses funds under this title for teacher and administrator training shall provide in its plan for the training of teachers and administrators in private schools located in the geographical area served by such agency.

(b) WAIVER.—If, by reason of any provision of law, a State or local educational agency is prohibited from providing for the equitable participation of teachers and administrators from private schools in training programs assisted with Federal funds provided under this title, or if the Secretary determines that a State or local educational agency has substantially failed or is unwilling to provide for such participation, the Secretary shall waive such requirements and shall arrange for the provision of training consistent with State goals and content standards for such teachers and administrators. Such waivers shall be subject to consultation, withholding, notice, and judicial review in accordance with section 1017 of the Elementary and Secondary Education Act of 1965.

SEC. 161. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.

(a) GENERAL.—(1) Except as provided in subsection (c), the Secretary may waive any requirement of any statute listed in subsection (b) or of the regulations issued under such statute for a State educational agency, local educational agency, or school that requests such a waiver—

(A) if, and only to the extent that, the Secretary determines that such requirement impedes the ability of the State, or of a local educational agency or school in the State, to carry out the State or local education improvement plan;

(B) if the State educational agency has waived, or agrees to waive, similar requirements of State law; and

(C) if, in the case of a Statewide waiver, the State educational agency—

(i) provides all local educational agencies and parent organizations in the State with notice and an opportunity to comment on the proposal of the State educational agency to seek a waiver; and

(ii) submits the comments of such agencies to the Secretary.

(2) To request a waiver, a State educational agency, local educational agency, or school that receives funds under this Act or a local educational agency that does not receive funds under this Act but is undertaking school reform efforts that meet the objectives of the State plan, shall submit an application to the Secretary that includes—

(A) the identification of statutory or regulatory requirements that are requested to be waived and the goals that the State local educational agency or school intends to achieve;

(B) a description of the action that the State has undertaken to remove State statutory or regulatory barriers identified in the applications of local educational agencies;

(C) a description of the goals of the waiver and the expected programmatic outcomes if the request is granted;

(D) the numbers and types of students to be impacted by such waiver;

(E) a timetable for implementing a waiver; and

(F) the process the State will use to monitor, on a biannual basis, the progress in implementing a waiver.

(3) The Secretary shall act promptly on a waiver request and state in writing the reasons for granting or denying such request. If a waiver is granted, the Secretary must also include the expected outcome of granting such waiver.

(4) The Secretary's decision shall be—

(A) published in the Federal Register; and

(B) disseminated by the State educational agency to interested parties, including educators, parents, students, advocacy and civil rights organizations, other interested parties, and the public.

(5) Each such waiver shall be for a period not to exceed three years. The Secretary may extend such period if the Secretary determines that the waiver has been effective in enabling the State or affected local educational agencies to carry out reform plans.

(b) INCLUDED PROGRAMS.—The statutes subject to the waiver authority of this section are as follows:

(1) Chapter 1 of title I of the Elementary and Secondary Education Act of 1965.

(2) Part A of chapter 2 of title I of the Elementary and Secondary Education Act of 1965.

(3) The Dwight D. Eisenhower Mathematics and Science Education Act (part A of title II of the Elementary and Secondary Education Act of 1965).

(4) The Emergency Immigrant Education Act of 1984 (part D of title IV of the Elementary and Secondary Education Act of 1965).

(5) The Drug-Free Schools and Communities Act of 1986 (title V of the Elementary and Secondary Education Act of 1965).

(6) The Carl D. Perkins Vocational and Applied Technology Education Act.

(c) WAIVERS NOT AUTHORIZED.—The Secretary may not waive any statutory or regulatory requirement of the programs listed in subsection (b) relating to—

(1) maintenance of effort;

(2) comparability of services;

(3) the equitable participation of students and professional staff in private schools;

(4) parental participation and involvement; or

(5) the distribution of funds to State or to local educational agencies.

(d) TERMINATION OF WAIVERS.—The Secretary shall periodically review the performance of any State, local educational agency, or school for which the Secretary has granted a waiver and shall terminate the waiver if the performance of the State, the local educational agency, or the school in the area affected by the waiver has been inadequate to justify a continuation of the waiver.

SEC. 162. PROGRESS REPORTS.

(a) STATE REPORTS TO THE SECRETARY.—Each State educational agency that receives funds under this title shall annually report to the Secretary regarding—

(1) progress in meeting State goals and plans;

(2) proposed State activities for the succeeding year; and

(3) in summary form, the progress of local educational agencies in meeting local goals and plans and increasing student learning.

(b) SECRETARY'S REPORTS TO CONGRESS.—By April 30, 1996, and every two years thereafter, the Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate describing the activities and outcomes of grants under—

(1) section 140 of this Act, including—

(A) a description of the purpose, uses, and technical merit of assessments evaluated with funds under such section; and

(B) an analysis of the impact of such assessments on the performance of all students, particularly students of different racial, gender, ethnic, language groups, or individuals with disabilities; and

(2) this title, including a description of the effect of waivers granted under section 151.

SEC. 163. NATIONAL LEADERSHIP.

(a) ACTIVITIES AUTHORIZED.—From funds reserved each year under section 154(a)(2)(A), the Secretary shall, through the Office of Educational Research and Improvement in accordance with the provisions of sections 405 and 406 of the General Education Provisions Act, directly or through grants or contracts—

(1) provide technical assistance to States and local educational agencies developing or implementing school improvement plans, in a manner that ensures that each such State has access to such assistance;

(2) gather data on, conduct research on, and evaluate systemic education improvement, including the programs authorized by this title;

(3) disseminate research findings and other information on systemic education improvement and how it affects student learning;

(4) provide grants to tribal divisions of education for coordination efforts between school reform plans developed for schools funded by the Bureau of Indian Affairs and public schools described in section 156(g)(5), including tribal activities in support of plans; and

(5) support national demonstration projects that unite local and State educational agencies, institutions of higher education, government, business, and labor in collaborative arrangements in order to make educational improvements systemwide.

(b) RESERVATION OF FUNDS.—(1) The Secretary shall use at least 50 percent of the funds reserved each year under section 154(a)(2)(A) to make grants, consistent with the provisions of section 159(a) that the Secretary finds appropriate, and provide technical and other assistance to urban and rural local educational agencies with large numbers or concentrations of students who are economically disadvantaged or who have limited English proficiency, to assist such agencies in developing and implementing local school improvement plans.

(2) The Secretary shall use not less than $1,000,000 of the funds reserved the first year under section 154(a)(2)(A) to survey coordinated services programs that have been found to be successful in helping students and families and improving student outcomes, and shall disseminate information about such programs to schools that plan to develop coordinated services programs.

SEC. 164. ASSISTANCE TO THE OUTLYING AREAS AND TO THE SECRETARY OF THE INTERIOR.

(a) OUTLYING AREAS.—(1) Funds reserved for outlying areas under section 154(a)(1)(A) shall be distributed among such areas by the Secretary according to relative need.

(2) The provisions of Public Law 95–134, permitting the consolidation of grants to the insular areas, shall not apply to funds received by such areas under this title.

(b) SECRETARY OF THE INTERIOR.—

(1) IN GENERAL.—The funds reserved to the Secretary of the Interior under section 154 shall be made in a payment which shall be pursuant to an agreement between the Secretary and the Secretary of the Interior containing such assurances and terms as the Secretary determines shall best achieve the provisions of this section and this Act. The agreement shall, at a minimum, contain assurances that—

(A) a panel, as set forth in paragraph (4) of this subsection, shall be established;

(B) a reform and improvement plan, designed to increase student learning and assist students in meeting the National Education Goals, meeting the requirements pertaining to State improvement plans required in section 156 and providing for the fundamental restructuring and improvement of elementary and secondary education in schools funded by the Bureau, shall be developed by such panel; and

(C) the provisions and activities required under State improvement plans, including the requirements for timetables for opportunity-to-learn standards, shall be carried out in the same time frames and under the same conditions stipulated for the States in sections 155 and 156, provided that for these purposes, the term "local educational agencies" shall be interpreted to mean "schools funded by the Bureau".

(2) VOLUNTARY SUBMISSION.—The provisions applicable to the States in section 123 of this Act shall apply to the Bureau plan with regard to voluntary submission of standards and assessment systems to the National Education Standards and Improvement Council for review and certification.

(3) PLAN SPECIFICS.—The reform and improvement plan shall include, in addition to the requirements referenced above, specific provisions for—

(A) opportunity to learn standards pertaining to residential programs and transportation costs associated with programs located on or near reservations or serving students in off-reservation residential boarding schools;

(B) review and incorporation of the National Education Goals and the voluntary national content, student performance, and opportunity-to-learn standards developed under part B of title II of this Act, provided that such review shall include the issues of cultural and language differences; and

(C) provision for coordination of the efforts of the Bureau with the efforts for school improvement of the States and local educational agencies in which the schools funded by the Bureau are located, to include, but not be limited to, the development of the partnerships outlined in section 156(g)(5) of the Act.

(4) PANEL.—To carry out the provisions of this section, and to develop the plan for system-wide reform and improvement required under the agreement required under paragraph (1), the Secretary of the Interior shall establish a panel coordinated by the Assistant Secretary of the

Interior for Indian Affairs. Such panel shall consist of—

(A) the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs and two heads of other divisions of such Bureau as the Assistant Secretary shall designate;

(B) a designee of the Secretary of Education; and

(C) a representative nominated by each of the following:

(i) The organization representing the majority of teachers and professional personnel in schools operated by the Bureau.

(ii) The organization representing the majority of nonteaching personnel in schools operated by the Bureau, if not the same organization as in clause (i).

(iii) School administrators of schools operated by the Bureau.

(iv) Education line officers located in Bureau area or agency offices serving schools funded by the Bureau.

(v) The organization representing the majority of contract or grant schools funded by the Bureau not serving students on the Navajo reservation.

(vi) The organization representing the majority of contract or grant schools funded by the Bureau serving students on the Navajo reservation.

(vii) The organization representing the school boards required by statute for schools operated by the Bureau not serving students on the Navajo reservation.

(viii) The organization representing the school boards required by statute for schools funded by the Bureau serving students on the Navajo reservation.

Including the additional members required by paragraph (5), a majority of the members of such panel shall be from the entities designated under subparagraph (C).

(5) ADDITIONAL MEMBERS.—In addition, the members of the panel stipulated above shall designate for full membership four additional members—

(A) one of whom shall be a representative of a national organization which represents primarily national Indian education concerns; and

(B) three of whom shall be chairpersons (or their designees) of Indian tribes with schools funded by the Bureau on their reservations (other than those specifically represented by organizations referred to in paragraph (4)), provided that preference for no less than two of these members shall be given to Indian tribes with a significant number of schools funded by the Bureau on their reservations, or with a significant percentage of their children enrolled in schools funded by the Bureau.

(c) BIA COST ANALYSIS.—

(1) IN GENERAL.—(A) The Secretary of the Interior shall reserve from the first allotment made to the Department of the Interior pursuant to section 154 an amount not to exceed $500,000 to provide, through the National Academy of Sciences, for an analysis of the costs associated with meeting the academic and home-living/residential standards of the Bureau of Indian Affairs for each school funded by such Bureau. The purpose of such analysis shall be to provide the Bureau and the Panel with baseline data regarding the current state of operations funded by the Bureau and to provide a framework for addressing the implementation of opportunity-to-learn standards.

(B) The results of such analysis shall be reported, in aggregate and school specific form, to the chairpersons and ranking minority members of the Committees on Education and Labor and Appropriations of the House of Representatives and the Select Committee on Indian Affairs and the Committee on Appropriations of the Senate, and to the Secretary of the Interior, the Secretary of Education (who shall transmit the report to the proper entities under this Act), and the Assistant Secretary of the Interior for Indian Affairs, not later than 6 months after the date of enactment of this Act.

(2) CONTENT.—Such analysis shall evaluate the costs of providing a program in each school for the next succeeding academic year and shall be based on—

(A) the standards either published in the Federal Register as having effect in schools operated by the Bureau on the date of enactment of this Act or the standards incorporated into each grant or contract in effect on such date with a tribally controlled school funded under section 1128 of Public Law 95–561 (as amended);

(B) the best projections of student counts and demographics, as provided by the Bureau and as independently reviewed by the Academy; and

(C) the pay and benefit schedules and other personnel requirements for each school operated by the Bureau, as existing on the date of enactment.

(d) SECRETARY OF DEFENSE.—The Secretary shall consult with the Secretary of Defense to ensure that, to the extent practicable, the purposes of this title are applied to the Department of Defense schools.

PART D—NATIONAL SKILL STANDARDS BOARD

SEC. 171. PURPOSE.

It is the purpose of this title to establish a National Board to serve as a catalyst in stimulating the development and adoption of a voluntary national system of skill standards and certification that will serve as a cornerstone of the national strategy to enhance workforce skills, and that can be used, consistent with Federal civil rights laws—

(1) by the Nation, to ensure the development of a high skills, high quality, high performance workforce, including the most skilled front-line workforce in the world, and that will result in increased productivity, economic growth and American economic competitiveness;

(2) by industries, as a vehicle for informing training providers and prospective employees of skills necessary for employment;

(3) by employers, to assist in evaluating the skill levels of prospective employees and to assist in the training of current employees;

(4) by labor organizations, to enhance the employment security of workers by providing portable credentials and skills;

(5) by workers, to obtain certifications of their skills to protect against dislocation, to pursue career advancement, and to enhance their ability to reenter the workforce;

(6) by students and entry level workers, to determine the skill levels and competencies needed to be obtained in order to compete effectively for high wage jobs;

(7) by training providers and educators, to determine appropriate training services to offer;

(8) by Government, to evaluate whether publicly-funded training assists participants to meet skill standards where they exist and thereby protect the integrity of public expenditures;

(9) to facilitate the transition to high performance work organizations;

(10) to increase opportunities for minorities and women, including removing barriers to the entry of women in non-traditional employment; and

(11) to facilitate linkages between other components of the workforce investment strategy, including school-to-work transition, secondary and postsecondary vocational-technical education, and job training programs.

SEC. 172. ESTABLISHMENT OF NATIONAL BOARD.

(a) IN GENERAL.—There is established a National Skill Standards Board (in this title referred to as the "National Board").

(b) COMPOSITION.—

(1) IN GENERAL.—The National Board shall be composed of 28 members, appointed in accordance with paragraph (3), of whom—

(A) one member shall be the Secretary of Labor;

(B) one member shall be the Secretary of Education;

(C) one member shall be the Secretary of Commerce;

(D) one member shall be the Chairperson of the National Education Standards and Improvement Council established pursuant to section 122(a);

(E) eight members shall be representatives of small and large business and industry selected from among individuals recommended by recognized national business organizations and trade associations;

(F) eight members shall be representatives of organized labor selected from among individuals recommended by recognized national labor federations; and

(G) eight members shall be representatives from the following groups, with at least one member from each group:

(i) Educational institutions.

(ii) Community-based organizations.

(iii) State and local governments.

(iv) Nongovernmental organizations with a demonstrated history of successfully protecting the rights of racial, ethnic and religious minorities, women, persons with disabilities or older persons.

(2) DIVERSITY REQUIREMENTS.—The members described in subparagraph (G) of paragraph (1) shall have expertise in the area of education and training. The members described in subparagraphs (E), (F), and (G) of paragraph (1) shall—

(A) in the aggregate, represent a broad cross-section of occupations and industries; and

(B) to the extent feasible, be geographically representative of the United States and reflect the racial, ethnic and gender diversity of the United States.

(3) APPOINTMENT.—The membership of the National Board shall be appointed as follows:

(A) Twelve members (four from each class of members described in subparagraphs (E), (F), and (G) of paragraph (1)) shall be appointed by the President.

(B) Six members (two from each class of members described in subparagraphs (E), (F), and (G) of paragraph (1)) shall be appointed by the Speaker of the House of Representatives, of whom three members (one from each class of members described in subparagraphs (E), (F), and (G) of paragraph (1)) shall be selected from recommendations made by the Majority Leader of the House of Representatives and three members (one from each class of members described in subparagraphs (E), (F), and (G) of paragraph (1)) shall be selected from recommendations made by the Minority Leader of the House of Representatives.

(C) Six members (two from each class of members described in subparagraphs (E), (F), and (G) of paragraph (1)) shall be appointed by the President pro tempore of the Senate, of whom three members (one from each class of members described in subparagraphs (E), (F), and (G) of paragraph (1)) shall be selected from recommendations made by the Majority Leader of the Senate and three members (one from each class of members described in subparagraphs (E), (F), and (G) of paragraph (1)) shall be selected from recommendations made by the Minority Leader of the Senate.

(4) TERM.—Each member of the National Board appointed under subparagraphs (E), (F), and (G) of paragraph (1) shall be appointed for a term of 4 years, except that of the initial members of the Board appointed under such paragraph—

(A) twelve members shall be appointed for a term of 3 years (four from each class of members described in subparagraphs (E), (F), and (G) of paragraph (1)), of whom—

(i) two from each class shall be appointed in accordance with paragraph (3)(A);

(ii) one from each such class shall be appointed in accordance with paragraph (3)(B); and

(iii) one from each such class shall be appointed in accordance with paragraph (3)(C); and

(B) twelve members shall be appointed for a term of 4 years (four from each class of members described in subparagraphs (E), (F), and (G) of paragraph (1)), of whom—

(i) two from each such class shall be appointed in accordance with paragraph (3)(A);

(ii) one from each such class shall be appointed in accordance with paragraph (3)(B); and

(iii) one from each such class shall be appointed in accordance with paragraph (3)(C).

(c) CHAIRPERSON AND VICE CHAIRPERSONS.—

(1) CHAIRPERSON.—The National Board shall biennially elect a Chairperson from among the members of the National Board by a majority vote of such members.

(2) VICE CHAIRPERSONS.—The National Board shall annually elect 3 Vice Chairpersons (each representing a different class of the classes of members described in subparagraphs (E), (F), and (G) of subsection (b)(1)) from among its members appointed under subsection (b)(3) by a majority vote of such members, each of whom shall serve for a term of 1 year.

(d) COMPENSATION AND EXPENSES.—

(1) COMPENSATION.—Members of the National Board who are not regular full-time employees or officers of the Federal Government shall serve without compensation.

(2) EXPENSES.—The members of the National Board shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57, title 5, United States Code, while away from their homes or regular places of business in the performance of services for the National Board.

(e) EXECUTIVE DIRECTOR AND STAFF.—The Chairperson of the National Board shall appoint an Executive Director, who shall be compensated at a rate determined by the National Board that shall not exceed the rate of pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, and who shall appoint such staff as is necessary in accordance with title 5, United States Code. Such staff shall include at least one individual with expertise in measurement and assessment.

(f) AGENCY SUPPORT.—

(1) USE OF FACILITIES.—The National Board may use the research, equipment, services and facilities of any agency or instrumentality of the United States with the consent of such agency or instrumentality.

(2) STAFF OF FEDERAL AGENCIES.—Upon the request of the National Board, the head of any department or agency of the United States may detail to the National Board, on a reimbursable basis, any of the personnel of such department or agency to assist the National Board in carrying out this title.

(g) CONFLICT OF INTEREST.—An individual who has served as a member of the National Board may not have any financial interest in an assessment and certification system developed or endorsed under this title for a period of three years after the termination of service of such individual from the National Board.

SEC. 173. FUNCTIONS OF THE NATIONAL BOARD.

(a) IDENTIFICATION OF OCCUPATIONAL CLUSTERS.—

(1) IN GENERAL.—Subject to paragraph (2), the National Board, after extensive public review and comment and study of the national labor market, shall identify broad clusters of major occupations that involve one or more than one industry in the United States.

(2) PROCEDURES FOR IDENTIFICATION.—Prior to identifying broad clusters of major occupations under paragraph (1), the National Board shall—

(A) develop procedures for the identification of such clusters;

(B) publish such procedures in the Federal Register; and

(C) allow for extensive public review of and comment on such procedures.

(b) VOLUNTARY PARTNERSHIPS TO DEVELOP STANDARDS.—

(1) IN GENERAL.—For each of the occupational clusters identified pursuant to subsection (a), the National Board shall encourage and facilitate the establishment of voluntary partnerships to develop a skill standards system in accordance with subsection (d).

(2) REPRESENTATIVES.—Such voluntary partnerships shall include the full and balanced participation of—

(A) representatives of business and industry who have expertise in the area of workforce skill requirements, including representatives of large and small employers, recommended by national business organizations and trade associations representing employers in the occupation or industry for which a standard is being developed, and representatives of trade associations that have received demonstration grants from the Department of Labor or the Department of Education to establish skill standards prior to the enactment of this title;

(B) employee representatives who have expertise in the area of workforce skill requirements and who shall be—

(i) individuals recommended by recognized national labor organizations representing employees in the occupation or industry for which a standard is being developed; and

(ii) such other individuals who are nonmanagerial employees with significant experience and tenure in such occupation or industry as are appropriate given the nature and structure of employment in the occupation or industry;

(C) representatives of—

(i) educational institutions;

(ii) community-based organizations;

(iii) State and local agencies with administrative control or direction over education, vocational-technical education, or employment and training;

(iv) other policy development organizations with expertise in the area of workforce skill requirements; and

(v) non-governmental organizations with a demonstrated history of successfully protecting the rights of racial, ethnic, and religious minorities, women, individuals with disabilities, and older persons; and

(D) individuals with expertise in measurement and assessment, including relevant experience in designing unbiased assessments and performance-based assessments.

(3) EXPERTS.—The partnerships described in paragraph (1) may also include such other individuals who are independent, qualified experts in their fields.

(c) RESEARCH, DISSEMINATION, AND COORDINATION.—In order to support the development of a skill standards system in accordance with subsection (d), the National Board shall—

(1) conduct workforce research relating to skill standards (including research relating to how to use skill standards in compliance with civil rights laws) and make such research available to the public, including the partnerships described in subsection (b);

(2) identify and maintain a catalog of skill standards used by other countries and by States and leading firms and industries in the United States;

(3) serve as a clearinghouse to facilitate the sharing of information on the development of skill standards and other relevant information among representatives of occupations and industries identified pursuant to subsection (a), the voluntary partnerships recognized pursuant to subsection (b), and among education and training providers through such mechanisms as the Capacity Building and Information and Dissemination Network established under section 453(b) of the Job Training Partnership Act;

(4) develop a common nomenclature relating to skill standards;

(5) encourage the development and adoption of curricula and training materials for attaining the skill standards developed pursuant to subsection (d) that include structured work experiences and related study programs leading to progressive levels of professional and technical certification and postsecondary education;

(6) provide appropriate technical assistance; and

(7) facilitate coordination among voluntary partnerships that meet the requirements of subsection (b) to promote the development of a coherent national system of voluntary skill standards.

(d) ENDORSEMENT OF SKILL STANDARDS SYSTEMS.—

(1) DEVELOPMENT OF ENDORSEMENT CRITERIA.—

(A) IN GENERAL.—The National Board, after extensive public consultation, shall develop objective criteria for endorsing skills standards systems relating to the occupational clusters identified pursuant to subsection (a). Such criteria shall, at a minimum, include the components of a skill standards system described in subparagraph (B). The endorsement criteria shall be published in the Federal Register, and updated as appropriate.

(B) COMPONENTS OF SYSTEM.—The components of a skill standards systems shall include the following:

(i) Voluntary skill standards, which at a minimum—

(I) meet or exceed, to the extent practicable, the highest standards used in other countries and the highest international standards;

(II) meet or exceed the highest applicable standards used in the United States, including apprenticeship standards registered under the National Apprenticeship Act;

(III) take into account content and performance standards certified pursuant to title II;

(IV) take into account the requirements of high performance work organizations;

(V) are in a form that allows for regular updating to take into account advances in technology or other developments within the occupational cluster;

(VI) are formulated in such a manner that promotes the portability of credentials and facilitates worker mobility within an occupational cluster or industry and among industries; and

(VII) are not discriminatory with respect to race, color, gender, age, religion, ethnicity, disability, or national origin, consistent with Federal civil rights laws.

(ii) A voluntary assessment system and certification of the attainment of skill standards developed pursuant to subparagraph (A), which at a minimum—

(I) takes into account, to the extent practicable, methods of assessment and certification used in other countries;

(II) utilizes a variety of evaluation techniques, including, where appropriate, oral and written evaluations, portfolio assessments and performance tests; and

(III) includes methods for establishing that the assessment and certification system is not

discriminatory with respect to race, color, gender, age, religion, ethnicity, disability, or national origin, consistent with Federal civil rights laws.

(iii) A system to promote the use of and to disseminate information relating to skill standards, and assessment and certification systems developed pursuant to this paragraph (including dissemination of information relating to civil rights laws relevant to the use of such standards and systems) to entities such as institutions of postsecondary education offering professional and technical education, labor organizations, trade associations, employers providing formalized training and other organizations likely to benefit from such systems.

(iv) A system to evaluate the implementation of the skill standards, and assessment and certification systems developed pursuant to this paragraph, and the effectiveness of the information disseminated pursuant to subparagraph (C) for informing the users of such standards and systems of the requirements of relevant civil rights laws.

(v) A system to periodically revise and update the skill standards, and assessment and certification systems developed pursuant to this paragraph, which will take into account changes in standards in other countries.

(2) ENDORSEMENT.—The National Board, after extensive public review and comment, shall endorse those skill standards systems relating to the occupational clusters identified pursuant to subsection (a) that—

(A) meet the objective endorsement criteria that are developed pursuant to paragraph (1); and

(B) are submitted by partnerships that meet the representation requirements of subsection (b)(2).

(e) RELATIONSHIP WITH ANTIDISCRIMINATION LAWS.—

(1) IN GENERAL.—Nothing in this title shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, ethnicity, national origin, gender, age, or disability.

(2) EVIDENCE.—The endorsement or absence of an endorsement by the Board of a skill standard or assessment and certification system under subsection (d) shall not be used in any action or proceeding to establish that the skill standard or assessment and certification system conforms or does not conform to the requirements of civil rights laws.

(f) COORDINATION WITH EDUCATION STANDARDS.—The National Board shall establish cooperative arrangements with the National Education Standards and Improvement Council to promote the coordination of the development of skill standards under this title with the development of content and performance standards under title II.

(g) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—From funds appropriated pursuant to section 166(a), the Secretary of Labor may award grants (including grants to the voluntary partnerships in accordance with paragraph (2)) and enter into contracts and cooperative arrangements that are requested by the National Board for the purposes of carrying out this title.

(2) GRANT PROGRAMS FOR VOLUNTARY PARTNERSHIPS.—

(A) ELIGIBILITY AND APPLICATION.—Voluntary partnerships that meet the requirements of subsection (b) shall be eligible to apply for a grant under this subsection. Each such voluntary partnership desiring a grant shall submit an application to the National Board at such time, in such manner, and accompanied by such information as the National Board may reasonably require.

(B) REVIEW AND RECOMMENDATION.—The National Board shall review each application submitted pursuant to subparagraph (A) in accordance with the objective criteria published pursuant to subparagraph (C) and shall forward each such application to the Secretary of Labor accompanied by a recommendation for the approval or disapproval of each such application by the Secretary.

(C) CRITERIA FOR REVIEW.—Prior to each fiscal year, the National Board shall publish objective criteria to be used by the Board in reviewing applications under subparagraph (B).

(3) LIMITATION ON THE USE OF FUNDS.—

(A) IN GENERAL.—Not more than 20 percent of the funds appropriated under section 166(a) for each fiscal year shall be used by the National Board for the costs of administration.

(B) COSTS OF ADMINISTRATION DEFINED.—For purposes of this paragraph, the term "costs of administration" means costs relating to staff, supplies, equipment, space, travel and per diem, costs of conducting meetings and conferences, and other related costs.

SEC. 174. DEADLINES.

Not later than December 31, 1996, the National Board shall—

(1) identify occupational clusters pursuant to section 163(a) representing a substantial portion of the workforce; and

(2) promote the development of an initial set of skill standards in accordance with section 163(d) for such clusters.

SEC. 175. REPORTS.

The National Board shall submit to the President and the Congress in each fiscal year a report on the activities conducted under this title, including the extent to which skill standards have been adopted by employers, training providers, and other entities and the effectiveness of such standards in accomplishing the purposes described in section 161.

SEC. 176. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated $15,000,000 for fiscal year 1994 and such sums as may be necessary for each of the fiscal years 1995 through 1998 to carry out this title.

(b) AVAILABILITY.—Amounts appropriated pursuant to subsection (a) shall remain available until expended.

SEC. 177. DEFINITIONS.

For purposes of this title, the following definitions apply:

(1) COMMUNITY-BASED ORGANIZATIONS.—The term "community-based organizations" means such organizations as defined in section 4(5) of the Job Training Partnership Act.

(2) EDUCATIONAL INSTITUTION.—The term "educational institution" means a high school, a vocational school, and an institution of higher education.

(3) SKILL STANDARD.—The term "skill standard" means the level of knowledge and competence required to successfully perform work-related functions within an occupational cluster.

PART E—MISCELLANEOUS

SEC. 181. DEFINITIONS.

As used in this Act—

(1) the terms "all students" and "all children" mean students or children from a broad range of backgrounds and circumstances, including disadvantaged students, students with diverse racial, ethnic, and cultural backgrounds, American Indians, Alaska Natives, Native Hawaiians, students with disabilities, students with limited-English proficiency, migrant children, school-aged children who have dropped out, migrant children, and academically talented students;

(2) the term "assessment system" means measures of student performance which include at least 1 test, and may include other measures of student performance, for a specific purpose and use which are intended to evaluate the progress of all students in the State toward learning the material in State content standards in 1 or more subject areas;

(3) the terms "community", "public", and "advocacy group" are to be interpreted to include representatives of organizations advocating for the education of American Indian, Alaska Native, and Native Hawaiian children and Indian tribes;

(4) the term "content standards" means broad descriptions of the knowledge and skills students should acquire in a particular subject area;

(5) the term "Governor" means the chief executive of the State;

(6) the terms "local educational agency" and "State educational agency" have the meaning given those terms in section 1471 of the Elementary and Secondary Education Act of 1965;

(7) the term "opportunity-to-learn standards" means the criteria for, and the basis of, assessing the sufficiency or quality of the resources, practices, and conditions necessary at each level of the education system (schools, local educational agencies, and States) to provide all students with an opportunity to learn the material in national or State content standards;

(8) the term "outlying areas" means Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the effective date of the Compact of Free Association with the Government of Palau);

(9) the term "performance standards" means concrete examples and explicit definitions of what students have to know and be able to do to demonstrate that they are proficient in the skills and knowledge framed by content standards;

(10) the term "related services" has the same meaning given such term under section 602(17) of the Individuals with Disabilities Education Act;

(11) the term "school" means a school that is under the authority of the State educational agency and a local educational agency or, for the purpose of carrying out section 164(b), a school that is operated or funded by the Bureau of Indian Affairs;

(12) the term "Secretary", except where used in title IV, means the Secretary of Education; and

(13) except as otherwise provided, the term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

SEC. 182. LIMITATIONS.

(a) ASSESSMENTS.—No funds provided under titles II or III of this Act shall be used to undertake assessments that will be used to make decisions regarding the graduation, grade promotion, or retention of students for five years after the date of enactment of this Act.

(b) PUBLIC SCHOOL.—Nothing in this Act shall be construed to authorize the use of funds under title III (except as provided in section 160) to directly or indirectly benefit any school other than a public school.

SEC. 183. ASSESSMENT OF EDUCATIONAL PROGRESS ACTIVITIES.

Section 421(h) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2421(h)) is amended—

(1) by inserting "(1)" after "(h)"; and

(2) by inserting at the end the following:

"(2)(A) Notwithstanding any provision of section 406 of the General Education Provisions Act, the Commissioner of Education Statistics may authorize a State educational agency or a consortium of such agencies to use items and data from the National Assessment of Educational Progress for the purpose of evaluating a course of study related to vocational edu-

cation, if the Commissioner has determined, in writing, that such use will not—

"(i) result in the identification of characteristics or performance of individual students or schools;

"(ii) result in the ranking or comparing of schools or local educational agencies;

"(iii) be used to evaluate the performance of teachers, principals, or other local educators for the purpose of dispensing rewards or punishments; or

"(iv) corrupt or harm the use and value of data collected for the National Assessment of Educational Progress.

"(B) Not later than 60 days after making an authorization under subsection (a), the Commissioner shall submit to the Committee on Education and Labor of the House of Representatives and to the Committee on Labor and Human Resources of the Senate, a report which contains—

"(i) a copy of the request for such authorization;

"(ii) a copy of the written determination under subsection (a); and

"(iii) a description of the details and duration of such authorization.

"(C) The Commissioner may not grant more than one such authorization in any fiscal year and shall ensure that the authorized use of items or data from the National Assessment is evaluated for technical merit and for its affect on the National Assessment of Educational Progress. The results of such evaluations shall be promptly reported to the committees specified in subparagraph (B).".

SEC. 184. COMPLIANCE WITH BUY AMERICAN ACT.

No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1993 (41 U.S.C. 10a–10c, popularly known as the "Buy American Act").

SEC. 185. SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE.

(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this Act, it is the sense of the Congress that entities receiving such assistance should, in expending the assistance, purchase only American-made equipment and products.

(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance under this Act, the head of each Federal agency shall provide to each recipient of the assistance a notice describing the statement made in subsection (a) by the Congress.

SEC. 186. PROHIBITION OF CONTRACTS.

If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to this Act, pursuant to the debarment, suspension, and ineligibility procedures described in section 9.400 through 9.409 of title 48, Code of Federal Regulations.

PART F—PARENTAL INFORMATION AND RESOURCES

SEC. 191. PARENTAL INFORMATION AND RESOURCES.

(a) AUTHORIZATION.—The Secretary of Education is authorized to make grants each year to nonprofit organizations for the purpose of providing training and information to parents of children, aged birth to 5 years, and children enrolled in participating schools and to individuals who work with such parents to encourage a more effective working relationship with professionals in meeting the educational needs of children, aged birth to 5 years, and children enrolled in participating schools.

(b) GRANTS.—Such grants shall—

(1) be designed to meet the unique training and information needs of parents of children, aged birth to 5 years, and children enrolled in participating schools, particularly parents who are severely disadvantaged educationally or economically;

(2) be distributed geographically to the greatest extent possible throughout all the States and give priority to grants which serve areas with high concentrations of low-income families;

(3) be targeted to parents of children, aged birth to 5 years, and children enrolled in participating schools in rural, suburban, and urban areas;

(4) serve parents of low-income and minority children, aged birth to 5 years, and children enrolled in participating schools, including limited-English-proficient children;

(5) be funded at a sufficient size, scope, and quality to ensure that the program is adequate to serve the parents in the area; and

(6) include funds to establish, expand, and operate Teachers as Parents programs.

SEC. 192. ELIGIBILITY.

(a) REPRESENTATION.—To receive a grant under section 191, a nonprofit organization shall meet the following requirements:

(1) Be governed by a board of directors in which the membership includes, or be an organization that represents the interests of, parents and establish a special advisory committee in which the membership includes—

(A) parents of children, aged birth to 5 years, and children enrolled in participating schools; and

(B) representation of education professionals with expertise in improving services for disadvantaged children.

(2) Provide that the parent and professional membership of the board or special advisory committee is broadly representative of minority, low-income, and other individuals and groups that have an interest in compensatory education and family literacy.

(3) Demonstrate the capacity and expertise to conduct effective training and information activities for which a grant may be made.

(4) Network with clearinghouses, other organizations and agencies, and with other established national, State, and local parent groups representing the full range of parents of children, aged birth to 5 years, and children enrolled in participating schools, especially parents of low-income and minority children.

(b) REQUIREMENTS.—The Board of Directors or special governing committee of an organization receiving a grant under this title shall meet at least once each calendar quarter to review the parent training and information activities for which the grant is made.

(c) GRANT RENEWAL.—Whenever an organization requests the renewal of a grant under section 191 for a fiscal year, the Board of Directors or the special advisory committee shall submit to the Secretary a written review of the parent training and information program conducted by such organization during the preceding fiscal year.

SEC. 193. USES OF FUNDS.

Grants received under this title may be used—

(1) for parent training and information programs that assist parents to—

(A) better understand their children's educational needs;

(B) provide follow up support for their children's educational achievement;

(C) communicate more effectively with teachers, counselors, administrators, and other professional educators and support staff;

(D) participate in the design and provision of assistance to students who are not making adequate progress;

(E) obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to assist parents of children, aged birth to 5 years, and children enrolled in participating schools and their parents;

(F) seek technical assistance regarding compliance with the requirements of this Act and of other Federal programs relevant to achieving the goals of this Act;

(G) participate in State and local decisionmaking;

(H) train other parents; and

(I) plan, implement, and fund activities that coordinate the education of their children with other Federal programs that serve such children or their families;

(2) to include State or local educational personnel where such participation would further an objective of the program assisted by the grant; and

(3) to establish a parent training and information center to carry out the activities in paragraphs (1) and (2) and to represent parent interests at the State level, including participation in the design of the public outreach process described in section 156(b)(6), submitting recommendations concerning State standards and plans, and commenting on proposed waivers under this Act.

SEC. 194. TECHNICAL ASSISTANCE.

The Secretary shall provide technical assistance, by grant or contract, for the establishment, development, and coordination of parent training and information programs and centers.

SEC. 195. EXPERIMENTAL CENTERS.

After the establishment in each State of a parent training and information center, the Secretary shall provide for the establishment of 5 additional experimental centers, 3 to be located in urban areas and 2 in rural areas where there are large concentrations of poverty.

SEC. 196. REPORTS.

Not later than June 30, 1995, and not later than June 30 each succeeding year, the Secretary shall obtain data concerning programs and centers assisted under this title, including—

(1) the number of parents, including the number of minority and limited-English-proficient parents, who receive information and training;

(2) the types and modes of information or training provided; and

(3) the strategies used to reach and serve parents of minority and limited-English-proficient children and parents with limited literacy skills.

SEC. 197. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $5,000,000 for fiscal year 1994 and such sums as may be necessary for each of the fiscal years 1995 through 1998.

TITLE II—EDUCATIONAL RESEARCH, DEVELOPMENT, AND DISSEMINATION EXCELLENCE ACT

SEC. 201. FINDINGS.

The Congress finds as follows with respect to improving education in the United States:

(1) A majority of public schools in the United States are failing to adequately prepare their students. To achieve the national education goals set forth by the President and the governors of the States, an overwhelming campaign for educational improvement must be mounted in order to set in motion many strategies and models designed to encourage and support school restructuring. The Federal Government must support an extensive program of educational research, development, dissemination, replication and assistance to identify and support the best responses for the challenges ahead. A significant investment in attaining a deeper

understanding of the processes of learning and schooling and developing new ideas holds the best hope of making a substantial difference to the lives of every school and student in the United States. The Office of Educational Research and Improvement of the Department of Education should be at the center of this campaign in order to coordinate such efforts.

(2) The Federal role in educational research has been closely identified with youths who are socioeconomically disadvantaged, belong to a language minority, or are disabled. However, in 1988, the Federal commitment to education was sufficient to serve not more than—

(A) 1 out of every 5 low-income children in need of preschool education;

(B) 2 out of every 5 children in need of remediation;

(C) 1 out of every 4 children in need of bilingual education; and

(D) 1 out of every 20 youths in need of job training.

(3) The failure of the Federal Government to adequately invest in educational research and development has denied the Nation a sound foundation on which to design school improvements, leading to a history of faddism and failed experimentation resulting in a dearth of research in the area of educationally at-risk students. This situation is of particular concern because at least half of the public school students in 25 of the largest cities of the United States are minority children, and demographers project that, by 2005, almost all urban public school students will be minority children or other children in poverty.

(4) The investment goal of the Federal research, development, and dissemination function should be at least 1 percent of the total amount of funds spent on education nationally.

(5) Nationwide model programs and reliable interventions should be demonstrated and replicated, and for such purposes, programs should be established to conduct research and evaluations, and to disseminate information.

(6) The Office of Educational Research and Improvement must develop a national dissemination policy that will advance the goal of placing a national treasure chest of research results, models, and materials at the disposal of the Nation's education decisionmakers.

(7) A National Educational Research Policy and Priorities Board should be established to ensure that an educational research and dissemination agenda is developed and implemented without partisan political interference.

(8) Existing research and development entities should adopt expanded, proactive roles and new institutions must be created to promote knowledge development necessary to accelerate the application of research knowledge to high priority areas.

(9) Greater use should be made of existing technologies in efforts to improve the Nation's educational system, including efforts to disseminate research findings.

(10) Minority educational researchers are inadequately represented throughout the Department of Education, but particularly in the Office of Educational Research and Improvement. The Office therefore must assume a leadership position in the recruitment, retention, and promotion of qualified minority educational researchers.

(11) The coordination of the mission of the Office of Educational Research and Improvement with that of other components of the Department of Education is critical. It must improve the coordination of the educational research, development, and dissemination function with those of other Federal agencies.

PART A—GENERAL PROVISIONS REGARDING OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

SEC. 211. GENERAL PROVISIONS.

Section 405 of the General Education Provisions Act (20 U.S.C. 1221e) is amended to read as follows:

"OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

"SEC. 405. (a) DECLARATION OF POLICY REGARDING EDUCATIONAL OPPORTUNITY.—

"(1) IN GENERAL.—The Congress declares it to be the policy of the United States to provide to every individual an equal opportunity to receive an education of high quality regardless of race, color, religion, sex, age, disability, national origin, or social class. Although the American educational system has pursued this objective, it has not attained the objective. Inequalities of opportunity to receive high quality education remain pronounced. To achieve the goal of quality education requires the continued pursuit of knowledge about education through research, development, improvement activities, data collection, synthesis, technical assistance, and information dissemination. While the direction of American education remains primarily the responsibility of State and local governments, the Federal Government has a clear responsibility to provide leadership in the conduct and support of scientific inquiry into the educational process.

"(2) MISSION OF OFFICE.—

"(A) The mission of the Office of Educational Research and Improvement shall be to provide national leadership in—

"(i) expanding fundamental knowledge and understanding of education;

"(ii) promoting excellence and equity in education; and

"(iii) monitoring the state of education.

"(B) The mission of the Office shall be accomplished in collaboration with researchers, teachers, school administrators, parents, students, employers, and policymakers.

"(b) PURPOSE AND STRUCTURE OF OFFICE.—

"(1) IN GENERAL.—The Secretary, acting through the Office of Educational Research and Improvement, shall carry out the policies set forth in subsection (a). In carrying out such policies, the Secretary shall be guided by the priorities established by the Board of Governors established in section 405A.

"(2) ADMINISTRATIVE STRUCTURE.—The Office shall be administered by the Assistant Secretary and shall include—

"(A) the National Educational Research Policy and Priorities Board established by section 405A;

"(B) the national research institutes established by section 405B;

"(C) the national education dissemination system established by section 405C;

"(D) the National Library of Education established by section 405D;

"(E) the National Center for Education Statistics established by section 406; and

"(F) such other units as the Secretary deems appropriate to carry out the purposes of the Office.

"(3) PRIORITIES IN RESEARCH AND DEVELOPMENT.—The Office shall, in accordance with the provisions of this section, seek to improve education in the United States through concentrating the resources of the Office on the following priority research and development needs:

"(A) The education of at-risk students.

"(B) The education and development of young children.

"(C) Student achievement in elementary and secondary school.

"(D) Postsecondary education, libraries, and lifelong learning for adults.

"(E) The improvement of schools through the restructuring and reform of school governance, policymaking, finance and management at the State, local, school building, and classroom level.

"(c) APPOINTMENT OF EMPLOYEES.—

"(1) IN GENERAL.—The Assistant Secretary may appoint, for terms not to exceed three years (without regard to the provisions of title 5 of the United States Code governing appointment in the competitive service) and may compensate (without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates) such scientific or technical employees of the Office as the Assistant Secretary considers necessary to accomplish its functions, provided that—

"(A) at least 60 days prior to the appointment of any such employee, public notice is given of the availability of such position and an opportunity is provided for qualified individuals to apply and compete for such position;

"(B) the rate of basic pay for such employees does not exceed the maximum rate of basic pay payable for positions at GS–15, as determined in accordance with section 5376 of title 5, United States Code;

"(C) the appointment of such employee is necessary to provide the Office with scientific or technical expertise which could not otherwise be obtained by the Office through the competitive service; and

"(D) the total number of such employees does not exceed one-fifth of the number of full-time, regular scientific or professional employees of the Office.

"(2) REAPPOINTMENT OF EMPLOYEES.—The Assistant Secretary may reappoint employees described in paragraph (1) upon presentation of a clear and convincing justification of need, for one additional term not to exceed 3 years. All such employees shall work on activities of the Office and shall not be reassigned to other duties outside the Office during their term.

"(d) AUTHORITY TO PUBLISH.—

"(1) IN GENERAL.—The Assistant Secretary is authorized to prepare and publish such information, reports, and documents as may be of value in carrying out the purposes of sections 405 through 405D without further clearance or approval by the Secretary or any other office of the Department.

"(2) QUALITY ASSURANCE.—In carrying out such authority, the Assistant Secretary shall—

"(A) establish such procedures as may be necessary to assure that all reports and publications issued by the Office are of the highest quality; and

"(B) provide other offices of the Department with an opportunity to comment upon any report or publication prior to its publication when its contents relate to matters for which such office has responsibility.

"(e) BIENNIAL REPORT ON ACTIVITIES OF OFFICE.—The Assistant Secretary shall transmit to the President and the Congress by not later than December 30 of every other year a biennial report which shall consist of—

"(1) a description of the activities carried out by and through each research institute during the fiscal years for which such report is prepared and any recommendations and comments regarding such activities as the Assistant Secretary considers appropriate;

"(2) a description of the activities carried out by and through the national education dissemination system established by section 405C during the fiscal years for which such report is prepared and any recommendations and comments regarding such activities as the Assistant Secretary considers appropriate;

"(3) such written comments and recommendations as may be submitted by the Board concerning the activities carried out by and through each of the institutes and the national edu-

cation dissemination system during the fiscal years for which such report is prepared and how such activities relate to the Research Policies and Priorities Plan developed by the Board;

"(4) a description of the coordination activites undertaken pursuant to section 405(f) during the fiscal years for which such report is prepared;

"(5) recommendations for legislative and administrative changes necessary to improve the coordination of all educational research, development, and dissemination activities carried out within the Federal Government, particularly within the priority research and development needs identified in section 405(b)(3); and

"(6) such additional comments, recommendations, and materials as the Assistant Secretary considers appropriate.

"(f) COORDINATION.—With the advice and assistance of the Board, the Assistant Secretary shall establish and maintain an ongoing program of activities designed to improve the coordination of education research, development, and dissemination and activities within the Department and within the Federal Government, particularly within the priority research and development needs identified in section 405(b)(3), in order to—

"(1) minimize duplication in education research, development, and dissemination carried out by the Federal Government;

"(2) maximize the value of the total Federal investment in education research, development, and dissemination; and

"(3) enable all entities engaged in education research, development, and dissemination within the Federal Government to interact effectively as partners and take full advantage of the diverse resources and proficiencies which each entity has available.

"(g) ACTIVITIES REQUIRED WITH RESPECT TO COORDINATION.—In carrying out such program of coordination, the Assistant Secretary shall compile (and thereafter regularly maintain) and make available a comprehensive inventory of all education research, development, dissemination activities, and expenditures being carried out by the Federal Government within the priority research and development needs identified in section 405(b)(3).

"(h) STANDARDS FOR CONDUCT AND EVALUATION OF RESEARCH.—

"(1) IN GENERAL.—In consultation with the Board, the Assistant Secretary shall develop such standards as may be necessary to govern the conduct and evaluation of all research, development, and dissemination activities carried out by the Office to assure that such activities meet the highest standards of professional excellence. In developing such standards, the Assistant Secetary shall review the procedures utilized by the National Institutes of Health, the National Science Foundation, and other Federal agencies engaged in research and development and shall also actively solicit recommendations from the the National Academy of Sciences, the American Educational Research Association and members of the general public.

"(2) CONTENTS OF STANDARDS.—Such standards shall at a minimum—

"(A) require that a system of peer review be utilized by the Office—

"(i) in reviewing and evaluating all applications for grants and cooperative agreements and bids for those contracts which exceed $100,000;

"(ii) in evaluating and assessing the performance of all recipients of grants from and cooperative agreements and contracts with the Office; and

"(iii) in reviewing and designating exemplary and promising programs in accordance with section 405C(d);

"(B)(i) specify the composition of peer review panels, the criteria for the selection of members of such panels, and describe the means by which potential members shall be identified so as to assure that such panels are broadly representative of individuals with expertise in matters relevant to the purposes of each such panel;

"(ii) prohibit the consideration of partisan affiliation in the selection of any member of a peer review panel;

"(iii) describe the general procedures which shall be used by each peer review panel in its operations;

"(iv) prohibit the participation by a member of a peer review panel in the review of any application in which such member has any financial interest; and

"(v) require that transcripts, minutes, and other documents made available to or prepared for or by a peer review panel will be available for public inspection to the extent consistent with the Freedom of Information Act, the Federal Advisory Committee Act, the Privacy Act, and other laws;

"(C)(i) describe the procedures which shall be utilized in evaluating applications for grants, proposed cooperative agreements, and contract bids;

"(ii) specify the criteria and factors which shall be considered in making such evaluations; and

"(iii) provide that any decision to fund a grant, contract, or cooperative agreement out of its order of ranking by a peer review panel shall be first fully justified in writing and that copies of such justification shall be transmitted to the Board, unless such action is required by some other provision of law;

"(D)(i) describe the procedures which shall be utilized in reviewing educational programs which have been identified by or submitted to the Secretary for evaluation in accordance with section 405C(d); and

"(ii) specify the criteria which shall be used in recommending programs as exemplary and promising; and

"(E)(i) require that the performance of all recipients of grants from and contracts and cooperative agreements with the Office shall be periodically evaluated, both during and at the conclusion of their receipt of assistance;

"(ii) describe the procedures and means by which such evaluations shall be undertaken, including—

"(I) the frequency of such evaluations;

"(II) the criteria, outcome measures, and other factors which shall be taken into account; and

"(III) measures to assure that on-site evaluations of performance shall be utilized to the extent appropriate and whenever practicable; and

"(iii) provide that the results of such evaluations shall be taken into account prior to any decision to continue, renew, or provide new funding to the entity being reviewed.

"(3) PUBLICATION AND PROMULGATION OF STANDARDS.—

"(A) The Assistant Secretary shall publish proposed standards—

"(i) which meet the requirements of subparagraphs (A), (B), and (C) of paragraph (2) not later than 1 year after the date of the enactment of the Educational Research, Development, and Dissemination Excellence Act;

"(ii) which meet the requirements of paragraph (2)(D) not later than 2 years after such date; and

"(iii) which meet the requirements of subparagraph (E) of paragraph (2) not later than 3 years after such date;

"(B) Following the publication of such proposed standards, the Assistant Secretary shall solicit comments from interested members of the public with respect to such proposed standards for a period of not more than 120 days. After giving due consideration to any comments which may have been received, the Assistant Secretary shall transmit such standards to the Board for its review and approval.

"(C) Upon the approval of the Board, the Assistant Secretary shall transmit final standards to the Secretary which meet the requirements of the particular subparagraphs of paragraph (2) for which they were developed. Such standards shall be binding upon all activities carried out with funds appropriated under section 405.

"(i) ADDITIONAL RESPONSIBILITIES OF THE ASSISTANT SECRETARY.—In carrying out the activities and programs of the Office, the Assistant Secretary shall—

"(1) be guided by the Research Priorities Plan developed by the Board;

"(2) ensure that there is broad and regular public and professional involvement from the educational field in the planning and carrying out of the Office's activities, including establishing teacher advisory boards for any program office, program or project of the Office as the Assistant Secretary deems necessary;

"(3) ensure that the selection of research topics and the administration of the program are free from undue partisan political influence; and

"(4) ensure that all statistics and other data collected and reported by the Office shall be collected, cross-tabulated, analyzed, and reported by sex within race or ethnicity and socioeconomic status whenever feasible (and when such data collection or analysis is not feasible, ensure that the relevant report or document includes an explanation as to why such data collection or analysis is not feasible).

"(j) DEFINITIONS.—For purposes of this section and sections 405A through 405D:

"(1) The term 'Assistant Secretary' means the Assistant Secretary for Educational Research and Improvement established by section 202 of the Department of Education Organization Act.

"(2) The term 'at-risk student' means a student who, because of limited English proficiency, poverty, geographic location, or educational or economic disadvantage, faces a greater risk of low educational achievement and has greater potential for dropping out of school.

"(3) The term 'Board' means the National Educational Research Policy and Priorities Board.

"(4) The term 'educational research' includes basic and applied research, development, planning, surveys, assessments, evaluations, investigations, experiments, and demonstrations in the field of education and other fields relating to education.

"(5) The term 'development'—

"(A) means the systematic use, adaptation, and transformation of knowledge and understanding gained from research to create alternatives, policies, products, methods, practices, or materials which can contribute to the improvement of educational practice; and

"(B) includes the design and development of prototypes and the testing of such prototypes for the purposes of establishing their feasibility, reliability, and cost-effectiveness.

"(6) The term 'technical assistance' means the provision of external assistance to facilitate the adoption or application of the knowledge gained from educational research and development and includes—

"(A) problem analysis and diagnosis;

"(B) assistance in finding, selecting, or designing suitable solutions and approaches to problems;

"(C) training in the installation and implementation of products, programs, policies, practices, or technologies; and

"(D) such other assistance as may be necessary to encourage the adoption or application of such knowledge.

"(7) The term 'dissemination' means the transfer of knowledge and products gained through research and includes—

"(A) the use of communication techniques to increase awareness of such knowledge and products;

"(B) the provision of comparative and evaluative information necessary to enable educators, school administrators, and others to assess and make informed judgments about the relevance and usefulness of such knowledge and products in specific settings; and

"(C) the provision of technical assistance needed to adapt, apply, and utilize such knowledge and products in specific educational settings.

"(8) The term 'national education dissemination system' means the activities carried out by the Office of Reform Assistance and Dissemination established by section 405C.

"(9) The term 'Office' means the Office of Educational Research and Improvement established in section 209 of the Department of Education Organization Act.

"(10) The term 'national research institute' means an institute established in section 405B.

"(11) The terms 'United States' and 'State' include the District of Columbia and the Commonwealth of Puerto Rico.

"(k) AUTHORIZATION OF APPROPRIATIONS.—

"(1) NATIONAL INSTITUTES.—

"(A) For the purpose of carrying out section 405B, there is authorized to be appropriated $37,000,000 for fiscal year 1994.

"(B) For the purpose of carrying out the provisions of section 405B relating to the National Institute for Student Achievement, there are authorized to be appropriated $20,000,000 for fiscal year 1995, and such sums as are necessary for each of fiscal years 1996 and 1997.

"(C) For the purpose of carrying out the provisions of section 405B relating to the National Institute for the Education of At-Risk Students, there are authorized to be appropriated $20,000,000 for fiscal year 1995, and such sums as are necessary for each of fiscal years 1996 and 1997.

"(D) For the purpose of carrying out the provisions of section 405B relating to the National Institute for Innovation in Educational Governance, Finance, Policy-Making, and Management, there are authorized to be appropriated $20,000,000 for fiscal year 1995, and such sums as are necessary for each of fiscal years 1996 and 1997.

"(E) For the purpose of carrying out the provisions of section 405B relating to the National Institute for Early Childhood Development and Education, there are authorized to be appropriated $20,000,000 for fiscal year 1995, and such sums as are necessary for each of fiscal years 1996 and 1997.

"(F) For the purpose of carrying out the provisions of section 405B relating to the National Institute of Postsecondary Education, Libraries, and Lifelong Learning, there are authorized to be appropriated $20,000,000 for fiscal year 1995, and such sums as are necessary for each of fiscal years 1996 and 1997.

"(2) NATIONAL EDUCATION DISSEMINATION SYSTEM.—

"(A)(i) For the purpose of carrying out subsections (b)(2) through (g) of section 405C, there are authorized to be appropriated $22,000,000 for fiscal year 1994, and such sums as are necessary for each of the fiscal years 1995 through 1997.

"(ii) Of the amount appropriated under clause (i) for any fiscal year, the Secretary shall make available not less than $7,175,000 to carry out subsection (f) of section 405C (relating to clearinghouses).

"(B) For the purpose of carrying out subsection (h) of section 405C (relating to regional educational laboratories), there are authorized to be appropriated $37,000,000 for fiscal year 1994, and such sums as are necessary for each of the fiscal years 1995 through 1997. Of the amounts appropriated under the preceding sentence for a fiscal year, the Secretary shall obligate not less than 25 percent to carry out such purpose with respect to rural areas (including schools funded by the Bureau of Indian Affairs which are located in rural areas).

"(C) For the purpose of carrying out subsection (j) of section 405C (relating to the teacher research dissemination network) there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as are necessary for each of the fiscal years 1995 through 1997.

"(D) For the purpose of carrying out subsection (i) of section 405C (relating to the Goals 2000 Community Partnerships program), there are authorized to be appropriated $30,000,000 for fiscal year 1994, $50,000,000 for fiscal year 1995, and such sums as are necessary for each of the fiscal years 1996 and 1997.

"(3) NATIONAL EDUCATIONAL RESEARCH POLICY AND PRIORITIES BOARD.—Of the amounts appropriated under paragraphs (1) and (2) for any fiscal year, the Secretary shall make available 2 percent of such amounts, or $1,000,000, whichever is less, to the Board for the purpose of carrying out section 405A.

"(4) ALLOCATIONS FOR GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—Of the amounts appropriated under paragraph (1) or (2) for any fiscal year, not less than 95 percent shall be expended to carry out the purposes described in such paragraphs through grants, cooperative agreements, or contracts.

"(5) LIMITATIONS ON APPROPRIATIONS.—No amounts are authorized to be appropriated under paragraph (1) or (2) for fiscal year 1995 or any fiscal year thereafter unless the Board has been appointed in accordance with section 405A.

"(6) GRANT AUTHORIZED.—From the amounts appropriated under paragraph (1) for fiscal year 1995, the Secretary is authorized, in accordance with the provisions of this paragraph, to award a grant of not more than $5,000,000 to a public or private institution, agency or organization for a period not to exceed five years for the purpose of conducting a State-by-State poll to determine the perceptions of recent graduates of secondary schools, their instructors in institutions of higher education, parents of recent such graduates, and employers of recent such graduates on how well schools have prepared students for further education or employment. The grant shall be awarded on a competitive basis and shall be matched on a two-to-one basis, with the Federal Government contributing one-third of the total costs of the poll.".

SEC. 212. ASSISTANT SECRETARY FOR EDUCATIONAL RESEARCH AND IMPROVEMENT.

Subsection (b) of section 202 of the Department of Education Organization Act is amended—

(1) in paragraph (1)—

(A) by striking subparagraph (E); and

(B) by redesignating subparagraphs (F) and (G) as subparagraphs (E) and (F), respectively; and

(2) by adding at the end the following new paragraph:

"(3) There shall be in the Department an Assistant Secretary for Educational Research and Improvement who shall be—

"(A) appointed by the President, by and with the consent of the Senate; and

"(B) selected in consultation with the National Educational Research Policy and Priorities Board from among individuals who—

"(i) are distinguished educational researchers;

"(ii) have proven management ability; and

"(iii) have substantial knowledge of education within the United States.".

SEC. 213. SAVINGS PROVISION.

Notwithstanding any other provision of law, contracts for the regional educational laboratories, education resources information clearinghouses and research and development centers assisted under section 405 of the General Education Provisions Act on the date of the enactment of this Act shall remain in effect until the termination date of such contracts.

SEC. 214. EXISTING GRANTS AND CONTRACTS.

Notwithstanding any other provision of law, grants and contracts for the research and development centers assisted under section 405 of the General Education Provisions Act on the date of enactment of this Act shall remain in effect until the termination date of such grants or contracts, as the case may be, except that such grants and contracts may be extended to implement the provisions of this Act.

PART B—NATIONAL EDUCATIONAL RESEARCH POLICY AND PRIORITIES BOARD

SEC. 221. ESTABLISHMENT WITHIN OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT.

Part A of the General Education Provisions Act (20 U.S.C. 1221e et seq.) is amended by inserting after section 405 the following new section:

"NATIONAL EDUCATIONAL RESEARCH POLICY AND PRIORITIES BOARD

"SEC. 405A. (a) IN GENERAL.—There is established within the Office a National Educational Research Policy and Priorities Board (hereafter in this section referred to as the 'Board').

"(b) FUNCTIONS.—It shall be the responsibility of the Board, acting through the Assistant Secretary—

"(1) to determine priorities that should guide the work of the Office and provide guidance to the Congress in its oversight of the Office;

"(2) to review and approve standards for the conduct and evaluation of all research, development, and dissemination carried out under the auspices of the Office pursuant to sections 405 through 405C; and

"(3) to regularly review, evaluate, and publicly comment upon, the implementation of its recommended priorities and policies by the Department and the Congress.

"(c) RESEARCH PRIORITIES PLAN.—In cooperation with the Assistant Secretary, the Board shall—

"(1) survey and assess the state of knowledge in education research, development and dissemination to identify disciplines and areas of inquiry within the priority research, development and dissemination needs identified in section 405(b)(3) in which the state of knowledge is insufficient and which warrant further investigation, taking into account the views of both education researchers and practicing educators;

"(2) consult with the National Education Goals Panel and other authorities on education to identify national priorities for the improvement of education;

"(3) actively solicit recommendations from education researchers, teachers, school administrators, cultural leaders, parents, and others throughout the Nation through such means as periodic regional forums;

"(4) provide recommendations for the development, maintenance, and assurance of a strong infrastructure for education, research, and development in the United States; and

"(5) on the basis of such recommendations, develop a research priorities program which shall recommend priorities for the investment of the resources of the Office over the next 5-, 10-, and 15-year periods, including as priorities those areas of inquiry in which further research, development and dissemination—

"(A) is necessary to attain the goals for the improvement of education identified in paragraph (2);

"(B) promises to yield the greatest practical benefits to teachers and other educators in terms of improving education; and

"(C) will not be undertaken in sufficient scope or intensity by the other Federal and non-Federal entities engaged in education research and development.

"(d) CONTENTS OF PLAN—

"(1) IN GENERAL.—The research and priorities plan described in subsection (c) shall, at a minimum—

"(A) set forth specific objectives which can be expected to be achieved as a result of a Federal investment in the priorities set forth in the plan;

"(B) include recommendations with respect to research and development on cross-cutting issues which should be carried out jointly by 2 or more of the research institutes; and

"(C) include an evaluative summary of the educational research and development activities undertaken by the Federal government during the preceding 2 fiscal years which shall describe—

"(i) what has been learned as a result of such activities;

"(ii) how such new knowledge or understanding extends or otherwise relates to what had been previously known or understood;

"(iii) the implications of such new knowledge or understanding for educational practice and school reform; and

"(iv) any development, reform, and other assistance activities which have utilized such knowledge or understanding and the effects of such efforts.

"(2) REPORT.—

"(A) Not later than 6 months after the first meeting of the Board and October 1 of every second year thereafter, the Assistant Secretary shall publish a report specifying the proposed research priorities of the Office and allow a 60-day period beginning on the date of the publication of the report for public comment and suggestions.

"(B) Not later than 90 days after the expiration of the 60-day period referred to in subparagraph (A), the Assistant Secretary shall submit to the President and the Congress a report specifying the research priorities of the Office and any public comment and suggestions obtained under such subparagraph.

"(e) ADDITIONAL RESPONSIBILITIES OF THE BOARD.—It shall also be the responsibility of the Board to—

"(1) provide advice and assistance to the Assistant Secretary in carrying out the coordination activities described in section 405;

"(2) make recommendations to the Assistant Secretary of persons qualified to fulfill the responsibilities of the Director for each research institute established by section 405B after making special efforts to identify qualified women and minorities and soliciting and giving due consideration to recommendations from professional associations and interested members of the public;

"(3) advise and make recommendations to the President with respect to individuals who are qualified to fulfill the responsibilities of the Assistant Secretary for the Office of Educational Research and Improvement; and

"(4) review and approve standards for the conduct and evaluation of research developed by the Assistant Secretary pursuant to subsection (h) of section 405.

"(f) STANDING SUBCOMMITTEES.—

"(1) ESTABLISHMENT; FUNCTIONS.—The Board shall establish a standing subcommittee for each of the Institutes established by subsection (a) of section 405B and for the Office of Reform Assistance and Dissemination established by subsection (b) of section 405C which shall advise, assist, consult with and make recommendations to the Assistant Secretary, the Board, the Director of such entity and the Congress on matters related to the activities carried out by and through such entities.

"(2) COMPOSITION.—

"(A) Each standing subcommittee shall consist of 3 members of the Board and 6 additional individuals appointed by the Board who have significant experience in and knowledge of the disciplines relevant to the purposes of the entity for which the subcommittee is established.

"(B) The Board shall assure that the membership of each subcommittee includes both educational researchers and persons who are knowledgeable about the research, development and dissemination needs of practitioners, including classroom teachers, school administrators, and members of State or local boards of education.

"(g) POWERS OF THE BOARD.—In carrying out its functions, powers, and responsibilities, the Board—

"(1) shall, without regard to the provisions of title 5, United States Code, relating to the appointment and compensation of officers or employees of the United States, appoint a director to be paid at a rate not to exceed the rate of basic pay payable for level V of the Executive Schedule who shall assist in carrying out and managing the activities of the Board and perform such other functions the Board determines to be necessary and appropriate;

"(2) shall hire its own staff through routine government procedures;

"(3) may arrange for the detail of staff personnel and utilize the services and facilities of any agency of the Federal Government;

"(4) may enter into contracts, or make other arrangements as may be necessary to carry out its functions;

"(5) may review any grant, contract, or cooperative agreement made or entered into by the Office;

"(6) may, to the extent otherwise permitted by law, obtain directly from any department or agency of the United States such information as it deems necessary to carry out its responsibilities;

"(7) may convene workshops and conferences, collect data, and establish subcommittees which may be composed of members of the Board and nonmember consultants (including employees of the Department) with expertise in the particular area addressed by such subcommittees; and

"(8) shall establish such rules and procedures to govern its operations as it considers appropriate, to the extent otherwise permitted by law.

"(h) MEMBERSHIP IN GENERAL.—

"(1) QUALIFICATIONS.—The members of the Board shall be eminent persons who, by virtue of their training, experience, and background, are exceptionally qualified to appraise the educational research and development effort of the Nation and to establish policies and priorities to govern future Federal investment in educational research, development, and dissemination.

"(2) BROAD REPRESENTATION.—Due consideration shall be given to the gender, race, and ethnicity of appointees to assure that the Board is broadly representative of the diversity of the Nation.

"(3) LIMITATION.—A voting member of the Board may not serve on any other governing or advisory board within the Department of Education.

"(4) CONFLICT OF INTEREST.—A voting member of the Board shall be considered a special Government employee for the purposes of the Ethics in Government Act of 1978.

"(i) SECRETARIAL APPOINTMENTS.—The Board shall consist of 18 members appointed by the Secretary. Of the members of the Board—

"(1) seven shall be appointed from among researchers in the field of education who have been nominated by the National Academy of Sciences and the National Academy of Education (giving due consideration to recommendations made by the American Educational Research Association), including persons who are among the leading authorities on early childhood education and the education of at-risk students;

"(2) five shall be outstanding field-based professional educators;

"(3) one shall be a Chief State School Officer;

"(4) one shall be a local education agency school superintendent or principal;

"(5) one shall be a member of a State or local board of education or Bureau of Indian Affairs-funded school board;

"(6) one shall be a professional librarian, school library media specialist, library administrator, or library science educator;

"(7) one shall be a parent with extensive experience in promoting parental involvement in education; and

"(8) one shall be an individual from business and industry with significant experience in promoting private sector involvement in education.

"(j) REQUIREMENTS FOR NOMINATIONS BY THE NATIONAL ACADEMY OF SCIENCES AND THE NATIONAL ACADEMY OF EDUCATION.—

"(1) IN GENERAL.—In making nominations for the members of the Board described in subsection (i)(1), the National Academy of Sciences and the National Academy of Education—

"(A) may not nominate any individual who is an elected officer or employee of such organizations; and

"(B) shall each nominate not less than 5 individuals for each of the positions on the Board for which such organization has responsibility for making nominations.

"(2) REQUEST FOR ADDITIONAL NOMINATIONS.—In the event that the Secretary determines that none of the individuals nominated by the National Academy of Sciences or the National Academy of Education meets the qualifications for membership on the Board specified in subsection (i), the Secretary may request that such organization make additional nominations.

"(k) NOMINATIONS FOR BOARD MEMBERSHIP.—Prior to appointing any member of the Board, the Secretary shall actively solicit and give due consideration to recommendations of persons qualified for membership on the board from the National Education Association, the American Federation of Teachers, the National Parent-Teachers Association, the American Library Association, the American Association of School Administrators, the National Association of State Boards of Education, the National Indian School Board Association, the Association of Community Tribal Schools, the National Indian Education Association, and other education-related organizations and interested members of the public.

"(l) EX OFFICIO MEMBERS.—The ex officio, nonvoting members of the Board shall include the Assistant Secretary and may also include—

"(1) the Director of Research for the Department of Defense;

"(2) the Director of Research for the Department of Labor;

"(3) the Director of the National Science Foundation;

"(4) the Director of the National Institutes of Health;

"(5) the chair of the National Endowment for the Arts;

"(6) the chair of the National Endowment for the Humanities;

"(7) the Librarian of Congress; and

"(8) the Director of the Office of Indian Education Programs of the Department of the Interior.

"(m) CHAIR.—The Board shall select a Chair from among its appointed members who shall serve for a renewable term of 2 years.

"(n) TERMS OF OFFICE.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the term of office of each voting member of the Board shall be 5 years.

"(2) EXCEPTIONS.—

"(A) Any individual appointed to fill a vacancy occurring on the Board prior to the expiration of the term for which the predecessor of the individual was appointed shall be appointed for the remainder of the term. A vacancy shall be filled in the same manner in which the original appointment was made.

"(B) The terms of office of the members of the Board who first take office after the date of the enactment of the Educational Research, Development, and Dissemination Excellence Act shall, as designated by a random selection process at the time of appointment, be as follows:

"(i) 2 years for each of 6 members of the Board.

"(ii) 3 years for each of 6 members of the Board.

"(iii) 5 years for each of 6 members of the Board.

"(3) PROHIBITION ON CERTAIN CONSECUTIVE TERMS.—An individual who has been a member of the Board for 10 consecutive years shall thereafter be ineligible for appointment during the 5-year period beginning on the date of the expiration of the 10th year.

"(o) MEETINGS OF BOARD.—

"(1) INITIAL MEETING.—The Secretary shall ensure that the first meeting of the Board is held not later than May 15, 1994.

"(2) SUBSEQUENT MEETINGS.—The Board shall meet quarterly, at the call of the Chair, and when at least one-third of the members of the Board make a written request to meet.

"(3) QUORUM.—A majority of the Board shall constitute a quorum.

"(4) OPEN MEETINGS.—The Government in the Sunshine Act (5 U.S.C. 552b) shall apply to meetings of the Board.".

PART C—NATIONAL RESEARCH INSTITUTES

SEC. 231. ESTABLISHMENT WITHIN OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT.

Part A of the General Education Provisions Act, as amended by section 221 of this Act, is amended by inserting after section 405A the following new section:

"NATIONAL RESEARCH INSTITUTES

"SEC. 405B. (a) ESTABLISHMENT OF INSTITUTES.—In order to fulfill the research and development purposes of the Office, and to carry out, in accordance with the standards established by the Board, a program of high-quality and rigorously evaluated research and development that is capable of improving Federal, State, Indian tribal, and local education policies and practices, there are established within the Office the following institutes:

"(1) The National Institute for the Education of At-Risk Students.

"(2) The National Institute for Innovation in Educational Governance, Finance, Policy-Making, and Management.

"(3) The National Institute for Early Childhood Development and Education.

"(4) The National Institute on Student Achievement.

"(5) The National Institute on Postsecondary Education, Libraries, and Lifelong Education.

"(b) DIRECTORS.—

"(1) IN GENERAL.—Each Institute established by subsection (a) shall be headed by a Director who shall be appointed by the Assistant Secretary from among persons who have significant experience and expertise in the disciplines relevant to the purposes of such Institute. Prior to making such appointment, the Assistant Secretary shall solicit and give due consideration to recommendations made by the Board of persons qualfied to fulfill the position.

"(2) TERM OF OFFICE.—The Director of each Institute shall serve for a renewable term of 3 years.

"(3) REPORTING.—Each Director shall report directly to the Assistant Secretary regarding the activities of the Institute and shall work with the other directors to promote research syntheses across the Institutes.

"(c) AUTHORITIES AND DUTIES.—

"(1) IN GENERAL.—The Assistant Secretary is authorized to conduct research, development, demonstration, and evaluation activities to carry out the purposes for which such Institute was established—

"(A) directly;

"(B) through grants, contracts, and cooperative agreements with institutions of higher education, regional educational laboratories, public and private organizations, institutions, agencies, and individuals, which may include—

"(i) grants to support research and development centers which are—

"(I) awarded competitively for a period of not less than 6 and not more than 10 years;

"(II) funded at not less than $2,000,000 annually in order to support a full range of basic research, applied research and dissemination activities, which may also include development activities; and

"(III) established by institutions of higher education, by institutions of higher education in consortium with public agencies or private nonprofit organizations, or by interstate agencies established by compact which operate subsidiary bodies established to conduct postsecondary educational research and development;

"(ii) public-private research partnerships established by a State or local education agency, Bureau of Indian Affairs-funded school, or tribal department of education, in concert with a private organization and a team of educational researchers, for which the Federal share shall be limited to not more than 50 percent of the total costs of the project;

"(iii) meritorious unsolicited proposals for educational research and related activities;

"(iv) proposals that are specifically invited or requested by the Assistant Secretary, on a competitive basis; and

"(v) dissertation grants, awarded for a period of not more than 2 years and in a total amount not to exceed $20,000 to graduate students in the sciences, humanities, and the arts to support research by such scholars in the field of education;

"(C) through the provision of technical assistance; and

"(D) through the award of fellowships to support graduate study in educational research by qualified African-American, Hispanic, American Indian and Alaska Native, and other individuals from groups which have been traditionally underrepresented in the field of educational research which shall—

"(i) be awarded on the basis of merit for a period of 3 years; and

"(ii) provide stipends to each fellow in an amount which shall be set at a level of support comparable to that provided by the National Science Foundation Graduate Fellowships, except that such amounts shall be adjusted as necessary so as not to exceed each fellow's demonstrated level of need.

"(2) SCOPE AND FOCUS OF ACTIVITIES.—In carrying out the purposes for which each Institute is established, the Assistant Secretary shall—

"(A) maintain an appropriate balance between applied and basic research;

"(B) significantly expand the role of field-initiated research in meeting the Nation's education research and development needs by reserving not less than 15 percent of the amounts available to each Institute in any fiscal year to support field-initiated research described in clauses (iii) through (v) of paragraph (1);

"(C) provide for and maintain a stable foundation of long-term research and development on core issues and concerns conducted through university-based research and development centers by reserving not less than one-third of the amounts available to each Institute in any fiscal year to support such research and development centers;

"(D) support and provide research information that leads to policy formation for State legislatures, State and local boards of education and other policy and governing bodies, to assist such entities in identifying and developing effective policies to promote student achievement and school improvement; and

"(E) coordinate the Institute's activities with the activities of the regional educational laboratories and with other educational service organizations in designing the Institute's research agenda and projects in order to increase the responsiveness of such Institute to the needs of teachers and the educational field and to bring research findings directly into schools to ensure greatest access at the local level to the latest research developments.

"(3) REQUIREMENTS REGARDING FINANCIAL ASSISTANCE.—No grant, contract, or cooperative agreement may be made under this section unless—

"(A) sufficient notice of the availability of, and opportunity to compete for, assistance has first been provided to potential applicants through notice published in the Federal Register or other appropriate means;

"(B) it has been evaluated through peer review in accordance with the standards developed pursuant to subsection (h) of section 405;

"(C) it will be evaluated in accordance with the standards developed pursuant to subsection (h) of section 405;

"(D) in the case of a grant, contract, or cooperative agreement which exceeds $500,000 for a single fiscal year or $1,000,000 for more than one fiscal year, the Secretary has complied with the requirements of paragraph (4); and

"(E) in the case of a grant, contract, or cooperative agreement to support a research and development center, all applications for such assistance have been evaluated by independent experts according to standards and criteria which include—

"(i) whether applicants have assembled a critical mass of high quality researchers sufficient to achieve the mission of the center;

"(ii) whether the proposed organizational structure and arrangements will facilitate achievement of the mission of the center;

"(iii) whether there is a substantial staff commitment to the work of the center;

"(iv) whether the directors and staff will devote adequate time to center activities; and

"(v) review of the contributions of primary researchers (other than researchers at the proposed center) to evaluate the appropriateness of such primary researcher's experiences and expertise in the context of the proposed center activities, and the adequacy of such primary researcher's time commitment to achievement of the mission of the center.

"(4) BOARD REVIEW OF CERTAIN PROPOSED GRANT AND CONTRACT ACTIONS.—The Assistant Secretary may not solicit any contract bid or issue a request for proposals or applications for any grant or cooperative agreement the amount of which exceeds $500,000 in any single fiscal year or which exceeds an aggregate amount of $1,000,000 for more than one fiscal year unless the Board has had an opportunity to review such proposed grant, contract, or cooperative agreement action and to provide written comments to the Assistant Secretary with respect to whether—

"(A) the purposes and scope of the proposed action are consistent with the Research Priorities Plan; and

"(B) the methodology and approach of the proposed action are sound and adequate to achieve its stated objectives.

"(5) HISTORICALLY UNDERUTILIZED RESEARCHERS AND INSTITUTIONS.—The Assistant Secretary shall establish and maintain initiatives and programs to increase the participation in the activities of each Institute of groups of researchers and institutions that have been historically underutilized in Federal educational research activities, including—

"(A) researchers who are women, African-American, Hispanic, American Indian and Alaska Native, or other ethnic minorities;

"(B) promising young or new researchers in the field, such as postdoctoral students and recently appointed assistant or associate professors;

"(C) historically black colleges and universities, tribally controlled community colleges, and other institutions of higher education with large numbers of minority students;

"(D) institutions of higher education located in rural areas; and

"(E) institutions and researchers located in States and regions of the Nation which have historically received the least Federal support for educational research and development.

"(6) ADDITIONAL AUTHORITIES.—The Assistant Secretary—

"(A) may obtain (in accordance with section 3109 of title 5 but without regard to the limitation in such section on the period of service) the services of experts or consultants with scientific or professional qualifications in the disciplines relevant to the purposes of such Institute;

"(B) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

"(C) may accept voluntary and uncompensated services; and

"(D) may accept unconditional gifts made to the Office to support its activities.

"(d) NATIONAL INSTITUTE FOR THE EDUCATION OF AT-RISK STUDENTS.—

"(1) FINDINGS.—The Congress finds as follows:

"(A) The rate of decline in our urban schools is escalating at a rapid pace. Student performance in most inner city schools grows worse each year. At least half of all students entering ninth grade fail to graduate 4 years later and many more students from high-poverty backgrounds leave school with skills that are inadequate for today's workplace. In 1988 the average National Assessment of Educational Progress (NAEP) reading score of white 17 year-olds was approximately 20 points higher than that of African-American 17 year-olds and 25 points higher than that of Hispanic 17 year-olds. None of the existing Federal educational research and development programs is adequately addressing this obvious emergency.

"(B) Rural schools enroll a disproportionately large share of the Nation's poor and at-risk students and yet often lack the means to address effectively the needs of these children. Intensive efforts must be made to overcome the problems of geographic isolation, declining population, inadequate financial resources and other impediments to the educational success of children residing in rural areas.

"(C) By the year 2000, an estimated 3.4 million school age children with limited English language proficiency will be entering the school system. The Federal Government must develop effective policies and programs to address the educational needs of this growing population of children who are at increased risk for educational failure.

"(D) An educational emergency exists in those urban and rural areas where there are large concentrations of children who live in poverty. The numbers of educationally disadvantaged children will substantially increase by the year 2020, when the number of impoverished children alone will be 16.5 million, a 33 percent increase over the 12.4 million children in poverty in 1987.

"(E) American Indian and Alaska Native students are keenly at-risk of educational failure, with demonstrated high dropout, illiteracy and poverty rates, and cultural, linguistic, social and geographic isolation. The estimated 400,000 Indian and Alaska Native student population from over 500 Indian and Alaska Native tribes, is small and scattered throughout remote reservations and villages in 32 States, and in off-reservation rural and urban communities where Indians constitute but a small percentage of public school student bodies. To meaningfully address the special educational needs of this historically under-served population, the existing research and development system must be opened to Indian and Alaska Native people to identify needs and design ways to address such needs.

"(F) Minority scholars as well as institutions and groups that have been historically committed to the improvement of the education of at-risk students need to be more fully mobilized in the effort to develop a new generation of programs, models, practices, and schools capable of responding to the urgent needs of students who are educationally at-risk.

"(2) PURPOSE.—It shall be the purpose of the Institute for the Education of At-Risk Students to carry out a coordinated and comprehensive program of research and development to provide nonpartisan, research-based leadership to the Nation as it seeks to improve educational opportunities for students who are at-risk for educational failure, particularly children who reside in inner city and rural areas, and on Indian reservations, and children of limited English proficiency. Such program shall—

"(A) undertake research necessary to provide a sound basis from which to identify, develop, evaluate, and assist others to replicate and adapt interventions, programs, and models which promote greater achievement and educational success by at-risk students, such as—

"(i) methods of instruction and educational practices (including community services) which improve the achievement and retention of at-risk students;

"(ii) means by which parents and community resources and institutions (including cultural institutions) can be utilized to support and improve the achievement of at-risk students;

"(iii) the training of teachers and other educational professionals and paraprofessionals to work more effectively with at-risk students;

"(iv) the most effective uses of technology in the education of at-risk students;

"(v) programs designed to promote gender equity in schools that serve at-risk students; and

"(vi) methods of assessing the achievement of students which are sensitive to cultural differences, provide multiple methods of assessing student learning, support student acquisition of higher order capabilities, and enable identification of the effects of inequalities in the resources available to support the learning of children throughout the Nation; and

"(B) maximize the participation of those schools and institutions of higher education that serve the greatest number of at-risk students in inner city and rural areas, and on Indian reservations, including model collaborative programs between schools and school systems, institutions of higher education, cultural institutions, and community organizations.

"(3) COMPREHENSIVE RESEARCH PROGRAM.—The Institute shall support a diverse and comprehensive program of research and development which shall include research related to the educational needs of—

"(A) at-risk students who reside in urban areas;

"(B) at-risk students who reside in rural areas;

"(C) children with limited English language proficiency; and

"(D) Indian and Alaska Native students.

"(4) CONSULTATION WITH INDIAN AND ALASKA NATIVE EDUCATORS.—All research and development activities supported by the Institute which relate to the education of Indian and Alaska Native students shall be developed in close consultation with Indian and Alaska Native researchers and educators, tribally controlled community colleges, tribal departments of education, and others with expertise in the needs of Indian and Native Alaska students.

"(e) NATIONAL INSTITUTE FOR INNOVATION IN EDUCATIONAL GOVERNANCE, FINANCE, POLICY-MAKING, AND MANAGEMENT.—

"(1) FINDINGS.—The Congress finds as follows:

"(A) Many elementary and secondary schools in the United States—

"(i) are structured according to models that are ineffective and rely on notions of management and governance that may be outdated or insufficient for the challenges of the next century; and

"(ii) are unsuccessful in equipping all students with the knowledge and skills needed to succeed as citizens and in the working world.

"(B) New approaches are needed in the governance and management of elementary and secondary education with the United States at the State, local, school building and classroom level.

"(C) Not enough is known about the effects of various systems of school governance and management on student achievement to provide sound guidance to policymakers as they pursue school restructuring and reform.

"(D) A concentrated Federal effort is needed to support research, development, demonstration, and evaluation of approaches to school governance, finance and management which promise to improve education equity and excellence throughout the Nation.

"(2) PURPOSE.—It shall be the purpose of the National Institute on Innovation in Educational Governance, Finance, Policy-Making, and Management to carry out a coordinated and comprehensive program of research and development to provide nonpartisan, research-based leadership to the Nation as it seeks to improve student achievement through school restructuring and reform. Such program shall—

"(A) undertake research necessary to provide a sound basis from which to identify, develop and evaluate approaches in governance, finance, policy-making, and management at the State, local, tribal, school building and classroom level which promise to improve educational equity and excellence, such as—

"(i) open enrollment programs, magnet schools and other systems through which parents may select the public schools and educational programs in which their children are enrolled;

"(ii) innovative school design, including lengthening the school day and the school year, reducing class size and building professional development into the weekly school schedule;

"(iii) effective approaches to organizing learning;

"(iv) effective ways of grouping students for learning so that a student is not labeled or stigmatized in ways that may impede such student's achievement;

"(v) effective approaches to organizing, structuring, and financing vocational education;

"(vi) the provision of financial and other rewards and incentives based on performance to improve student achievement;

"(vii) the use of regulatory flexibility on the State or district level to promote innovation and school restructuring;

"(viii) school-based management;

"(ix) the restructuring of school finance systems at the State and local level to promote greater equity in the distribution of resources for education and to maximize the allocation of such resources to support direct learning;

"(x) expanding the role of teachers in policymaking and administration at the school and district-wide level;

"(xi) programs designed to increase the involvement of parents and families in the management and governance of schools and the education of their children;

"(xii) effective approaches to increasing the representation of women and minorities among leadership and management positions in education;

"(xiii) approaches to systemic reforms involving the coordination of multiple policies of each level of government to promote higher levels of student achievement;

"(xiv) approaches to coordinated services for children; and

"(xv) policies related to school to work transitions and preparing noncollege-bound students; and

"(B) undertake research and development activities necessary to provide information on the skills required for successful educational leadership at the State, tribal, and local level and to enhance the ability of school leaders and administrators to improve the educational environment for all students.

"(3) RESEARCH ON EDUCATIONAL CHOICE.—In carrying out the duties of the Institute, the Assistant Secretary shall conduct or support research on whether and to what extent the quality of education in the United States would be improved by providing public funds to parents for the costs of attendance of their children at the elementary and secondary schools of the parents' choice.

"(f) NATIONAL INSTITUTE FOR EARLY CHILDHOOD DEVELOPMENT AND EDUCATION.—

"(1) FINDINGS.—The Congress finds as follows:

"(A) The Nation has set as a goal that all children should arrive at school ready to learn.

"(B) Despite efforts to expand and improve preschool programs, many children still reach school age unprepared to benefit from formal education programs.

"(C) Early intervention for disadvantaged children from conception to age five has been shown to be a highly cost-effective strategy for reducing later expenditures on a wide variety of health, developmental, and educational problems that often interfere with learning. Long-term studies of the benefits of preschool education have a demonstrated return on investment ranging from three to six dollars for every one dollar spent.

"(D) The Federal government should play a central role in providing research-based information on early childhood education models which enhance children's development and ultimately their success in school.

"(2) PURPOSE.—The purpose of the National Institute for Early Childhood Development and Education is to carry out a comprehensive program of research and development to provide nonpartisan, research-based leadership to the Nation as it seeks to improve early childhood development and education. Such program shall identify, develop, evaluate, and assist others to replicate sound policies and practices that may include—

"(A) social and educational development of all infants, toddlers, and preschool children;

"(B) the role of parents and the community in promoting the successful social and educational development of children from birth to age five;

"(C) training and preparation of teachers and other professional and paraprofessional preschool and child care workers;

"(D) the structure and environment of early childhood education and child care settings which lead to improved social and educational development;

"(E) practices and approaches which sustain the benefits of effective preschool and child care programs;

"(F) effective learning methods and curriculum for early childhood learning, including access to current materials in libraries;

"(G) the importance of family literacy and parental involvement in student learning;

"(H) the impact that outside influences have on learning, including television, and drug and alcohol abuse; and

"(I) methods for integrating learning in settings other than the classroom, such as within families and communities, with a special emphasis on character development and the value of hard work.

"(3) CERTAIN REQUIREMENTS.—In carrying out the activities of the Institute, the Assistant Secretary shall—

"(A) place special emphasis on the special early childhood education needs of at-risk children, children with disabilities, and girls; and

"(B) ensure that its research and development program provides information that can be utilized in improving the major Federal early childhood education programs, including Head Start, Even Start, chapter 1 preschool programs, and part H of the Individuals with Disabilities Education Act, and Bureau of Indian Affairs early childhood development programs.

"(g) NATIONAL INSTITUTE ON STUDENT ACHIEVEMENT.—

"(1) FINDINGS.—The Congress finds as follows:

"(A) The current achievement levels of students in the Nation are far below those that might indicate competency in challenging subject matter in English, mathematics, science, history, and geography and other areas, or across the subject areas.

"(B) Very few students demonstrate that they can use their minds well. In recent assessments, more students are gaining basic skills, yet fewer are demonstrating a grasp of higher-level applications of those skills.

"(C) During the past 20 years, relatively little has changed in how students are taught. Despite much research suggesting better alternatives, classrooms are still dominated by textbooks, teacher lectures, and short-answer activity sheets and unequal patterns of student attention.

"(D) Despite progress in narrowing the gaps, the differences in performance between white students and their minority counterparts remain unacceptably large. While progress has been made in reducing the gender gap in mathematics, it still remains at higher levels of problem solving. Too little progress has been made in reducing gender performance gaps favoring males in science and females in writing.

"(2) PURPOSE.—The purpose of the National Institute on Student Achievement is to carry out a coordinated and comprehensive program of research and development to provide research-based leadership to the Nation as it seeks to improve student achievement in English, mathematics, science, history, geography, and other subject areas and across the boundaries of the subject areas. Such program shall—

"(A) identify, develop, and evaluate innovative and exemplary methods to improve student knowledge at all levels in English, mathematics, science, history, geography, civics and government, foreign languages, arts and humanities, economics, and other subject areas, such as—

"(i) student learning and assessment in various subject matters;

"(ii) the effects of organizational patterns on the delivery of instruction, including issues of grouping and tracking, ungraded classrooms, and on the effects of various pedagogies, including the issues of technology in education;

"(iii) the best methods of teacher preparation;

"(iv) methods to improve the process of reading, the craft of writing, the growth of reasoning skills, and the development of information-finding skills;

"(v) enabling students to develop higher order thinking skills;

"(vi) methods to teach effectively all students in mixed-ability classrooms;

"(vii) curriculum, instruction, and assessment, in vocational education;

"(viii) the impact and effectiveness of Federal, State, and local efforts to provide gender-fair educational opportunities to elementary and secondary students; and

"(ix) programs, policies, approaches which promote gender equity in elementary and secondary education;

"(B) conduct basic and applied research in the areas of human learning, cognition, and performance, including research and development on the education contexts which promote excellence in learning and instruction, and motivational issues which provide a key to learning;

"(C) identify, develop, and evaluate programs designed to enhance academic achievement and narrow racial and gender performance gaps in a variety of subject areas, including research and development on methods of involving parents in their children's education and ways to involve business, industry and other community partners in promoting excellence in schools; and

"(D) include a comprehensive, coordinated program of research and development in the area of assessment which—

"(i) addresses such issues as—

"(I) the validity, reliability, generalizability, fairness, costs, relative merits, and most appropriate uses of various approaches and methods of assessing student learning and achievement;

"(II) methods and approaches to assessing student opportunities to learn (including the quality of instruction and the availability of resources necessary to support learning) and evaluating the quality of school environment;

"(III) the design, development, evaluation, and validation of model performance-based and other alternative or innovative formats or uses of assessments;

"(IV) the impact of high-stakes uses of assessment on student performance and motivation, narrowing of curriculum, teaching practices, and test integrity;

"(V) the fairness and impact of various methods of assessment on children of different races, ethnicities, gender, socioeconomic status, English language proficiencies, and children with other special needs;

"(VI) standards of performance, quality, and validity for various methods of assessment and the means by which such standards should be developed;

"(VII) current and emerging testing practices of State and local education agencies within the United States, as well as other nations;

"(VIII) the diverse effects, both intended and unintended, of assessments as actually used in the schools, including effects on curriculum and instruction, effects on equity in the allocation of resources and opportunities, effects on equity of outcomes, effects on other procedures and standards for judging students and practitioners and possible inflation of test scores;

"(IX) identifying and evaluating how students with limited English language proficiency and students with disabilities are included and accommodated in the various assessment programs of State and local education agencies; and

"(X) the feasibility and validity of comparing or equating the results of different assessments;

"(ii) reflects recommendations made by the National Education Goals Panel (provided such panel has been authorized by law);

"(iii) complies with the 'Standards for Educational and Psychological Tests' developed by the American Psychological Association, the National Council on Measurement in Education,

and the American Educational Research Association;

"(iv) is consistent with the 'Criteria for Evaluation of Student Assessment Systems' developed by the National Forum on Assessment; and

"(v) complies with the 'Code of Fair Testing Practices in Education' developed by the Joint Committee on Testing Practices.

For purposes of this subparagraph, the term 'development' means the development of prototypes for the purposes of research and evaluation.

"(h) NATIONAL INSTITUTE FOR POSTSECONDARY EDUCATION, LIBRARIES, AND LIFELONG LEARNING.—

"(1) FINDINGS.—The Congress finds as follows:

"(A) The American system of postsecondary education is foremost in the world in its achievement of both academic excellence and equity in access, but maintaining that preeminence requires renewed efforts to strengthen the quality of postsecondary education. Disappointing student performance on achievement tests and licensure examinations, declining rates of persistence and completion among minorities, and other troubling trends in the quality of postsecondary education must be addressed by the Nation as part of its overall drive to improve American education.

"(B) The need to improve our Nation's economic productivity to meet the competitive challenges of a new, international economy, coupled with high levels of mobility in the United States labor market and demographic changes in the workforce, now demands more and higher quality programs of learning and training in the American workplace.

"(C) The more than 1,000,000 men and women incarcerated in the Nation's prisons and jails are among the most severely educationally disadvantaged in the United States, with high rates of functional illiteracy and extremely low levels of educational attainment. Since an estimated 90 percent of these individuals are expected to be released by the end of the decade, the Nation must act to assure that our correctional system has the means to equip these Americans with the knowledge and skills they will need to participate productively in our society.

"(D) The development of a 'Nation of Students' capable of and committed to the pursuit of formal and informal lifelong learning is essential to sustain both national and individual economic success and to provide a nurturing environment in which all children and youth can learn and achieve. Historically the most effective community resource for lifelong learning, the Nation's public library system must expand and restructure its delivery of services to take full advantage of the potential of new information technologies to meet the needs of learning communities.

"(2) PURPOSE.—The purpose of the National Institute for Postsecondary Education, Libraries, and Lifelong Learning is to promote greater coordination of Federal research and development on issues related to adult learning and to carry out a program of research and development in adult learning to provide nonpartisan, research-based leadership to the Nation as it seeks to improve libraries, postsecondary education, and lifelong learning throughout the United States. Such program—

"(A) shall promote greater coordination, cooperation, and interaction among entities within the Federal Government which support research and development related to postsecondary education, libraries, and lifelong learning;

"(B) shall enable greater collaboration among entities within the Federal Government which support research and development related to postsecondary education, libraries, and lifelong learning by supporting research and development projects which are carried out jointly by such entities;

"(C) shall support research and development in those areas of postsecondary education, libraries, and lifelong learning which are not being addressed sufficiently by other entities within the Federal Government;

"(D) may include basic and applied research, development, replication, and evaluation activities in such areas as—

"(i) methods of assessing and evaluating individual, program, and institutional performance;

"(ii) the uses and applications of new technologies to improve program effectiveness and enhance student learning;

"(iii) practices, policies, and programs which address the unique needs of adult learners, including—

"(I) institutional and classroom policies and practices at the postsecondary level necessary to improve matriculation, persistence, achievement and graduation by students who are economically disadvantaged, ethnic and racial minorities, women, older, working, and who have children;

"(II) instructional practices and programs which are effective in correctional settings;

"(III) new models of service delivery for public library systems which expand opportunities for lifelong learning;

"(IV) effective programs and approaches which promote greater access to and success by minorities in postsecondary programs which prepare them for scientific, technical, teaching, and health career fields;

"(V) effective approaches to work-based learning; and

"(VI) the most effective training methods for adults to upgrade education and vocational skills;

"(iv) the effectiveness of Historically Black Colleges and Universities, Tribally-Controlled Indian Community Colleges, women's colleges, and other special mission institutions in fulfilling their mission of providing access and equal opportunity in higher education;

"(v) the quality of higher education at all levels and the roles and responsibilities of regional and national accrediting agencies in assuring the quality and relevance of academic goals and objectives established by institutions of higher education;

"(vi) approaches to improving the productivity of colleges, community colleges, universities, and other postsecondary institutions;

"(vii) financial barriers to postsecondary educational opportunity, including—

"(I) the role of Federal programs authorized under title IV of the Higher Education Act and State grant and work programs in mitigating such barriers;

"(II) the impact of the rising total cost of postsecondary education on access to higher education; and

"(III) the extent and impact of student reliance on loans to meet the costs of higher education;

"(viii) opportunities for adults to continue their education beyond higher education and graduate school, in the context of lifelong learning and information-finding skills; and

"(ix) preparing students for a lifetime of work, the ability to adapt through retraining to the changing needs of the work force and the ability to learn new tasks.

"(3) INVOLVEMENT OF CERTAIN AGENCIES AND ORGANIZATIONS.—In promoting coordination and collaboration on research and development on issues related to postsecondary education, libraries, and lifelong learning, the Institute shall, as appropriate, seek the involvement of—

"(A) within the Department of Education—

"(i) the Office of Library Programs;

"(ii) the Office of Correctional Education;

"(iii) the Office of Vocational and Adult Education;

"(iv) the National Institute on Disability and Rehabilitation Research; and

"(v) the Office of Postsecondary Education;

"(B) the National Institute for Literacy;

"(C) the National Board for Professional Teaching Standards;

"(D) the Employment and Training Administration of the Department of Labor;

"(E) the Administration for Children and Families within the Department of Health and Human Services;

"(F) the National Institutes of Health;

"(G) the National Endowment for Humanities;

"(H) the National Endowment for the Arts;

"(I) the Bureau of Prisons of the Department of Justice;

"(J) the Department of Commerce;

"(K) the Department of Defense; and

"(L) the Office of Indian Education Programs of the Department of the Interior.

"(4) In addition to the responsibilities described in paragraph (2), the Assistant Secretary shall ensure that the activities of the existing National Center on Literacy are fully coordinated with those of the National Institute for Literacy.

"(i) COORDINATION OF RESEARCH ON CROSS-CUTTING ISSUES.—The Assistant Secretary shall promote the coordination of research and development activities among the Institutes established by subsection (a) to investigate those cross-cutting disciplines and areas of inquiry, such as assessment, the use of technology and the training of teachers and school administrators, which are relevant to the missions of more than one of the Institutes. Such activities shall—

"(1) address cross-cutting disciplines and areas of inquiry which have been proposed by the Assistant Secretary and are consistent with the research priorities identified by the Board;

"(2) be carried out jointly (1) by any one of the Institutes and—

"(A) one (or more) of the Institutes;

"(B) the National Center for Education Statistics; or

"(C) any research and development entity administered by other offices of the Department of Education or by any other Federal agency or Department; and

"(3) meet all the standards set by the Assistant Secretary and the Board for other research and development conducted by the Office.

"(j) PROGRAM ON TEACHING AND TEACHER EDUCATION.—

"(1) IN GENERAL.—The Assistant Secretary, in accordance with the requirements of this subsection, shall undertake a comprehensive, coordinated program of research in the area of teaching, teacher education, and professional development.

"(2) CERTAIN PURPOSES OF PROGRAM.—In carrying out the program established under paragraph (1), the Assistant Secretary shall conduct, directly or through grants and contracts, basic and applied research and analytical activities to further knowledge about, make recommendations, and improve—

"(A) the ability of classroom teachers and schools to assist new and diverse populations of students in successfully assimilating into the classroom environment;

"(B) the working conditions of teachers and other educational practitioners, which may include such topics as—

"(i) teacher isolation;

"(ii) professional resources available to teachers;

"(iii) continuing educational and professional opportunities available to teachers;

"(iv) physical facilities and equipment, such as office space, telephone, computer access, and fax machines and television cable access available to teachers in the work environment;

"(v) opportunities for teachers to share information and resources with other teachers and education professionals;

"(vi) opportunities for advanced learning experience; and

"(vii) the reduction of stress in the teaching profession;

"(C) institutional program renewal and instruction;

"(D) restructuring of State certification of teachers and teacher education standards; and

"(E) assisting in the development of teacher certification standards by Indian tribal departments of education.

"(3) CERTAIN ACTIVITIES.—In carrying out the program established under paragraph (1), the Assistant Secretary—

"(A) shall work with institutions of higher education engaged in the preparation of teachers and professional organizations of teacher educators and practitioners to encourage institutional program renewal and restructuring;

"(B) may conduct, directly or through grants and contracts research on—

"(i) effective and reflective teaching for the preparation and continuing education of teachers;

"(ii) the use of computing and multi-made technology to advance the understanding and abilities of teacher educators and classroom teachers;

"(iii) the development and appraisal of curriculum and curriculum materials for the initial and continuing education of teachers and teacher educators; and

"(iv) strengthening the evaluation and dissemination of information on programs for continuing professional education and renewal of those who educate teachers for initial or advanced licensure or certification; and

"(C) shall work with the national regional education laboratories, the ERIC clearinghouses, national education research library, and the National Center for Education Statistics to maximize information available, to prevent unnecessary duplication of efforts and resources, and to ensure the results of the centers work are widely available.

"(k) RESEARCH ON EDUCATIONAL TECHNOLOGY.—The Assistant Secretary shall undertake a comprehensive, coordinated program of research and development in the area of the uses and applications of technology in education. Such program—

"(1) may support basic and applied research and development, analysis, evaluation in the area of the uses and applications of technology to education, including—

"(A) the capabilities of current and emerging technologies and their possible uses in education;

"(B) the uses and applications of technology—

"(i) to improve instruction within all content areas in the school curriculum;

"(ii) to educate more effectively at-risk students and other students with special needs;

"(iii) to improve education in rural communities and other remote areas;

"(iv) to improve the assessment of student learning and achievement;

"(v) to deliver preservice and inservice training for teachers, librarians, and school administrators; and

"(vi) to deliver and improve professional development and continuing education programs;

"(C) the cost and educational effectiveness of technologies used in education;

"(D) effective models and approaches for providing the preservice and inservice training and technical assistance necessary to enable teachers, librarians, and school administrators, cultural organizations, and others to use technology effectively in education;

"(E) the identification of barriers to greater use of technologies in education and potential approaches to eradicating or mitigating such barriers;

"(F) methods and approaches which can be utilized by teachers, school administrators, and education policymakers, and educational programs in cultural institutions to evaluate the quality and most appropriate uses of software and other technologies designed for use in education; and

"(G) approaches to organizing and managing schools and classrooms to make the most effective use of technology in education; and

"(2) shall be coordinated with related research and development activities undertaken by the Office of Special Education Programs, the National Science Foundation, the Department of Defense, and other Federal agencies.

"(l) TRANSITIONAL PROVISIONS.—

"(1) TEMPORARY REORGANIZATIONS.—Upon the enactment of the Educational Research, Development and Dissemination Excellence Act, the Secretary shall reorganize the research and development functions and activities of the Office into administrative units the purposes of which shall be the same as those for each of the national research institutes established in subsection (a). Such administrative units shall be responsible for planning and providing for the establishment of such institutes and shall cease to exist on the dates upon which each of the relevant institutes is established. The provisions of subsection (c) (relating to authorities and duties) shall apply to all activities undertaken by each such administrative unit.

"(2) DATES FOR ESTABLISHMENT OF INSTITUTES.—The National Institute for the Education of At-Risk Students, the National Institute for Innovation in Educational Governance, Finance, Policy-Making, and Management, the National Institute for Early Childhood Development and Education, the National Institute on Student Achievement, and the National Institute on Postsecondary Education, Libraries, and Lifelong Learning shall each be established effective October 1, 1994.".

PART D—NATIONAL EDUCATION DISSEMINATION SYSTEM

SEC. 241. ESTABLISHMENT WITHIN OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT.

Part A of the General Education Provisions Act, as amended by section 231 of this Act, is amended by inserting after section 405B the following new section:

"NATIONAL EDUCATION DISSEMINATION SYSTEM

"SEC. 405C. (a) IN GENERAL.—

"(1) FINDINGS.—The Congress finds as follows:

"(A) In order to improve the American educational system for all students, achieve the national education goals, and provide for greater educational equity, policymakers, administrators, teachers, and parents must have ready access to the best information and methods available as a result of educational research and development.

"(B) The Office of Educational Research and Improvement should have as one of its primary purposes the dissemination of such information and methods in order to assist the national education reform effort.

"(C) All current resources within the Office, the Department, and other agencies that can help accomplish this goal should be coordinated by the Assistant Secretary so as to form a systematic process to accomplish these objectives.

"(D) Education research has the capacity to improve teaching and learning in our Nation's schools, however, teachers need training in the developmental skills necessary to translate research into practice and to allow them to become a cadre of knowledgeable practitioners and leaders in educational improvement.

"(E) Adequate linkages between research and development providers and practitioners are essential to ensuring that research on effective practice is useful, disseminated and supported with technical assistance to all educators, and that all educators are partners in the research and development process.

"(2) PURPOSE.—The purpose of this section is to—

"(A) create a national system of dissemination, development, and educational improvement in order to create, adapt, identify, validate, and disseminate to educators, parents, and policymakers those educational programs that have potential or have been shown to improve educational opportunities for all students; and

"(B) empower and increase the capacity of teachers to participate in the research and development process.

"(3) DEFINITION OF EDUCATIONAL PROGRAM.—For the purposes of this section, the term 'educational program' includes educational policies, research findings, practices, and products.

"(b) ESTABLISHMENT OF OFFICE.—

"(1) IN GENERAL.—There is established within the Office an Office of Reform Assistance and Dissemination (in this section referred to as the 'Dissemination Office') through which the Secretary shall carry out all functions and activities described in this section.

"(2) CERTAIN DUTIES.—The Dissemination Office shall—

"(A) identify educational programs that may merit being designated as exemplary or promising educational programs;

"(B) based solely on the educational merits and promise of such programs, select those to be designated as exemplary or promising;

"(C) provide technical and financial assistance to individuals and organizations in the process of developing promising educational programs in the priority areas identified in section 405(b)(3), but who might not, without such assistance, be able to complete necessary development and assessment activities;

"(D) nationally disseminate information regarding the exemplary and promising programs to educators, parents, and policymakers through a variety of means, including existing Department activities, education associations and networks, and communication technologies;

"(E) provide training and technical assistance regarding the implementation and adoption of such exemplary and promising programs by interested entities; and

"(F) carry out a program of research on models for successful knowledge dissemination, and utilization, and strategies for reaching education policymakers, practitioners, and others interested in education.

"(3) ADDITIONAL DUTIES.—The Dissemination Office shall carry out and contain the following functions and activities:

"(A) A process for the identification of educational programs that work.

"(B) The educational resources information clearinghouses.

"(C) Dissemination through new technologies.

"(D) Smartline.

"(E) The regional educational laboratories.

"(F) Teacher Research Dissemination Network.

"(G) The Goals 2000 Community Partnerships Program.

"(H) The existing National Diffusion Network and its Developer-Demonstrator and State Facilitator projects.

"(I) Such other programs or entities the Secretary determines are consistent with the purposes for which the Dissemination Office is established.

"(c) IDENTIFICATION OF PROGRAMS.—

"(1) IN GENERAL.—The Assistant Secretary shall establish a process through which success-

ful educational programs are actively sought out for possible dissemination through the national educational dissemination system. Such process shall, at a minimum, have the capability to—

"(A) work closely with the research institutes, centers, regional educational laboratories, the National Diffusion Network and its Developer-Demonstrator and State Facilitator projects, learning grant institutions established under the Goals 2000 Community Partnerships Program, department-supported technical assistance providers, and other entities to identify successful educational programs at the regional, State, local, or classroom level;

"(B) review successful educational programs supported by the Department through all of its programs, including Chapter 1, Even Start, Drug-Free Schools and Communities Act of 1986, the Individuals With Disabilities Education Act, Bilingual Education, Indian Education, the Women's Educational Equity Act, and Adult and Vocational Education;

"(C) through cooperative agreements, review for possible inclusion in the system educational programs administered by the Departments of Health and Human Services (particularly the Head Start program), Labor and Defense, the National Science Foundation, the Department of the Interior (particularly the Office of Indian Education Programs), and any other appropriate Federal agency; and

"(D) provide for an active outreach effort to identify successful educational programs through cooperative arrangements with State and local education agencies, teachers and teacher organizations, curriculum associations, foundations, private schools, institutions of higher education, and other entities that could enhance the ability of the Secretary to identify programs for possible inclusion in the dissemination system.

"(2) PRIORITY PROGRAMS.—In carrying out this subsection, the Secretary shall place a priority on identifying programs, products, and practices related to the priority research and development needs identified in section 405(b)(3).

"(d) DESIGNATION OF EXEMPLARY AND PROMISING PROGRAMS.—

"(1) IN GENERAL.—The Assistant Secretary, in consultation with the Board, shall establish 1 or more panels of appropriately qualified experts and practitioners to—

"(A) evaluate educational programs that have been identified by the Secretary under subsection (c) or that have been submitted to the Secretary for such evaluation by some other individual or organization; and

"(B) recommend to the Secretary programs that should be designated as exemplary or promising educational programs.

"(2) CONSIDERATIONS IN MAKING RECOMMENDATIONS.—In determining whether an educational program should receive a recommendation under paragraph (1), a panel established under such paragraph shall consider—

"(A) whether, based on empirical data, which may include but shall not be limited to test results, the program is effective and should thus be designated as exemplary and disseminated through the national dissemination system; or

"(B) whether there is sufficient evidence to lead a panel of experts and practitioners to believe that the program shows promise for improving student achievement and should thus be designated as promising and disseminated through the national dissemination system while it continues to be evaluated.

"(3) REQUIREMENT REGARDING APPROVAL OF PROGRAMS.—In seeking out programs for approval under paragraph (2), the Assistant Secretary shall seek programs that may be implemented at the State, local, and classroom level.

"(4) REQUIREMENTS REGARDING PANELS.—

"(A) A panel shall not eliminate a program from consideration under this subsection based solely on the fact that it does not have one specific type of supporting data, such as test scores.

"(B) The Assistant Secretary may not designate a program as exemplary or promising unless a panel established under paragraph (1) has recommended that the program be so designated.

"(C) The Secretary shall establish such panels under paragraph (1) as may be necessary to ensure that each program identified or submitted for evaluation is evaluated.

"(D) Not less than ⅔ of the membership of a panel established under paragraph (1) shall consist of individuals who are not officers or employees of the United States. Members of panels under paragraph (1) who are not employees of the United States shall receive compensation for each day engaged in carrying out the duties of the panel as well as compensation for their expenses.

"(e) DISSEMINATION OF EXEMPLARY AND PROMISING PROGRAMS.—

"(1) IN GENERAL.—In order to ensure that programs identified as exemplary or promising are available for adoption by the greatest number of teachers, schools, local and State education agencies, and Bureau of Indian Affairs-funded schools, the Assistant Secretary shall utilize the capabilities of—

"(A) the education resources information clearinghouses;

"(B) Smartline;

"(C) the regional educational laboratories;

"(D) the National Diffusion Network;

"(E) entities established under the Goals 2000 Community Partnerships Program;

"(F) department-supported technical assistance providers;

"(G) the National Library of Education; and

"(H) other public and private nonprofit entities, including existing education associations and networks, that have the capability to assist educators in adopting exemplary and promising programs.

"(2) REQUIREMENTS FOR ASSISTANT SECRETARY.—In carrying out paragraph (1), the Assistant Secretary shall ensure that all such entities are—

"(A) kept apprised of the availability of specific programs for dissemination;

"(B) provided technical assistance, if necessary, to carry out this dissemination function; and

"(C) involved in the national education dissemination system as specified by law.

"(f) EDUCATION RESOURCES INFORMATION CLEARINGHOUSES.—

"(1) IN GENERAL.—The Assistant Secretary shall establish a system of 16 education resource information clearinghouses having, at a minimum, the functions and scope of work as the clearinghouses had on the date of the enactment of the Educational Research, Development, and Dissemination Excellence Act.

"(2) ADDITIONAL FUNCTIONS.—In addition to those functions already being carried out by the clearinghouses, such clearinghouses may—

"(A) periodically produce interpretive summaries, digests, and syntheses of the results and findings of education-related research and development; and

"(B) contain and make available to users information concerning those programs designated as exemplary and promising under subsection (c).

"(3) COORDINATION OF ACTIVITIES.—The Assistant Secretary shall assure that the functions and activities of such clearinghouses are coordinated with the activities of the research institutes, the regional educational laboratories, learning grant institutions, other clearinghouses supported by the Department, the National Diffusion Network, and other appropriate entities within the Office and the Department.

"(4) SPECIAL RESPONSIBILITIES OF THE SECRETARY.—To assure that the information provided through such clearinghouses is fully comprehensive, the Secretary shall—

"(A) require that all reports, studies, and other resources produced directly or by grant or contract with the Department of Education are made available to clearinghouses;

"(B) establish cooperative agreements with the Departments of Defense, Health and Human Services, Interior, and other Federal agencies to assure that all education-related reports, studies, and other resources produced directly or by grant or contract with the Federal Government are made available to such clearinghouses; and

"(C) devise an effective system for maximizing the identification, synthesis, and dissemination of information related to the needs of Indian and Alaska Native children.

"(5) COPYRIGHT PROHIBITED.—

"(A) No clearinghouse or other entity receiving assistance under this subsection may copyright or otherwise charge a royalty or other fee that—

"(i) is for the use or redissemination of any database, index, abstract, report, or other information produced with assistance under this subsection; and

"(ii) exceeds the incremental cost of disseminating such information.

"(B) For purposes of subparagraph (A), the incremental cost of dissemination does not include any portion of the cost of collecting, organizing, or processing the information which is disseminated.

"(g) DISSEMINATION THROUGH NEW TECHNOLOGIES.—

"(1) IN GENERAL.—The Assistant Secretary is authorized to award grants or contracts in accordance with this subsection to support the development of materials, programs, and resources which utilize new technologies and techniques to synthesize and disseminate research and development findings and other information which can be used to support educational improvement.

"(2) SOURCES OF MATERIALS AND RESEARCH ABOUT TEACHING AND LEARNING FOR IMPROVING NATIONWIDE EDUCATION (SMARTLINE).—

"(A) ELECTRONIC NETWORK.—The Assistant Secretary, acting through the Office of Reform Assistance and Dissemination, shall establish and maintain an electronic network which shall, at a minimum, link—

"(i) each office of the Department of Education;

"(ii) the research institutes established by section 405B;

"(iii) the National Center for Education Statistics;

"(iv) the National Library of Education; and

"(v) entities engaged in research, development, dissemination, and technical assistance under grant, contract, or cooperative agreement with the Department of Education.

"(B) CERTAIN REQUIREMENTS FOR NETWORK.—The network described in subparagraph (A) shall—

"(i) to the extent feasible, build upon existing national, regional, and State electronic networks and support video, telecomputing, and interactive communications;

"(ii) at a minimum, have the capability to support electronic mail and file transfer services;

"(iii) be linked to and accessible to other users, including State and local education agencies, institutions of higher education, museums, libraries, and others through the Internet and the National Research and Education Network; and

"(iv) be provided at no cost (excluding the costs of necessary hardware) to the contractors and grantees described in clause (v) of subpara-

graph (A) and to educational institutions accessing such network through the Internet and the National Research and Education Network.

"(C) INFORMATION RESOURCES.—The Assistant Secretary, acting through the Office of Reform Assistance and Dissemination, may make available through the network described in subparagraph (A)—

"(i) information about grant and contract assistance available through the department;

"(ii) an annotated directory of current research and development activities and projects being undertaken with the assistance of the Department;

"(iii) information about publications published by the Department and, to the extent feasible, the full text of such publications;

"(iv) statistics and data published by the National Center for Education Statistics;

"(v) syntheses of research and development findings;

"(vi) a directory of other education-related electronic networks and databases, including information about the means by which they may be accessed;

"(vii) a descriptive listing of materials and courses of instruction provided by telecommunications partnerships assisted under the Star Schools program;

"(viii) resources developed by the ERIC Clearinghouses;

"(ix) education-related software (including video) which is in the public domain;

"(x) a listing of instructional materials available through telecommunications to local education agencies through the Public Broadcasting Service and State educational television networks; and

"(xi) such other information and resources the Assistant Secretary considers useful and appropriate.

"(D) EVALUATIONS REGARDING OTHER FUNCTIONS OF NETWORK.—The Assistant Secretary shall also undertake projects to test and evaluate the feasibility of using the network described in subparagraph (A) for—

"(i) the submission of applications for assistance to the Department; and

"(ii) the collection of data and other statistics through the National Center for Education Statistics.

"(E) TRAINING AND TECHNICAL ASSISTANCE.—The Assistant Secretary, acting through the Office of Reform Assistance and Dissemination, shall—

"(i) provide such training and technical assistance as may be necessary to enable the contractors and grantees described in clause (v) of subparagraph (A) to participate in the electronic network described in such subparagraph; and

"(ii) work with the National Science Foundation to provide, upon request, assistance to State and local education agencies, the Department of the Interior's Office of Indian Education Programs, tribal departments of education, State library agencies, libraries, museums, and other educational institutions in obtaining access to the Internet and the National Research and Education Network.

"(h) REGIONAL EDUCATIONAL LABORATORIES.—

"(1) REGIONAL EDUCATIONAL LABORATORIES.—The Assistant Secretary shall enter into contracts with public or private nonprofit entities to establish a networked system of 10 regional educational laboratories which serve the needs of each region of the Nation in accordance with the provisions of this subsection. For the purposes of this subsection, the term 'region' means 1 of the 10 geographic regions set forth in section 2(a) of part 707 of title 34, Code of Federal Regulations (34 CFR 707.2(a)), as published in number 157 of volume 53 of the Federal Register on August 15, 1988.

"(2) DUTIES.—Each regional educational laboratory receiving assistance under this subsection shall, with such assistance, assist State education agencies, intermediate education agencies, local school districts, and schools funded by the Bureau of Indian Affairs in implementing broad-based, systemic school improvement strategies through the use of applied research and development activities. The regional educational laboratories shall support such system-wide reform efforts through—

"(A) the development of a plan for identifying needs and for serving the needs of the region by conducting a continuing survey of the educational needs, strengths and weaknesses within the region, including a process of open hearings to solicit the views of schools, teachers, administrators, parents, local educational agencies, librarians, and State educational agencies within the region;

"(B) the dissemination of information about programs designated as exemplary and promising under subsection (c) and other appropriate programs and practices;

"(C) the provision of support and technical assistance in—

"(i) replicating and adapting such exemplary and promising practices;

"(ii) the development of high-quality, challenging curriculum frameworks;

"(iii) the development of valid, reliable, fair systems of assessment which are based upon State, local, or Bureau of Indian Affairs-funded school curriculum frameworks and reflect recent advances in the field of educational assessment;

"(iv) the improvement of professional development strategies to assure that all teachers are prepared to teach a challenging curriculum;

"(v) expanding and improving the use of technology in education to improve teaching and learning;

"(vi) the development of alternatives for restructuring school finance systems to promote greater equity in the distribution of resources; and

"(vii) the development of alternative administrative structures which are more conducive to planning, implementing, and sustaining school reform and improved educational outcomes;

"(D) the development of educational programs and practices that address State, regional, or Indian tribal needs in relating to their school reform efforts;

"(E) facilitating communication between educational experts, school officials, and teachers, parents, and librarians, to enable such individuals to assist schools to develop a plan to meet the national education goals;

"(F) bringing teams of experts together to develop and implement school improvement plans and strategies;

"(G) the provision of training in—

"(i) the field of education research and related areas;

"(ii) the use of new educational methods; and

"(iii) the use of information-finding methods, practices, techniques, and products developed in connection with such training for which the regional educational laboratory shall be authorized to support internships and fellowships and to provide stipends; and

"(H) the provision of support and technical assistance (upon their request) to State facilitators funded through the National Diffusion Network.

"(3) NETWORKING.—In order to improve the efficiency and effectiveness of the regional laboratories, the governing boards of the ten regional laboratories shall establish and maintain a network to—

"(A) share information about the activities each is carrying out;

"(B) plan joint activities that would meet the needs of multiple regions;

"(C) create a strategic plan for the development of activities undertaken by the laboratories to reduce redundancy and increase collaboration and resource-sharing in such activities; and

"(D) otherwise devise means by which the work of the individual laboratories could serve national, as well as regional, needs.

"(4) ADDITIONAL DUTIES.—Each regional education laboratory receiving assistance under this subsection shall carry out the following activities:

"(A) Collaborate with the Institutes established under section 405B in order to—

"(i) maximize the use of research conducted through the Institutes in the work of such laboratory;

"(ii) keep the Institutes apprised of the work of the regional educational laboratories in the field; and

"(iii) inform the Institutes about additional research needs identified in the field.

"(B) Consult with the State educational agencies and library agencies in the region in developing the plan for serving the region.

"(C) Develop strategies to utilize schools as critical components in reforming education and revitalizing rural communities in the United States.

"(D) Report and disseminate information on overcoming the obstacles faced by rural educators and rural schools.

"(E) Identify successful educational programs that have either been developed by such laboratory in carrying out its functions or that have been developed or used by others within the region served by the laboratory and make such information available to the Secretary and the network of regional laboratories so that they may be considered for inclusion in the national education development and dissemination system.

"(5) CERTAIN REQUIREMENTS.—In carrying out its responsibilities, each regional educational laboratory shall—

"(A) establish a governing board that—

"(i) is the sole entity that—

"(I) guides and directs the laboratory in carrying out the provisions of this subsection and satisfying the terms and conditions of the contract award; and

"(II) determines the regional agenda of the laboratory, consistent with the priority research and development needs identified in section 405(b)(3); and

"(ii) reflects a balanced representation of the States in the region, as well as the interests and concerns of regional constituencies;

"(B) comply with the standards established by the Assistant Secretary and the Board under section 405A;

"(C) coordinate its activities, collaborate, and regularly exchange information with the institutes established under section 405C, the National Diffusion Network, and its Developer Demonstrator and State Facilitator projects, learning grant institutions and district education agents assisted under subsection (i), the ERIC Clearinghouses, and other entities engages in technical assistance and dissemination activities which are supported by other Offices of the Department of Education; and

"(D) allocate its resources to and within each State in a manner which reflects the need for assistance, taking into account such factors as the proportion of economically disadvantaged students, the increased cost burden of service delivery in areas of sparse populations, and any special initiatives being undertaken by State, intermediate, local education agencies, or Bureau of Indian Affairs-funded schools which may require special assistance from the laboratory.

"(6) EVALUATIONS.—The Assistant Secretary shall provide for periodic, independent evalua-

tions of each of the laboratories in carrying out the duties described in paragraph (1) in accordance with the standards developed by the Assistant Secretary and the Board and transmit the results of such evaluations to the relevant committees of the Congress, the Board, and the appropriate regional educational laboratory board.

"(7) INVITATION REGARDING COMPETITION FOR AWARDS OF ASSISTANCE.—Prior to awarding a grant or entering into a contract under this section, the Secretary shall invite applicants, including the existing regional educational laboratories, to compete for such award through notice in the Federal Register and in the publication of the Department of Commerce known as the Commerce Business Daily.

"(8) APPLICATION FOR ASSISTANCE.—Each application for assistance under this subsection shall—

"(A) cover not less than a 5-year period;

"(B) describe how the applicant would carry out the activities required by this subsection; and

"(C) contain such additional information as the Secretary may reasonably require.

"(9) RULE OF CONSTRUCTION.—No regional educational laboratory receiving assistance under this subsection shall, by reason of the receipt of that assistance, be ineligible to receive any other assistance from the Department as authorized by law.

"(10) ADVANCE PAYMENT SYSTEM.—Each regional educational laboratory shall participate in the advance payment system at the Department of Education.

"(i) GOALS 2000 COMMUNITY PARTNERSHIPS PROGRAM.—

"(1) PURPOSE.—The purpose of the Goals 2000 Community Partnerships program is to improve the quality of learning and teaching in the Nation's most impoverished urban and rural communities by supporting sustained collaborations between universities, schools, businesses, and communities which apply and utilize the results of educational research and development.

"(2) GRANTS FOR GOALS 2000 COMMUNITY PARTNERSHIPS.—The Assistant Secretary is authorized to make grants to eligible entities to support the establishment of Learning Grant Institutions and District Education Agents and the activities authorized under this subsection within eligible communities.

"(3) DEFINITION OF ELIGIBLE ENTITY AND ELIGIBLE COMMUNITY.—For the purposes of this subsection:

"(A) The term 'eligible entity' includes any institution of higher education, regional education laboratory, National Diffusion Network project, national research and development center, public or private nonprofit corporation, or any consortium thereof that—

"(i) has demonstrated experience, expertise and commitment in serving the educational needs of at-risk students; and

"(ii) is, by virtue of its previous activities, knowledgeable about the unique needs and characteristics of the community to be served.

"(B) The term 'eligible community' means a unit of general purpose local government (such as a city, township, or village), a nonmetropolitan county, tribal village, or a geographically distinct area (such as a school district, school attendance area, ward, precinct or neighborhood), or any group of such entities that—

"(i) has a population of not less than 200,000 and not more than 300,000; and

"(ii) in which not less than one-half of the school-age children have family incomes which are below the poverty line, as determined by the 1990 United States Census, participation in the National School Lunch program, or other current, reliable data concerning family income.

"(4) GOALS 2000 COMMUNITY PARTNERSHIPS.—Each learning grant institution receiving assistance under this subsection shall establish a Goals 2000 community partnership to carry out the activities authorized under this subsection. Such partnership—

"(A) shall include the participation of one or more local educational agencies, institutions of higher education, community-based organizations, parents, teachers, and the business community;

"(B) may include the participation of human, social service and health care agencies, Head Start and child care agencies, libraries, museums, employment and training agencies, and the State educational agency or tribal department of education; and

"(C) shall be broadly representative of all segments of the community in which the activities will be carried out.

"(5) COMPREHENSIVE GOALS 2000 PLAN.—Each Goals 2000 Community Partnership shall develop a comprehensive plan for assuring educational success and high achievement for all students in the community. Each such plan shall—

"(A) adopt the 6 national educational goals;

"(B) identify additional needs and goals for educational improvement within the community;

"(C) focus on helping all students reach challenging content and student performance standards;

"(D) be consistent with the State and local plan for system-wide education improvement developed pursuant to the Goals 2000: Educate America Act;

"(E) establish a comprehensive community-wide plan for achieving such goals; and

"(F) develop a means for measuring the progress of the community in meeting such goals for improvement.

"(6) IMPLEMENTATION OF COMMUNITY-WIDE PLAN.—Each Goals 2000 Community Partnership shall, utilizing the District Education Agent, provide assistance in implementing the community-wide plan for educational improvement by—

"(A) supporting innovation, restructuring, and continuous improvement in educational practice by—

"(i) disseminating information throughout the community about exemplary and promising educational programs, practices, products, and policies;

"(ii) evaluating the effectiveness of federally funded educational programs within the community and identifying changes in such programs which are likely to improve student achievement;

"(iii) identifying, selecting and replicating exemplary and promising educational programs, practices, products, and policies in both in and out-of-school settings;

"(iv) applying educational research to solve specific problems in the classroom, home and community which impede learning and student achievement; and

"(v) supporting research and development by teachers, school administrators, and other practitioners which promise to improve teaching and learning and the organization of schools;

"(B) improving the capacity of educators, school administrators, child care providers and other practitioners to prepare all students to reach challenging standards and to attain the goals set out in the comprehensive community-wide plan through such means as—

"(i) the training of prospective and novice teachers (including preschool and early childhood educators) in a school setting under the guidance of master teachers and teacher educators;

"(ii) training and other activities to promote the continued learning and professional development of experienced teachers, related services personnel, school administrators to assure that they develop the subject matter and pedagogical expertise needed to prepare all students to reach challenging standards;

"(iii) training and other activities to increase the ability of prospective, novice, and experienced teachers to teach effectively at-risk students, students with disabilities, students with limited English language proficiency, and students from diverse cultural backgrounds; and

"(iv) programs to enhance teaching and classroom management skills, including school-based management skills, of novice, prospective, and experienced teachers;

"(C) promoting the development of an integrated system of service delivery to children from birth through age 18 and their families by facilitating linkages and cooperation among—

"(i) local education agencies;

"(ii) health and social services agencies and providers;

"(iii) juvenile justice and criminal justice agencies;

"(iv) providers of employment training; and

"(v) child care, Head Start, and other early childhood agencies; and

"(D) mobilizing the resources of the community in support of student learning and high achievement by facilitating effective partnerships and collaboration among—

"(i) local education agencies;

"(ii) postsecondary educational institutions;

"(iii) public libraries;

"(iv) parents;

"(v) community-based organizations, neighborhood associations, and other civic and community organizations;

"(vi) child care, Head Start, and other early childhood agencies;

"(vii) churches, synagogues and other religious institutions;

"(viii) labor organizations; and

"(ix) business and industry.

"(7) ADDITIONAL REQUIREMENTS.—In carrying out its responsibilities under this subsection, each partnership receiving assistance under this subsection shall—

"(A) appoint a District Education Agent who shall be responsible, on a full-time basis, for directing the implementation of the community-wide plan. Such individual shall have significant experience and expertise in the field of education in—

"(i) addressing the needs of at-risk students; and

"(ii) conducting educational research and promoting the application of the results of such research to educational practice;

"(B) provide for such other professional and support personnel as may be necessary to implement the community-wide plan under the direction of the District Education Agent; and

"(C) coordinate its activities and work cooperatively with the National Diffusion Network State facilitators, regional laboratories, and other components of the Office to utilize most effectively Federal research, development, and dissemination resources in implementing the community-wide plan.

"(8) APPLICATION FOR GRANTS.—Any eligible entity desiring a grant under this subsection shall submit an application to the Assistant Secretary at such time, in such manner, and accompanied by such information as the Assistant Secretary may reasonably require. Each such application shall—

"(A) include a comprehensive plan for meeting the objectives and requirements of this subsection; and

"(B) provide evidence of support for the application from local elected officials, the State education agency, the local education agency, parents, local community leaders, businesses, and other appropriate organizations.

"(9) PRIORITY IN MAKING GRANTS; DURATION AND AMOUNT OF GRANT.—Each grant made under this subsection shall be—

"(A) awarded on a competitive basis, with first priority given to those applications from communities with the greatest percentage of school-age children in families with poverty-level incomes;

"(B) made for a 5-year period, with funding for the second and each successive year in this period conditioned upon a determination by the Assistant Secretary that the grant recipient has complied with the conditions of the grants during the previous year; and

"(C) an amount equal to not less than $1,000,000 per year.

"(10) LIMITATION OF ONE GRANT PER CONGRESSIONAL DISTRICT.—Not more than one grant shall be awarded within a single congressional district.

"(11) TECHNICAL ASSISTANCE; EVALUATIONS.—In administering the program authorized under this subsection, the Assistant Secretary shall, either directly or through grant or contract with an eligible nonprofit agency—

"(A) upon request, provide technical assistance to eligible entities to assist in the development of a comprehensive plan to meet the requirements of this subsection and in the preparation of applications for assistance;

"(B) regularly provide technical assistance to learning grant institutions receiving assistance under this subsection to assist with the development and implementation of the community-wide plan for educational improvement;

"(C) provide for an independent evaluation of the activities assisted under this subsection, including—

"(i) the impact of the Goals 2000 Community Partnerships program on children and families within each community, including (but not limited to) effects on the extent of educational achievement, rates of school retention and completion, and enrollment in program postsecondary educational programs; and

"(ii) whether an intensified effort to apply and utilize educational research within a limited geographic area significantly improves student learning and achievement; and

"(D) plan for the expansion of the Goals 2000 Community Partnerships program throughout the remainder of the Nation beginning in fiscal year 1998.

"(j) TEACHER RESEARCH DISSEMINATION NETWORK.—

"(1) FINDINGS.—The Congress finds that—

"(A) education research, including research funded by the Office, is not having the impact on the Nation's schools that such research should;

"(B) relevant education research and resulting solutions are not being adequately disseminated to the teachers that need such research and solutions;

"(C) there are not enough linkages between the research and development centers assisted under this section, the regional educational laboratories described in subsection (k), the National Diffusion Network State facilitators, the Education Resources Information Clearinghouses, and the public schools, to ensure that research on effective practice is disseminated and technical assistance provided to all teachers;

"(D) the average teacher has almost no time to plan or engage in a professional dialogue with such teacher's peers about strategies for improving learning;

"(E) teachers do not have direct access to information systems or networks;

"(F) teachers have little control over what in-service education teachers will be offered; and

"(G) individual teachers are not encouraged to move beyond the walls of their classrooms to identify and use outside resources.

"(2) PROGRAM AUTHORIZED.—

"(A) The Assistant Secretary shall enter into contracts with regional educational laboratories, in partnership with 1 or more institutions of higher education in each State of its region, the National Diffusion Network, and other entities with demonstrated experience, expertise, and commitment in the areas of teacher research or teacher professional development, such as the national research and development centers, professional teacher organizations, and other qualified organizations and associations, in the region to carry out activities described in paragraph (3).

"(B) The Assistant Secretary shall enter into contracts under this subsection in an equitable manner and shall provide assistance on the basis of the number of schools, teachers, and students in each regional educational laboratory region with attention given to populations with special needs and the increased cost burden of service delivery in regions of sparse population.

"(C) Contracts under this subsection shall be awarded for a period of not less than 3 years.

"(3) PROGRAM ACTIVITIES.—

"(A) Each regional partnership described in paragraph (2)(A) entering into a contract under this subsection shall carry out programs of providing training to teachers relevant to the needs and problems of the schools and school districts where teachers, who participate in the programs, serve. The purpose of such programs shall be to—

"(i) educate teachers on how to acquire information about education research findings and best practices;

"(ii) provide teachers with current education research and development theory, skills, and practice as shall enable them to modify, design, develop, and adapt such findings and practices to effect local district and classroom outcomes that improve education;

"(iii) enable teachers to become actively involved in the applied research and development process;

"(iv) provide teachers the ability to become leaders in the utilization of applied research and to become active participants in the Federal research and development partnership;

"(v) enhance the ability of teachers to evaluate and choose effective education programs and curricula; and

"(vi) facilitate collaboration between the teacher change agent and the National Diffusion Network State facilitator.

"(B) Teachers that participate in training assisted under this subsection shall be known as 'teacher change agents'.

"(C) The program described in subparagraph (A) shall provide teacher change agents with training during the summer and at such other times as agreed to by the district, which shall—

"(i) give teacher change agents knowledge and guidance in using the existing educational improvement services and resources funded by the United States Department of Education and other major research organizations, including the products and work of the regional educational laboratories, professional teacher organizations, the National Diffusion Network, institutions of higher education, the Educational Research Information Centers, National Research Centers, National Research Institutes, State Departments of Education, local education agencies, and other nonprofit organizations participating in the improvement of education;

"(ii) provide teacher change agents with in-depth knowledge about a number of products, programs, and processes developed by entities described in clause (i) that the teacher change agents judge most relevant to the needs of the district or districts they will serve;

"(iii) inform teacher change agents about government programs, including, but not limited to, programs in government agencies other than the Department of Education, which offer research opportunities, fellowships, and funding; and

"(iv) provide teacher change agents with instruction in technical assistance skills in order to increase their capacity to aid district and school site teacher teams responsible for leading school improvement activities at the district and school site level.

"(D) The school year activities described in subparagraph (A) shall provide teacher change agents participating in such program during the school year with—

"(i) opportunities to meet with other teacher change agents to exchange experiences;

"(ii) additional training or assistance as needed or requested;

"(iii) updates in education research, application, and findings; and

"(iv) opportunities to provide feedback into the educational research infrastructure regarding needed research and ways to improve the development and dissemination of information.

"(E) The regional partnership program may support educational improvement and reform activities such as—

"(i) training in applied research methodologies;

"(ii) assistance in conducting applied research;

"(iii) teacher research sabbaticals;

"(iv) video conferencing for additional training in order to reduce travel time and expenses;

"(v) training in developing and implementing effective teacher in-service training;

"(vi) training in change management, including strategies for restructuring schools, building local capacity, and generally strengthening the culture of schools so that schools are conducive and supportive of change, including training in interpersonal and leadership skills; and

"(vii) training in the appropriate use of technology to assist classroom teachers.

"(F) TEACHER RESPONSIBILITIES.—Teacher change agents shall, during the school year—

"(i) meet with other teachers and district or school site teacher teams to provide other teachers with knowledge about how to acquire information regarding education research findings and best practices, including what resources are available from the Department of Education and how to obtain products and technical services from the Department;

"(ii) meet with the National Diffusion Network State Facilitator to coordinate and not duplicate efforts in the dissemination of exemplary educational programs;

"(iii) help interested schools identify resources needed to address the school's needs and act as liaison between the school and the appropriate resource entities, such as regional educational laboratories, centers, national institutes, institutions of higher education, professional teacher organizations, scholars, consultants, and other schools and school districts that may be of assistance;

"(iv) teach other teachers how to use the products, programs, and processes in which the teacher was trained pursuant to paragraph (2)(C)(II);

"(v) work with other teachers and teacher teams to adapt identified exemplary practices, programs, and research results to implement school site or classroom improvements as desired, and provide follow-up activities throughout a 2-year period to ensure the successful adaptation and implementation of such programs in local schools; and

"(vi) inform teachers about how they can obtain Federal research funding, fellowships, and sabbaticals.

"(G) APPLICATION.—

"(i) IN GENERAL.—Each regional partnership desiring a contract under this subsection shall submit to the Secretary an application at such time, in such manner, and accompanied by such information as the Assistant Secretary may reasonably require.

"(ii) CONTENTS.—Each application described in clause (i) shall—

"(I) contain a plan acceptable to affected States and local education agencies for conducting the program to be assisted under this section;

"(II) contain assurances that the partnership requirements are fulfilled;

"(III) contain assurances that both district and school site teacher teams will be established to work in conjunction with the teacher change agent;

"(IV) contain a plan for the selection of district and school site teacher team participants and others as deemed appropriate by the teacher change agent and the regional partnership;

"(V) contain assurances that the regional partnership, in conjunction with the participating school districts, shall provide each teacher change agent with a stipend for the entire calendar year commensurate with such teacher's salary and travel expenses, to permit a teacher to participate in such program without incurring loss of income;

"(VI) contain assurances that each teacher change agent participating in the program shall receive an award of not more than $10,000 to be used by such teacher during the school year of such teacher's participation to purchase materials, support, and coordinate with other teachers or site teacher teams in the school district;

"(VII) contain assurances that such regional partnerships shall provide not more than $5,000 to each school district or group of school districts having an individual from such district or districts participating in the program assisted under this section for each of the 2 years following such participation to enable such school district or districts to continue efforts to improve dissemination of effective practices and programs within the district or districts;

"(VIII) contain assurances that representatives of State educational agencies, intermediate educational agencies, teacher centers, teacher educators at institutions of higher education, and school district in-service or curriculum specialists will be eligible to participate in the program assisted under this section if such individuals pay the cost of their participation; and

"(IX) contain an assurance that such regional partnership shall permit a teacher to participate in the program only after such partnership determines that the teacher will be afforded a full opportunity by the district to perform such teacher's responsibilities described in paragraph (3)(F).

"(4) TEACHER SELECTION AND ELIGIBILITY.—

"(A) NOMINATION.—Teacher participants in the program assisted under this subsection shall be nominated by their peers at the school district level.

"(B) ELIGIBILITY.—Each school district or group of school districts desiring to have teachers from such district or districts participate in the program assisted under this subsection shall provide the regional partnership with the names of such teachers, and an indication of the type of issues or problems on which each such teacher would like to receive information and training.

"(C) SELECTION.—

"(i) Teacher participants shall be selected by the regional partnerships in consultation with the State educational agencies in the region. Teacher participants shall be selected in such a manner so as to ensure an equitable representation of such teachers by State and school enrollment within the region.

"(ii) The number of teachers selected each year shall be determined in accordance with the amount of funding received by the regional partnership.

"(5) INDEPENDENT EVALUATION.—

"(A) IN GENERAL.—The Assistant Secretary shall provide for an independent evaluation of the program assisted under this subsection to determine the net impact and cost effectiveness of the program and the reactions of teachers and school districts participating in such program, including any career plan changes of participating teachers.

"(B) DATE.—The evaluation described in subparagraph (A) shall be submitted to the Congress within 6 months after the completion of the third year of the program.

"(C) FUNDING.—The Assistant Secretary may reserve not more than $250,000 of the amount appropriated under section 405(i)(2)(E) to carry out the evaluation described in this paragraph.".

PART E—NATIONAL LIBRARY OF EDUCATION

SEC. 251. ESTABLISHMENT WITHIN OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT.

Part A of the General Education Provisions Act, as amended by section 241 of this Act, is amended by inserting after section 405C the following new section:

"NATIONAL LIBRARY OF EDUCATION

"SEC. 405D. (a) IN GENERAL.—There is established within the Office a National Library of Education (hereafter in this section referred to as the 'Library'), which shall be maintained as a governmental activity.

"(b) FUNCTIONS OF LIBRARY.—The functions of the Library are—

"(1) to provide a central location within the Federal Government for information about education;

"(2) to provide comprehensive reference services on matters related to education to employees of the Department of Education and its contractors and grantees, other Federal employees, and members of the public; and

"(3) to promote greater cooperation and resource sharing among providers and repositories of education information in the United States.

"(c) ONE-STOP INFORMATION AND REFERRAL SERVICE.—The Library shall establish and maintain a central information and referral service to respond to telephonic, mail and electronic and other inquiries from the public concerning—

"(1) programs and activities of the Department of Education;

"(2) publications produced by the Department of Education and, to the extent feasible, education related publications produced by the Departments of Labor, Health and Human Services, and other Federal agencies;

"(3) services and resources available to the public through the Office, including the ERIC Clearinghouses, the research institutes, and the national education dissemination system;

"(4) statistics and other information produced by the National Center for Education Statistics; and

"(5) referrals to additional sources of information and expertise about educational issues which may be available through educational associations and foundations, the private sector, colleges and universities, libraries and bibliographic databases.

The Library shall maintain and actively publicize a toll-free telephone number through which public inquiries to the Library may be made.

"(d) COMPREHENSIVE REFERENCE SERVICES.—The Library shall, to the extent feasible, provide for the delivery of a full range of reference services on subjects related to education to employees of the Department and its contractors and grantees, other Federal employees, and members of the general public. Such services may include—

"(1) specialized subject searches;

"(2) search and retrieval of electronic databases;

"(3) document delivery by mail and facsimile transmission;

"(4) research counseling, bibliographic instruction, and other training services;

"(5) interlibrary loan services; and

"(6) selective dissemination of information services.

The Library shall first give priority in the provision of reference services to requests made by employees of the Department.

"(e) COOPERATION AND RESOURCE SHARING.—The Library shall promote greater cooperation and resource sharing among libraries and archives with significant collections in the area of education through such means as—

"(1) the establishment of information and resource sharing networks among such entities;

"(2) the development of a national union list of education journals held by education libraries throughout the United States;

"(3) the development of directories and indexes to textbook and other specialized collections held by education libraries throughout the United States; and

"(4) cooperative efforts to preserve, maintain and promote access to items of special historical value or interest.

"(f) ADMINISTRATION.—The Library shall be administered by an Executive Director who shall—

"(1) be appointed by the Assistant Secretary from among persons with significant training or experience in library and information science;

"(2) serve for a renewable term of 5 years; and

"(3) be paid at not less than the minimum rate of basic pay payable for GS–15 of the General Schedule.

"(g) TASK FORCE.—

"(1) IN GENERAL.—The Assistant Secretary shall appoint a task force of librarians, scholars, teachers, parents, and school leaders (hereafter in this paragraph referred to as the 'Task Force') to provide advice on the establishment of the Library.

"(2) PREPARATION OF PLAN.—The Task Force shall prepare a workable plan to establish the Library and to implement the requirements of this section.

"(3) CERTAIN AUTHORITIES.—The Task Force may identify other activities and functions for the Library to carry out, except that such functions shall not be carried out until the Library is established and has implemented the requirements of this section.

"(4) REPORT.—The Task Force shall prepare and submit to the Assistant Secretary not later than 6 months after the first meeting of the Task Force a report on the activities of the Library.

"(h) TRANSFER OF FUNCTIONS.—There are hereby transferred to the Library all functions of—

"(1) the Department of Education Research Library;

"(2) the Department of Education Reference Section; and

"(3) the Department of Education Information Branch.

"(i) COLLECTION DEVELOPMENT POLICY.—Not later than 180 days after the enactment of the Educational Research, Development, and Dissemination Excellence Act, the Assistant Secretary shall promulgate a comprehensive collection development policy to govern the Library's operations, acquisitions, and services to users. Such collection development policy shall—

"(1) be consistent with the functions of the Library set out in subsection (b);

"(2) emphasize the acquisition and maintenance of a comprehensive collection of reference materials; and

"(3) avoid unnecessary duplication by putting a priority on meeting the information needs of the Library's users through cooperation and re-

source-sharing with other entities with significant collections in the field of education.

"(j) ARREARAGE AND PRESERVATION.—On the basis of the collection development policy promulgated under subsection (h), the Executive Director shall develop a multiyear plan which shall set forth goals and priorities for actions needed to—

"(1) eliminate within 3 years the arrearage of uncataloged books and other materials in the Library's collections; and

"(2) respond effectively and systematically to the preservation needs of the Library's collections, relying, whenever possible, upon cooperative efforts with other institutions to preserve and maintain the usability of books and materials in the Library's collections.".

TITLE III—SAFE SCHOOLS ACT OF 1994

SEC. 301. SAFE SCHOOLS PROGRAM AUTHORIZED.

(a) IN GENERAL.—With funds appropriated under subsection (c)(1), the Secretary of Education shall make competitive grants to eligible local educational agencies to carry out projects designed to achieve Goal Six of the National Education Goals, which provides that by the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning, by helping to ensure that all schools are safe and free of violence.

(b) MODEL PROJECT.—The Secretary of Education, shall develop a written safe schools model so all schools can develop models that enable all students to participate regardless of any language barriers.

(c) AUTHORIZATION OF APPROPRIATIONS AND RESERVATION.—

(1) AUTHORIZATION.—There are authorized to be appropriated to carry out this Act $50,000,000 for fiscal year 1994.

(2) RESERVATION.—From the sums appropriated to carry out this Act for any fiscal year, the Secretary may reserve not more than 5 percent to carry out national leadership activities under section 305.

SEC. 302. ELIGIBLE APPLICANTS.

To be eligible to receive a grant under this Act, a local educational agency shall demonstrate in its application under section 303(a) that it—

(1) serves an area in which there is a high rate of—

(A) homicides committed by persons between the ages 5 to 18, inclusive;

(B) referrals of youth to juvenile court;

(C) youth under the supervision of the courts;

(D) expulsions and suspensions of students from school;

(E) referrals of youth, for disciplinary reasons, to alternative schools; or

(F) victimization of youth by violence, crime, or other forms of abuse; and

(2) has serious school crime, violence, and discipline problems, as indicated by other appropriate data.

SEC. 303. APPLICATIONS AND PLANS.

(a) IN GENERAL.—In order to receive a grant under this Act, an eligible local educational agency shall submit to the Secretary an application that includes—

(1) an assessment of the current violence and crime problems in the schools to be served by the grant and in the community to be served by the applicant;

(2) an assurance that the applicant has written policies regarding school safety, student discipline, and the appropriate handling of violent or disruptive acts;

(3) a description of the schools and communities to be served by the grant, the activities and projects to be carried out with grant funds, and how these activities and projects will help to reduce the current violence and crime problems in the schools and communities served;

(4) a description of educational materials to be developed in the second most predominate language of the schools and communities to be served by the grant, if applicable;

(5) if the local educational agency receives Federal education funds, an explanation of how activities assisted under this Act will be coordinated with and support any systemic education improvement plan prepared with such funds;

(6) the applicant's plan to establish school-level advisory committees, which include faculty, parents, staff, and students, for each school to be served by the grant and a description of how each committee will assist in assessing that school's violence and discipline problems as well as in designing appropriate programs, policies, and practices to combat those problems;

(7) the applicant's plan for collecting baseline and future data, by individual schools, to monitor violence and discipline problems and to measure its progress in achieving the purpose of this Act;

(8) a description of how, in subsequent fiscal years, the grantee will integrate the violence prevention activities it carries out with funds under this Act with activities carried out under its comprehensive plan for drug and violence prevention adopted under the Safe and Drug-Free Schools and Communities Act of 1986;

(9) a description of how the grantee will coordinate its school crime and violence prevention efforts with education, law enforcement, judicial, health, social service, programs supported under the Juvenile Justice and Delinquency Prevention Act of 1974, and other appropriate agencies and organizations serving the community;

(10) a description of how the grantee will inform parents about the extent of crime and violence in their children's schools and maximize the participation of parents in its violence prevention activities;

(11) an assurance that grant funds under this Act will be used to supplement and not supplant State and local funds that would, in the absence of funds under this Act, be made available by the applicant for the purposes of the grant;

(12) an assurance that the applicant will cooperate with, and provide assistance to, the Secretary in gathering statistics and other data the Secretary determines are necessary to determine the effectiveness of projects and activities under this Act or the extent of school violence and discipline problems throughout the Nation; and

(13) such other information as the Secretary may require.

(b) PRIORITIES.—In awarding grants under this Act, the Secretary shall take into account the special needs of local educational agencies located in both rural and urban communities.

SEC. 304. GRANTS AND USE OF FUNDS.

(a) DURATION AND AMOUNT OF GRANTS.—Grants under this Act may not exceed—

(1) 1 year in duration; and

(2) $3,000,000.

(b) USE OF FUNDS.—

(1) ACTIVITIES.—A local educational agency may use funds awarded under section 301(a) for 1 or more of the following activities:

(A) Identifying and assessing school violence and discipline problems, including coordinating needs assessment activities with education, law-enforcement, judicial, health, social service, juvenile justice programs, gang prevention activities, and other appropriate agencies and organizations.

(B) Conducting school safety reviews or violence prevention reviews of programs, policies, practices, and facilities to determine what changes are needed to reduce or prevent violence and promote safety and discipline.

(C) Planning for comprehensive, long-term strategies for combating and preventing school violence and discipline problems through the involvement and coordination of school programs with other education, law-enforcement, judicial, health, social service, and other appropriate agencies and organizations.

(D) Activities which involve parents in efforts to promote school safety and prevent school violence.

(E) Community education programs involving parents, businesses, local government, the medical, and other appropriate entities about the local educational agency's plan to promote school safety and reduce and prevent school violence and discipline problems and the need for community support.

(F) Coordination of school-based activities designed to promote school safety and reduce or prevent school violence and discipline problems with related efforts of education, law-enforcement, judicial, health, social service, juvenile justice programs, and other appropriate agencies and organizations.

(G) Developing and implementing violence prevention activities and materials, including—

(i) conflict resolution and social skills development for students, teachers, aides, other school personnel, and parents;

(ii) disciplinary alternatives to expulsion and suspension of students who exhibit violent or anti-social behavior;

(iii) student-led activities such as peer mediation, peer counseling, and student courts; or

(iv) alternative after-school programs that provide safe havens for students, which may include cultural, recreational, educational and instructional activities, and mentoring and community service programs.

(H) Educating students and parents about the dangers of guns and other weapons and the consequences of their use.

(I) Developing and implementing innovative curricula to prevent violence in schools and training staff how to stop disruptive or violent behavior if it occurs.

(J) Supporting "safe zones of passage" for students between home and school through such measures as Drug- and Weapon-Free School Zones, enhanced law enforcement, and neighborhood patrols.

(K) Counseling programs for victims and witnesses of school violence and crime.

(L) Evaluating its project under this Act.

(M) The cost of administering the project of the local educational agency under this Act.

(N) Other activities that meet the purposes of this Act.

(2) OTHER LIMITATIONS.—A local educational agency may use not more than 5 percent of its grant for activities described in paragraph (1)(M).

(3) CONSTRUCTION.—A local educational agency may not use funds under this Act for construction.

SEC. 305. NATIONAL LEADERSHIP.

To carry out the purpose of this Act, the Secretary may use funds reserved under section 301(c)(2) to conduct national leadership activities such as research, program development and evaluation, data collection, public awareness activities, training and technical assistance, to provide grants to noncommercial telecommunications entities for the production and distribution of national video-based projects that provide young people with models for conflict resolution and responsible decisionmaking, and to conduct peer review of applications under this Act. The Secretary may carry out such activities directly, through interagency agreements, or through grants, contracts, or cooperative agreements.

SEC. 306. REPORTS.

(a) REPORT TO SECRETARY.—Local educational agencies that receive funds under this part shall submit to the Secretary a report not

later than March 1, 1995, that describes progress achieved in carrying out the plan required under section 303.

(b) REPORT TO CONGRESS.—The Secretary shall submit to the Committee on Education and Labor of the House of Representatives a report not later than October 1, 1995, which contains a detailed statement regarding grant awards, activities of grant recipients, a compilation of statistical information submitted by applicants under section 303, and an evaluation of programs established under this part.

SEC. 307. DEFINITIONS.

For purposes of this Act:

(1) LOCAL EDUCATIONAL AGENCY.—The term "local educational agency" has the meaning given such term in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

(2) SECRETARY.—The term "Secretary" means the Secretary of Education.

Mr. LEVIN. Mr. President, I ask unanimous consent that the Senate disagree to the House amendment to the Senate amendment and agree to the request for a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees.

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

The Presiding Officer (Mr. CONRAD) appointed Mr. KENNEDY, Mr. PELL, Mr. METZENBAUM, Mr. SIMON, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. BINGAMAN, Mr. WELLSTONE, Mr. WOFFORD, Mrs. KASSEBAUM, Mr. JEFFORDS, Mr. COATS, Mr. GREGG, Mr. THURMOND, Mr. HATCH, and Mr. DURENBERGER conferees on the part of the Senate.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

FIFTH BIENNIAL REPORT OF THE INTERAGENCY ARCTIC RESEARCH POLICY COMMITTEE—MESSAGE FROM THE PRESIDENT—PM 91

The Presiding Officer laid before the Senate a message from the President of the United States, together with an accompanying report; which was referred to the Committee on Governmental Affairs:

To the Congress of the United States:

Pursuant to the provisions of section 108(b) of Public Law 98-373 (15 U.S.C. 4107(b)), I transmit herewith the Fifth Biennial Report of the Interagency Arctic Research Policy Committee (February 1, 1992, to January 31, 1994).

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 2, 1994.*

TWENTY-SIXTH ANNUAL REPORT OF THE DEPARTMENT OF TRANSPORTATION FOR FISCAL YEAR 1992—MESSAGE FROM THE PRESIDENT—PM 92

The Presiding Officer laid before the Senate a message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

In accordance with section 308 of Public Law 97-449 (49 U.S.C. 308(a)), I transmit herewith the Twenty-sixth Annual Report of the Department of Transportation, which covers fiscal year 1992.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 2, 1994.*

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-2244. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation to amend the Intermodal Surface Transportation Efficiency Act of 1991; to the Committee on Environment and Public Works.

EC-2245. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation entitled "National Highway System Designation Act of 1994"; to the Committee on Environment and Public Works.

EC-2246. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the report of the financial statements of the forfeiture fund for fiscal year 1993; to the Committee on Finance.

EC-2247. A communication from the Secretary of Commerce, transmitting, a draft of proposed legislation entitled "The Export Administration Act 1994"; to the Committee on Banking, Housing and Urban Affairs.

EC-2248. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the annual report for fiscal year 1993; to the Committee on Governmental Affairs.

EC-2249. A communication from the Chairman of the Federal Maritime Commission, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2250. A communication from the Assistant Secretary of the Treasury (Management), transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2251. A communication from the Office of Special Counsel, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2252. A communication from the Principal Deputy Assistant (Secretary of Defense for Public Affairs), transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1993; to the Committee on the Judiciary.

EC-2253. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on silicosis in underground uranium miners; to the Committee on the Judiciary.

EC-2254. A communication from the Secretary of the Education, transmitting, a draft of proposed legislation entitled "College Construction Loan Insurance Association Amendments of 1994"; to the Committee on Labor and Human Resources.

EC-2255. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Preventing Tobacco Use Among Young People"; to the Committee on Labor and Human Resources.

EC-2256. A communication from the Secretary of Labor, transmitting, pursuant to law, the report on the Job Training for the Homeless Demonstration Program; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROCKEFELLER, from the Committee on Veterans' Affairs, with an amendment in the nature of a substitute:

S. 1546. A bill to amend title 38, United States Code, to revise certain administrative provisions relating to the United States Court of Appeals, and for other purposes (Rept. No. 103-232).

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. SIMPSON (for himself, Mr. BYRD, Mr. THURMOND, Mr. DOLE, Mr. D'AMATO, and Mrs. KASSEBAUM):

S. 1884. A bill to amend the Immigration and Nationality Act to reform asylum procedures, to strengthen criminal penalties for the smuggling of aliens, and to reform other procedures to control illegal immigration to the United States; to the Committee on the Judiciary.

By Mr. DECONCINI (for himself and Mr. KERREY):

S. 1885. A bill to amend the National Security Act of 1947 to provide a uniform framework for the classification and declassification of information in the interests of national security; to the Select Committee on Intelligence.

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

S. 1886. A bill to amend the Water Supply Act of 1958 to provide for the funding of capital improvements at the Washington Aqueduct, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. COCHRAN:

S.J. Res. 165. A joint resolution to designate the month of September 1994 as "National Sewing Month"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. LEVIN (for himself, Mrs. BOXER, Mr. PELL, Mr. METZENBAUM, and Mrs. FEINSTEIN):

S. Res. 184. A resolution to condemn the massacre in Hebron, and urge all parties in the Middle East peace process to renew energy to achieve a just peace; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SIMPSON (for himself, Mr. BYRD, Mr. THURMOND, Mr. DOLE, Mr. D'AMATO, and Mrs. KASSEBAUM):

S. 1884. A bill to amend the Immigration and Nationality Act to reform asylum procedures, to strengthen criminal penalties for the smuggling of aliens, and to reform other procedures to control illegal immigration to the United States; to the Committee on the Judiciary.

COMPREHENSIVE IMMIGRATION AND ASYLUM REFORM ACT OF 1994

Mr. SIMPSON. Mr. President, I rise to introduce today the Comprehensive Immigration and Asylum Reform Act of 1994. This measure addresses so many of the various serious immigration and asylum problems which have been "the stuff of headlines" and debate in this country for the past year and much longer.

As jobless rates remain high, and as State and local governments struggle with the cost of education, public assistance, and health care, and as there is great stress on the criminal justice system during these times of economic pain, we frequently hear in frustration, that "something must be done" about immigration—legal and illegal.

There are many studies and many opinions on the economic costs and benefits of immigration. Some believe we should have open borders. I happen to think that is about the most absurd viewpoint that could ever be expressed, because the first duty of a sovereign nation is to control its borders.

Some feel there should be no limit on the number of immigrants we could admit to our benefit. Others argue that immigration, legal and illegal, is costing State and local governments billions of dollars every year in public-funded services.

I believe that legal immigration has been and can continue to be of great benefit to the United States, but only if the newcomers can be comfortably absorbed into the American community.

I do not want to get into flash words like "assimilation" and "make them do the American thing" and all of the stuff that comes with hyphenated Americanism in these times.

Immigrants can be comfortably absorbed in reasonable numbers if they come here to become "Americans" just as others have always come before them—to understand, accept, and support the democratic institutions and the laws, principles, values, traditions, and spirit which reflect the American character. That is not corny to say. I have always referred to that as our "public culture," in order to distinguish it from the individual's "private culture" of their own religions, their ways, and their customs which reflect the remarkable diversity of our immigrants and which all other Americans should fully respect.

But, indeed, those who come to our land should respect our public culture, a common flag, a common language. These are not racist things. These are not bigoted things. These are not nativist things. These are not mean-spirited things. And all may practice their private cultures, whatever they may be, as long as others are not injured.

But the numbers have to be reasonable for the times in order that these new Americans may be successfully integrated, or people become sour and hardened against their entry.

In 1990, we increased legal immigration to the United States to 700,000 persons—an increase of nearly 40 percent. I was a cosponsor of that act which created the increase. I thought it was good.

Since 1990, we have been admitting more than 120,000 refugees in every year. And I was part of the passage of the Refugee Act in 1980.

In addition to these legal immigrants and refugees, illegal immigration contributes another 300,000 permanent immigrants annually.

This burgeoning stream of legal immigrants, undocumented aliens, and refugees is as large an immigration flow as has ever been experienced in this country. It cannot continue. We can add to that flow thousands more who come here each year to claim, or to try to claim, political asylum. And often it is a phony claim.

Immigration is 35 percent of our annual population growth, and our population growth rate is the highest of any developed Western nation. I have come to the conclusion that our current immigration exceeds the numbers of persons which the United States is capable of absorbing comfortably.

So, today, I present this bill. When we increased the numbers in 1990, I did not foresee these things, did not anticipate California's economic crisis, did not appreciate the fact that illegal immigration was again growing to unacceptable levels. And we see now that 1990 was not the time for a large-scale expansion in legal immigration, and we should not hesitate to correct that miscalculation today.

So the first order of business is to bring undocumented illegal immigration under control. Then we must determine a level of immigration which will be reasonable and which will clearly reflect our interest as a Nation—the national interest. So this measure I am introducing will, for a period of 5 years, reduce legal immigration to 500,000 legal immigrants annually.

When we passed the Immigration Act of 1990, I believed we had successfully closed the back door to illegal immigration. We did not do that. We had enacted laws to prevent the employment of undocumented workers. Apprehensions of deportable aliens dropped for the third straight year. We thought we were on a good course. And we did not foresee the economic distress to our largest immigrant-receiving States: California, Florida, Illinois—caused in part by the downsizing, at least in California, of the defense establishment.

The level proposed in this legislation will take us back to the level of legal immigration prior to the 1990 act. This reduction will be in effect for 5 years, at which time it will automatically return to 675,000 immigrants annually, the permanent, worldwide level established by the 1990 act.

During this 5-year period, this breathing space, we can address the issue of illegal immigration. We can create more English language training programs for the immigrants who are already here. We can assist the half-million immigrants, plus refugees, who will be admitted every year to integrate successfully into the American society. And I would note here that while it has been our usual practice in the United States to allow immigration to grow, and to never adjust it downward no matter what the economic situation, the two other countries of high immigration—Australia and Canada—have mechanisms to reduce immigration as well as to increase it, in order to best serve their national interests.

Because of the worldwide economic recession, Australia, for example, now has reduced immigration by more than 50 percent over the last 3 years. During those same 3 years we were attempting to absorb a nearly 40 percent increase in our own immigration. It just does not make sense that we cannot or should not adjust our numbers when it is obviously in the national interest to do so.

Although some immigrants and their advocates—I often refer to them as "groups" in a sinister way—may consider immigration to the United States as a right, we must always remember that immigration is a privilege; a privilege that should be granted only when it is in the national interest.

This bill will also establish for the first time a firm cap on total immigration, excepting only the immigration of immediate relatives of American citizens—the nuclear family—which shall remain unrestricted. Remember,

there is no restriction on the parents, sons and daughters, and spouses of U.S. citizens, and the numbers for the minor sons and daughters and spouses of permanent resident aliens will not be reduced.

But at this point I want to say that all immigrants who are in this country legally have come at the invitation or sponsorship of an American citizen, an employer, or a permanent resident. All of them have been approved by our immigration service. All are entitled to the respect and consideration we accord to every other American. A temporary reduction in the overall level of immigration does not mean there is an anti-immigrant sentiment in the Nation or in the Congress. It is not nativist, racist, or mean-spirited to talk of controlling illegal immigration, or of reducing legal immigration. And it is not some response to anti-immigrant passions in the general public. In fact, a reduction in immigration should help this country to reduce any anti-immigrant feelings that do exist.

This measure will also establish a limit on the number of refugees which the administration can admit without congressional action.

Under the 1980 Refugee Act, the administration was to have consulted with the Congress before determining the number of refugees to admit in each year. This consultation process has not proven in any way to be a copartnership, it is a one-way street. The administrations under both parties have admitted refugees for many years at double or triple the 50,000 admissions which were established under the act as the "normal flow" of refugees.

Most of the refugees now come directly from the country of their own nationality. Hear that. As a refugee, you are supposed to be fleeing persecution based on race, religion, national origin, political opinion, or membership in a particular group. Few are, in fact, fleeing any immediate persecution. They may be fleeing economic conditions, even discrimination, but that does not make one a refugee under the law.

So the refugee program has really become, in essence, more of an immigration program than a refugee rescue program. This bill will establish a limit of 80,000 on the number of refugees which may be admitted without congressional action. That is a 60 percent increase over the "normal flow" set by the Refugee Act. But the ability of the administration to act in the event of a refugee emergency will not be restricted. Under the provisions of the Refugee Act, additional refugees may be admitted in the event of a genuine refugee emergency. That will continue.

In addition to providing more congressional control over the admission of large numbers of refugees, this provision will limit the number of refugees accepted by the United States for the same reasons I have mentioned in discussing the proposed limits on immigrant admissions.

This measure also addresses many of the problems we experience with criminal aliens. Last summer the American public saw on their television the spectacle of aged ships containing hundreds of illegal aliens running aground in New York harbor or sailing under the Golden Gate Bridge in order to discharge their pathetic human cargo at a dock in San Francisco. Americans were appalled at the loss of life, the terrible conditions on board the ships, and the inability of our Government to control this blatant abuse of our laws by alien smuggling organizations. This legislation will increase the penalties for alien smuggling, it will add alien smuggling to the list of crimes that establish the basis for bringing a RICO—racketeering—charge and will expand the seizure or forfeiture authority against those who smuggle or harbor illegal aliens.

The legislation will also expedite the deportation procedures for criminal aliens who are not permanent resident aliens, green-card holders. The bill will permit a Federal judge to enter an order of deportation during the sentencing phase of a criminal trial, thus avoiding a second administrative hearing on the deportation. It will also limit the defenses to deportation for certain criminal aliens. And, to increase the effectiveness of deportation orders, the bill will increase the penalties for criminal aliens who fail to depart, or who reenter the country after the final order of deportation has been issued.

These provisions are tough, and they are strong, and they are direct—but fair. They will reduce the ability of criminal aliens to the advantage of a multilayered appeals process which has been plastered into the law over the decades. Aliens take advantage of that system in extraordinary ways. We now see in our asylum and deportation procedures that it is almost in total gridlock. And this will deter illegal alien smuggling by greatly increasing the cost of the criminal smuggler.

The legislation also addresses a most serious immigration problem at our Nation's international ports of entry. Taking advantage of the loopholes that exist in current law, large numbers of illegal aliens are entering the United States at our major ports of entry, claiming asylum, then disappearing into the interior of our country.

In a single year approximately 40,000 aliens will seek illegal entry at our international airports, either with fraudulent documents or no documents. Because we have limited detention space, these aliens, and the smugglers who assist them, know that they will likely be released into the community at large—and with a work permit, too, if they can simply indicate a desire to apply for asylum. This measure will address this problem while at the same time preserving and protecting the rights of those aliens who present legitimate, good-faith applications for asylum. Under this bill, any alien who uses a fraudulent document to enter the United States or who uses a document overseas, but then fails to present that document upon arrival in the United States, would be subject to an immediate order of exclusion.

However, this bill would still protect those aliens who have legitimate claims to refugee status, but who attempt to enter the country without proper documents. The legislation would prevent the Immigration Service from immediately removing any alien who has a "credible fear of persecution" in the country to which he or she would be returned.

The determination of a "credible fear of persecution" would be made by a specially trained asylum officer at the port of entry. A denial of an asylum claim would be reviewed by the asylum officer's supervisor before the alien would be excluded.

Mr. President, the rampant and widespread use of fraudulent and phony identification of all types in this country continues to appall U.S. citizens. It reduces the effectiveness of the employer sanctions legislation which we passed in 1986. It cannot be effective with the gimmickry of the documents.

It also subjects our public welfare systems to terrible abuse, and it weakens the enforcement of gun control laws.

This legislation will direct the administration to develop and implement a more secure system to verify the identification of persons who apply for work or for welfare benefits in the United States. The bill contains protections to ensure that such a verification system shall not become a national identification card.

I think this provision is especially critical and important, Mr. President, as we move toward a universal health care system. We saw our President in his address to the Nation hold up a card and say, "All of you will carry this, or all of you will have this, and all of you will receive health care."

I have no problem with that. But I must note here that I did not see a great many editorials warning of a "slippery slope" to a national I.D. card. I thought that most interesting.

But as we move toward a universal health care system and we see a system that is costing us $900 billion a year for health care, we see a system out of whack because of what it is costing to sustain people who are here illegally and who get legal documents to get illegal benefits. So we want to have the necessary tool for the enforcement of employer sanctions—a secure verification system—because, potentially, we

think that that is the most effective and humane deterrent against illegal immigration.

In addition, the bill will increase penalties for document fraud. I do not usually use these remarkable gimmicks that we sometimes see on the floor, but I certainly would not hesitate if it does not frighten children.

A person called my office and said, "Send me your picture and your vital statistics and I will send you a couple of documents that will be of great interest to you as to what is happening in your country." So, naturally, I took a photo of my best side, sent it to the person, and he went to a street corner in Los Angeles. A man walked up to the car, took the order for a California I.D. card and a Social Security card, and said, "I will have it in the morning," and he did. And here it is. I had it enlarged so you can see it.

This is my name, Alan Kooi Simpson. That is my middle name, Kooi. My address is 4850 Royal in Turlock, CA. I do not know where that is. I have never heard of that. There are my vital statistics. Sex, male; hair, glossy—no, gray. I am sorry. Eyes, gray; height 6'7"; weight, 200. There I am. Date of birth, correct. This is not, of course, my signature. Only the photo background color is a little off. It should be bluer.

This card and the Social Security card would enable me to work anywhere in California and to draw from the welfare systems of the State of California. It had a magnetic tape on the back. As far as I know, the magnetic tape was correct. That will, in some counties, get me the right to vote, and all of it is totally phony. Also, it has a holograph over the photo, just like a genuine California I.D. card, so it looks counterfeit resistant.

No wonder California is finally paying attention. That is their I.D. card. They and Florida are now in the process of wanting to sue the Federal Government for the cost of caring for the people who come there because of the Federal Government's failure to properly restrict refugees and immigrants. So that is the I.D. card.

Then the gentleman, whoever it was—I do not know—got this Social Security card fixed up for me. I covered a couple of numbers, because this is undoubtedly some poor soul's actual number. Some poor guy in America now has me using his Social Security account. The card is on the counterfeit resistant paper now used by the Social Security Administration. There I am. I obliterated two of the numbers so the person whose number this is won't know.

That is the package you need to work, vote, get benefits, whatever. You can get it for 50 to 100 bucks. So that is where we are in America.

These are the things I am up to. We are going to deal with the asylum problem at the airports; we are going to deal with the backlog of 400,000 asylum cases. Hear this one: We have people who are in the United States illegally, then get picked up after ranging through the country for a couple of years, and then plead asylum where they are found. They say, "I am here, I am an asylee, I am fleeing persecution." When it is noted that they have been here a couple years illegally, they reply, "I know, but now I am asking for asylum."

So the systems have been overwhelmed. These 400,000 people in the asylum backlog are aliens who have already entered our country. Actually many have been here, as I say, for many years and they are in illegal status. These undocumented aliens, at some point apply for asylum, usually during deportation proceedings. The system is so laborious, so backlogged, so freighted with lawyers that the alien knows he can get additional months or years to work in America simply by saying the words, "political asylum."

The immigration lawyers of America are really a special group—tough, tough, self-preserving and, of course, always for the little guy if the little guy has enough to pay. They are very difficult. They will go bananas when they see these provisions. I hope we will recognize their special interest in keeping the immigration laws confused and obtuse.

So we will proceed with that. We give the Attorney General the discretion to deny work authorization to asylum applicants until such time as they receive a grant of asylum. This alone should deter many frivolous claims.

Another problem frequently raised by the Governors of our two largest immigrant receiving States—California and Florida—both who served in this body with me, both very able men, is the use of public welfare by legal and illegal aliens. This burden on the States, as I have mentioned, has given rise to calls for full Federal reimbursement for public assistance and educational costs attributable to immigrants.

Under current law, aliens become deportable if they become a "public charge"—those are the words in the statute. But this provision is never enforced because of a difficult court decision that said you have to ask them to pay it back, and only if they refuse to pay it back, are they a public charge. How absurd.

Many legal immigrants are granted admission only because their sponsors promised to support them, if necessary. That is what they promised when they brought them here, that they were paying for them.

This bill will now make it very clear that any alien receiving public assistance for more than 1 year, except for causes occurring after his or her arrival here, will become deportable as a "public charge." Further, the sponsors' income and resources will remain available to assist needy immigrants until such person becomes a citizen, rather than for only 3 years, as is the case under our current policy. A very important change.

The legislation also provides for additional interior investigators; a pilot program to examine the use of closed military bases for the detention of illegal aliens; a pilot program to study the effectiveness of deporting aliens to the interior of their own country rather than simply returning them to the border; and a requirement that all federally funded agencies must communicate with the INS regarding the immigration status of any, and all, aliens in the United States. We will no longer allow that little luxury where a county says, "We do not tell anybody the alienage or the immigration status of anybody in our county regardless of what we are taking from the public Treasury." That is not good enough anymore.

Finally, Mr. President, the bill would establish a border-crossing fee, a user fee to provide funding for the programs contained in this measure.

We must again reform our immigration laws. Much of the American public, with some very real justification, views immigration to the United States as being excessive and plainly out of control. And the most heavily impacted States are demanding Federal moneys to pay the cost of legal and illegal immigrants.

The provisions of this bill, Mr. President, will serve to address those concerns in a reasonable manner: A temporary reduction in immigration for 5 years, and with additional provisions to control illegal immigration; to reduce abuses of the legal immigration system; and to streamline procedures to deal with the massive backlogs in the asylum system. I urge my colleagues to support this measure, and I earnestly invite their cosponsorship.

I ask unanimous consent that the cosponsors include Senator BYRD, Senator THURMOND, Senator DOLE, Senator D'AMATO, Senator KASSEBAUM, and such Senators, at the conclusion of the day, who will indicate themselves as original cosponsors of the bill.

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

Mr. SIMPSON. Mr. President, I send to the desk a section-by-section summary of the bill and ask unanimous consent that it be printed at the appropriate place in the RECORD.

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

SECTION-BY-SECTION SUMMARY

TITLE I—CRIMINAL ALIENS

Part A—Alien smuggling control

Sec. 101. Increased penalties for alien smuggling. (1) increases the penalty for alien

smuggling to 10 years (currently 5), (2) provides an additional penalty if the smuggler willfully subjects any alien to a substantial risk of death or serious bodily harm of 3 to 10 years, (3) allows the death penalty for a smuggler who causes death, and (4) provides a 2 to 5 year sentence if a person knowingly hires a smuggled alien.

Sec. 102. Death penalty procedures. Incorporates constitutionally required procedures for considering and implementing the death penalty.

Sec. 103. Smuggling for commission of crimes. Creates a new crime for smuggling aliens for the purpose of committing serious crimes in the U.S. The underlying smuggling penalty is enhanced by 3 to 5 years.

Sec. 104. Adding alien smuggling to RICO. Adds alien smuggling to the list of crimes which establish the basis for bringing a RICO charge. This addition will allow law enforcement officials to use RICO penalties (such as forfeiture and imprisonment) against alien smuggling organizations.

Sec. 105. Expanded forfeiture for smuggling or harboring illegal aliens. Expands current INS authority to seize and forfeit property used in, or facilitating, the smuggling or harboring of illegal aliens. Important in cases when RICO charges (and penalties) are not available.

Sec. 106. Wiretap authority for alien smuggling investigations. Permits the INS, with judicial authorization, to intercept wire, electronic, and oral communications of persons involved in alien smuggling operations.

Part B—Deportation

Sec. 111. Expansion in definition of "aggravated felony". Expands the definition of "aggravated felony" for purposes of the immigration laws. Currently the definition includes: murder, drug trafficking, trafficking in firearms or explosives, money laundering, terrorism and any crime of violence for which the sentence is 5 or more years. This section adds: firearms violations, failure to appear to answer a felony charge, demanding or receiving ransom money, unlawful conduct relating to RICO, child pornography, owning or operating a prostitution business, treason, tax evasion exceeding $200,000 and certain immigration-related offenses including alien smuggling and sale of fraudulent documents.

Sec. 112. Deportation procedures for certain criminal aliens who are not permanent residents. Provides for the prompt deportation of any non-green card holder alien who has been convicted of an aggravated felony and who is deportable.

Eliminates the following deportation procedures for non-permanent resident criminal aliens: (1) administrative hearing before an immigration judge, (2) administrative review by the Board of Immigration Appeals, (3) availability of current grounds of relief from deportation, and (4) federal court review on any grounds (other than mistaken identity as convicted criminal alien). The AG may not execute a final order of deportation for 14 days to allow the alien to seek the limited court review.

Sec. 113. Judicial deportation. Allows federal trial courts to issue an order of deportation during the sentencing phase of the criminal trial of an alien convicted of an aggravated felony. This section applies to all criminal aliens, including permanent residents.

The deportation order must be requested by the government and the alien must be notified promptly of the government's intent. The government must prove that the defendant is an alien subject to deportation and that the alien has been convicted an "aggravated felony."

"Judicial deportation" would replace current administrative deportation procedures where it is sought. An appeal of the deportation order to the circuit court of appeals is retained. The Attorney General would retain her right to seek an administrative determination of deportability if the federal court denies a motion for judicial deportation.

Sec. 114. Restricting defenses to deportation for certain criminal aliens. Restricts defenses against deportation for aliens convicted of aggravated felonies. Allows only those aggravated felons who have been green card holders for at least seven years, and who have been sentenced to less than five years imprisonment, to assert a defense against deportation.

Currently, green card holders are ineligible for relief from deportation if the alien has served five or more years for one or more aggravated felonies. This section amends section 212(c) to make aliens who have been sentenced to five or more years ineligible for relief.

This standard is more relevant to judging the seriousness of an offense since dangerous criminals may be released prematurely due to prison overcrowding or other reasons unrelated to the seriousness of crime. Also, the current standard at times prevents a speedy commencement of deportation proceedings since it may be five years before it is known whether the alien has "served" 5 years.

This section also clarifies current law that aggravated felons may not request or be granted withholding of deportation. The provision is consistent with the intent of the UN Protocol to permit denial of withholding of deportation in cases of persons convicted of a "particularly serious crime."

Sec. 115. Enhancing penalties for failing to depart, or reentering, after final order of deportation. Enhances penalties for failing to depart or for reentering after a final order of deportation has been issued.

Currently, an alien who is deportable for criminal offenses, document fraud, or as a security risk is subject to criminal penalties of up to 10 years imprisonment for failure to depart. However, there are no penalties for aliens deportable for other reasons. Subsection (a) retains the current 10 year penalty and provides for up to 4 years imprisonment for aliens who are issued deportation orders on other grounds and who fail to depart.

Subsection (b) increases the penalties for criminal aliens who reenter the U.S. after being formally deported. Currently, an alien who is convicted of a felony other than an aggravated felony and who re-enters is subject to 5 years imprisonment and a criminal fine; this subsection extends the penalties to aliens convicted of three or more misdemeanors and increases the maximum sentence to 10 years. Aggravated felons who reenter the U.S. currently are subject to criminal fines and up to 15 years; this subsection increases the maximum sentence to 20 years. Language also is added to make it clear that any alien who stipulates to deportation during a criminal trial shall be considered to have been formally deported.

Subsection (c) would restrict a court's ability, in a criminal proceeding against a deported alien who has re-entered the U.S., to re-examine the underlying deportation order except in those cases where the alien demonstrates (1) that she has exhausted any available administrative remedies against the deportation order, (2) that the deportation proceedings improperly deprived the alien of the opportunity for judicial review, and (3) that the entry of the order of deportation was "fundamentally unfair."

Sec. 116. Civil penalties for failure to depart. Allows civil penalties to be levied against an alien who fails to depart pursuant to a deportation order.

Part C. Miscellaneous

Sec. 121. Miscellaneous and technical changes. Responds to two holdings of the 9th Circuit. Subsection (a) clarifies that the Attorney General can authorize deportation proceedings to be conducted by electronic or telephonic means or, where agreed to by the parties, in the absence of the alien.

Subsection (b) clarifies that nothing in this Act or in section 242(i) (directing the AG to begin deportation proceedings as quickly as possible after a conviction) shall be construed to create a legally enforceable right or benefit for the alien.

TITLE II—PORT OF ENTRY INSPECTIONS

Sec. 201. Restrictions on admissions fraud. An alien who presents fraudulent documents, documents containing false information or who presents no documents to an asylum officer upon entry into the U.S. is excludable (can be denied admission to the U.S.), *unless* the alien can show: (1) that the fraudulent, stolen or "disappeared" documents (such as documents destroyed on the airplane) were used exclusively to leave a country from which he or she has a "credible fear of persecution," or (2) to avoid return to such a country.

Credible fear is established if: (1) it is "more probable than not" that the alien's statements are true, and (2) there is a significant possibility, given the alien's statements and the information known by the asylum officer, that the alien can prove her eligibility as a refugee.

Aliens expressing a desire to apply for asylum will be screened by a specially trained asylum officer. If the officer determines she has a credible fear of persecution, she can then apply for asylum. All other undocumented or falsely documented aliens will be excluded.

Sec. 202. Special port of entry exclusion for admissions fraud. Aliens found to be specially excludable under this bill may be ordered deported. An alien may be returned only to a country in which the alien has no credible fear of prescution upon return.

Sec. 203. Judicial review. Restricted to limited habeas corpus review. Other than limited habeas, no court can: (1) review a determination to exclude aliens under this bill, (2) review the procedures established by the Attorney General under this Title, or (3) enter declaratory or injunctive relief regarding implementation of this Title.

Sec. 204. Effective date.

TITLE III—PENALTIES FOR DOCUMENT FRAUD AND MISREPRESENTATION

Sec. 301. Increased penalties for document fraud. The penalties for fraud and misuse of immigration documents and government-issued identification documents are increased from 5 years imprisonment to 10 years. The sentencing guidelines are amended to increase the minimum penalties based upon the number of fradulent document involved. The penalties are also increased if the documents are supplied to a terrorist, to facilitate a terrorist activity, or to persons involved in organized crime activities.

Sec. 302. Penalties for failure to disclose role as preparer of fraudulent documents. Establishes both civil and criminal penalties for failure to disclose a person's role as preparer of fraudulent documents. Criminal

penalties are also established for persons who conceal that they have, for a fee, prepared or assisted in preparing a fraudulent application for asylum.

Sec. 303. Civil penalties for fraud, misrepresentation, and failure to present documents. Establishes civil penalties for failing to present valid immigration documents at the time of boarding a common carrier, or to an immigration officer upon arrival at a U.S. port of entry.

TITLE IV—ASYLUM REFORM

Sec. 401. Penalties for frivolous applications. Establishes civil and criminal penalties for preparing false or frivolous applications for immigration benefits or false supporting documents.

Sec. 402. Asylum and work authorization. Establishes that an applicant for asylum is not automatically entitled to work authorization. The Attorney General has discretion in granting, denying, suspending or placing conditions on work authorization.

Sec. 403. Resources to address asylum backlog. Providing for a 2-year program of property acquisition and leasing and use of retired federal employees to process the backlog of asylum claims (as in the 1986 Act legalization program).

Sec. 404. Reforms to deportation process. To expedite the deportation process: removes the Spanish language requirement for the document initiating deportation proceedings, clarifies that the privilege of counsel is "at no expense or unreasonable delay to the Government," and establishes time deadlines for filing judicial appeals, briefs and reply briefs.

Sec. 405. Reduction of incentive to delay proceedings. Requires that permanent resident aliens undergoing deportation proceedings who assert the defense of having resided in the U.S. for seven consecutive years cannot court the time they were in deportation proceedings towards the 7-year requirement.

TITLE V—ILLEGAL IMMIGRATION AND BORDER SECURITY

Sec. 501. Additional investigators. Reprograms $8 million for one year to hire 125 additional investigators and staff to investigate potential violations of employer sanctions.

Sec. 502. Funding of deportation costs. Reporgrams $10 million for one year to fund the detention and deportation of aliens from the U.S.

Sec. 503. Interior repatriation pilot program. A two-year pilot program and report to examine methods to deter multiple illegal entries, including removing aliens to the interior of their country (instead of just across the border).

TITLE VI—BORDER CROSSING USER FEE

Sec. 601. Imposition of fees. Within 6 months of enactment, fees shall be imposed at land border ports of entry for the entrant's use of border facilities and services to equal the amount necessary for maintenance and operation of facilities and services. A separate account is established to retain the fees for INS use. Moneys unused for the current fiscal year due to the imposition of these fees will be used to hire and equip 100 additional Border Patrol agents and support personnel, and for repair, maintenance or construction of structures on the border.

TITLE VII—DETENTION OF ILLEGAL ALIENS

Sec. 701. Pilot program on use of closed military bases for the detention of illegal aliens. 2-year pilot program and report on the feasibility of using of closed military bases to detain illegal aliens.

TITLE VIII—PUBLIC BENEFITS ABUSE

Sec. 801. Ineligibility for federal benefits. Prohibits the distribution of federally-funded welfare benefits to illegal aliens (except emergency health care, short-term disaster aid, child nutrition programs and public health programs). Only aliens lawfully in the U.S. with work authorization can qualify for unemployment benefits.

Sec. 802. Attribution of sponsor's income and resources to family preference aliens. The income and resources of an alien's sponsor shall be deemed to be the income and resources of the alien until the alien becomes a citizen.

Sec. 803. Definition of public charge. Defines "public charge" (for deportation purposes) as any alien who, within 5 years after the date of entry, has received welfare benefits for more than 12 consecutive months, except for causes which arose after entry into the U.S.

TITLE IX—WORK AUTHORIZATION VERIFICATION

Sec. 901. Work authorization verification. Requires the Attorney General with the Secretary of Health and Human Services to develop and implement a counterfeit-resistant system to verify work eligibility and federally-funded public assistance benefits eligibility for all persons.

TITLE X—NUMERICAL LIMITATIONS ON ADMISSION OF ALIENS INTO THE UNITED STATES

Sec. 1001. Five-year reduction in legal immigration. Reduces legal immigration from 675,000 to 500,000 for five years. The 175,000 reduction is taken proportionately as follows: 75,000 from the family immigration preferences, 45,000 from the employment immigration preferences, and 55,000 from the diversity program.

Sec. 1002. Worldwide numerical limitations. Removes the "pierceable cap" and replaces with a firm cap. This firm cap applies both to the reduced admissions (5-year reduction to 500,000) and the permanent 675,000 admissions limit.

Sec. 1003. Numerical limitation on annual admission of refugees. Limits refugee admissions to 80,000 unless Congress adopts a bill specifically authorizing a larger number.

TITLE XI—MISCELLANEOUS PROVISIONS

Sec. 1101. Use of legalization information for criminal prosecution purposes. Allows the Attorney General to furnish identifying information, contained in confidential legalization applications, to a law enforcement agency in connection with a criminal investigation, or to a coroner for identifying a deceased individual.

Sec. 1102. Communications between federally funded government agencies and the Immigration and Naturalization Service. No federal, state or local government entity receiving federal funds shall be prohibited from communicating with the INS regarding the immigration status of an alien.

Mr. DOLE. Mr. President, I am pleased to join today with my distinguished colleague, Senator SIMPSON, in introducing the Comprehensive Immigration and Asylum Reform Act.

SCOPE OF THE PROBLEM

Mr. President, during the past decade, nearly 9 million people have immigrated legally into our country—a population greater than most States. Unfortunately, millions more have chosen to enter the United States illegally, without our consent. The Immigration and Naturalization Service, for example, estimates that more than 3,000 people attempt to illegally cross the California-Mexico border each night. Nearly 60 percent of them succeed. In 1986, the apprehension of illegal undocumented aliens reached an all-time high of 1.8 million. And in 1992, the number of apprehensions was still staggering—more than 1 million.

Of course, illegal immigration has a disproportionate impact on certain areas of the country. In California, for example, there are an estimated 1.3 million illegal aliens, and more than half of these illegals live in a single county—the county of Los Angeles. Not surprisingly, a staggering 10 percent of the 1992 budget of Los Angeles County was spent on providing services to illegal aliens. The Governor of Florida, another State heavily impacted by immigration, has even threatened to sue the Federal Government for reimbursement of the cost of providing services to immigrants, both legal and illegal.

Today's bill won't solve these critical problems overnight. But, if enacted, it would represent a good first step in the right direction. The bottom line is simply this: If we want to get a handle on the illegal-immigration problem, we need a national immigration policy.

SUMMARY OF THE BILL

Mr. President, some of the highlights of the bill include the following: Increased penalties for alien smuggling, including the death penalty for a smuggler whose actions result in the death of an innocent victim; streamlined deportation procedures that will allow Federal trial courts to issue an order of deportation during the sentencing phase of the criminal trial of an alien convicted of an aggravated felony; reform of the asylum process, making it easier to exclude aliens who present fraudulent immigration documents, and increased penalties for the misuse of these documents; a 2-year pilot program studying the feasibility of using closed military bases to detain illegal aliens; and another pilot program to examine ways to remove illegal and criminal aliens to the interior of their country of origin, rather than right across the border.

The bill also requires the Attorney General, in consultation with the Secretary of Health and Human Services, to develop and implement a counterfeit-resistant system to verify work eligibility and eligibility for federally funded benefits. The bill contains specific language prohibiting this system from ever developing into a so-called national I.D. card. On a related issue, the bill makes illegal aliens ineligible for all Federal benefits except emergency medical assistance, short-term disaster relief, and certain child nutrition and immunization programs.

In addition, the bill addresses the issue of legal immigration, proposing

to reduce the annual level of legal immigration from 675,000 to 500,000 for each of the next 5 years, until the year 1999. Annual legal immigration of 500,000 is approximately equal to the level of annual legal immigration that existed prior to the passage of the Immigration Act of 1990.

CONCLUSION

Mr. President, during my 33 years in Congress, I have received many requests for help from people who want to come to America. But I have never—not once—received a request from anyone seeking help in getting a ticket out. Everyone wants to come America. Few ever want to leave.

While America remains the land of opportunity, it is not the land of unlimited opportunity for unlimited numbers of immigrants, both legal and illegal. If the America of the 21st century is to prosper—and yes, to grow—she must be an America that determines her own destiny by controlling her own borders. Today's legislation is an attempt to help this process along.

Finally, Mr. President, I want to thank my colleague, Senator SIMPSON, for his hard work and for all the time he has personally devoted to making some sense out of our Nation's immigration policy. In many ways, this task has been a thankless one, but Senator SIMPSON has carried the ball on immigration without complaint and with considerable skill.

Mr. President, I commend the distinguished Senator from Wyoming, who is recognized as the expert on immigration and immigration policies in the Senate. He spent a lot of time putting this bipartisan bill together, and I hope it is received as such. It has broad bipartisan support.

So I just want to commend my colleague from Wyoming.

Mr. BYRD. Mr. President, I once again find myself rising to support immigration reform legislation introduced by Senator SIMPSON. I commend him, not only for introducing this legislation earlier today but also for his many years of work and leadership in this area. I am pleased to join him as a cosponsor of the Comprehensive Immigration and Asylum Reform Act of 1994.

A thorough reform of U.S. immigration law is overdue. The dramatic changes that the world experienced over the past decade have not been matched by changes in U.S. immigration policies. The breakdown of cold war security structures, the rise of nationalism and interethnic violence, and a deep worldwide recession have prompted the movement of large numbers of people in many regions of the world. Additionally, easier access to travel has contributed to the shifting migration patterns and has made it much easier for individuals to make the trek to the United States. There was a time when America was somewhat insulated by two great oceans, but no longer. In the face of this dramatic change, our immigration laws still reflect an earlier time.

The current lax U.S. asylum procedures provide a prime example of these outdated policies and the way that unscrupulous individuals take advantage of America's compassion. This system allows anyone to gain entry to the United States and become immediately eligible to work here. All one needs to do is to show up at a U.S. port of entry, request asylum, and relate some vague story of persecution to the Immigration and Naturalization Service agent. The individual then receives work authorization documents and is instructed to show up later for a hearing on the asylum claim. The system has become so backlogged that the hearing will most likely be more than a year later. Not surprisingly, fewer than half of the asylum seekers ever appear for their hearing. All too often, those claiming asylum are really seeking economic opportunity, not freedom from persecution, and they use U.S. asylum laws to gain access to the United States, their economic Holy Grail.

America has always had a tradition of compassion for oppressed and persecuted peoples. Unfortunately, in our desire to provide a safe haven for those who legitimately fear for their lives, we have made it too easy to take advantage of American good will by using asylum procedures to circumvent the regular immigration process. Asylum and refugee laws should apply to individuals that have a legitimate fear of personal persecution in their home country, and not those who are fleeing from areas of general unrest or poverty.

Reform of the asylum provisions is important, and over the past 2 years I have joined with Senator SIMPSON in attempts to correct these problems, but I am more concerned with overall immigration levels. We cannot continue to absorb the levels of immigrants that we have experienced over the past few years. America no longer has limitless resources or vast open areas ripe for settlement and our population places ever-increasing demands on an already overburdened environment even without the addition of hundreds of thousands of immigrants a year.

It is clear that reform efforts must go beyond our attempts to merely plug the gap of illegal immigration. We must reexamine our overall immigration policy in light of America's continuing economic and social problems. In addition to the well-known upsurge of illegal immigration, the United States has witnessed an unprecedented explosion of legal immigration in the last few years. From 1981 to 1988, total legal immigration to the United States hovered around 600,000. That number jumped to 1,090,000 in 1989, and continued up to 1,536,000 in 1990, and 1,827,000 in 1991. The number dropped off in 1992, the last year for which we have final numbers, but remained at approximately 1,000,000. This situation cannot continue indefinitely.

The legislation introduced by the distinguished Senator from Wyoming [Senator SIMPSON] attempts to reverse this trend and return the numbers to a more manageable level. Title X includes a 5-year reduction of the basic annual ceiling on immigrants from 675,000 to 500,000 and attempts to make that number a firm cap. In the past this so-called ceiling has been far too permeable, resulting in legal immigration numbers much higher than the statutory limit and, I feel certain, much higher than most Members anticipated when they voted for the Immigration Act of 1990. Title X also limits the annual number of refugees to 80,000 unless the Congress specifically authorizes a larger number. This is another area where the flexibility provided in earlier statutes has resulted in numbers far in excess of what the Congress originally envisioned.

Exceedingly high levels of immigration in recent years have eroded public support for continued immigration. A USA Today cover story on July 14, 1993, included a poll showing that 65 percent of Americans favor decreasing the level of immigration. This is not a question of America's compassion or of our sympathy for the plight of those in the world who are less fortunate. We simply have reached the point where it is not possible for the United States to absorb these exceptionally large numbers.

It is particularly important to note that the segment of our society which suffers the most from increased immigration is the lower end of the economic scale—unemployed, unskilled, and semiskilled laborers who are in real danger of becoming a permanent underclass in our society. If we truly want to help our citizens that are mired in poverty, we should not be accepting ever-increasing numbers of replacement workers to take away those low-skill jobs. We must also realize that the U.S. economy, environment, and social structure are being severely strained by an unprecedented level of immigration and we must take action soon.

The United States simply does not have the resources to help all those around the world who wish to come here for a better life. We do not have the resources to eliminate poverty and unemployment for our own population, much less the rest of the world.

Yesterday, the Senate completed consideration of a constitutional amendment to balance the budget. We had a lengthy debate on the wisdom of using the Constitution to deal with budget deficits, and the amendment was ultimately defeated, but I think it

is safe to say, however, that all of the Senators who participated in the debate agreed on one thing—we must continue to reduce the deficit. That will require the President and the Congress working together to achieve that goal. That goal cannot be achieved without additional spending reductions and those reductions will mean reduced services to everyone living in the United States. It is unfair to U.S. citizens and legal residents to continue virtually uncontrolled population expansion through immigration at the same time that our fiscal situation forces us to reduce the services that the Government provides.

The time has come to look inward and to start to take care of our own problems. We can no longer afford to offer opportunities to all those who come in search of a better life. It is more and more difficult for us to provide basic social guarantees—education, health care, and so on—to our own citizens, whose ancestries go back to many countries, and over the years, over the centuries—touch all of us. It is unfair and irresponsible of us, as a Government, not to stem the tide of the hundreds of thousands of new immigrants coming to this country. I hope, in addition to the many other items on the Senate's agenda, that it will be possible to consider this comprehensive immigration reform package, and I thank the distinguished Senator from Wyoming [Mr. SIMPSON] for keeping our attention focused on this issue. I look forward to working with him in the coming months as we attempt to deal with this very important problem.

I ask unanimous consent, Mr. President, to include in the RECORD the article from USA Today to which I referred earlier.

I yield the floor.

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

[From USA Today, July 14, 1993]

USA COOL TO HUDDLED MASSES—SENTIMENT SOURS AS RATE OF ARRIVAL RISES

(By Maria Puente)

America—a nation of immigrants—is turning its back on its newest arrivals, with anti-immigration sentiment now as high as it's been at anytime since World War II.

A USA Today/CNN/Gallup Poll shows the blacklash against the record number of immigrants running broad and deep, stoked by anxiety over the stagnant economy, the failure to curb illegal immigration and, immigration advocates charge, nothing short of racism.

Although relatively few Americans say they have much contact with new immigrants, nearly two-thirds of those polled want immigration decreased—the highest percentage since the mid-1940s.

In addition, 56% believe immigrants cost taxpayers money and 55% say the racial and ethnic diversity of immigrants threatens American culture.

"My nightmare is an image of the Statue of Liberty dissolving, replaced by an image of the bombed World Trade Center and the association of immigrants with smuggling, drugs and terrorism," says Arthur Helton, immigration expert for the Lawyers Committee for Human Rights.

Conjuring the images may be the sheer numbers—a historic and massive movement to this country led by Hispanic and Asian immigrants. About 9.5 million legal and illegal immigrants came to the USA between 1980-90—the largest number in any decade since the nation's founding.

"In my district, no issue compares to illegal aliens—people just go berserk," says Rep. Tony Beilenson, D-Calif., who represents Los Angeles, where immigrants make up a major proportion of the population.

Those who favor curbs—Congress is considering several—say the Emma Lazarus poem on the Statue of Liberty is irrelevant. The last thing needed today, the argument goes, is "huddled masses."

"It's a poem, not policy," says Rosemary Jenks, senior analyst at the Center for Immigration Studies, a Washington think-tank that advocates reducing immigration. "It never was policy and we never said we wanted to open our arms."

Historians take the uproar with a grain of salt. Fifty-four million immigrants have come to the USA since 1820, and the public's response has been at best ambivalent—and at worst racist and violent.

The latest round of recriminations over immigrants has been prompted, at least in part, by recent headlines: boatloads of Chinese peasants trying to sneak into U.S. ports; Haitians with the AIDS virus ordered let in; immigrants arrested in connection with New York bomb plots; and Egyptian cleric who somehow got in and now can't be immediately kicked out.

It is a debate punctuated with apocalyptic rhetoric.

One side says the United States—especially California, Texas, Florida and New York—is being invaded by immigrants who crowd neighborhoods, take jobs, cost money and change the culture.

"We're at the floodstage and we have been for the past six years," says Robert Goldsborough, president of Americans for Immigration Control, a group that backs a temporary moratorium on immigration.

Even President Clinton has adopted the vocabulary of immigration opponents, saying the chief goal of his nominee to head the Immigration and Naturalization Service would be to ensure the USA doesn't "lose control of our borders,"

Immigrant advocates, on the other hand, use words like racism and xenophobia to describe feelings of their opponents. They say immigrants create jobs, pay their taxes, build communities and add vitality to the culture.

"There's this image being created of a white minority encircled by Hispanics, Africans and Asians coming to take something we have, rather than contributing to make us all better," says Frank Sharry, head of the National Immigration Forum, a coalition of advocate groups in Washington.

Fierce and emotional, the debate has reached Congress, where many members have concluded that the 1986 law meant to fix the immigration problem failed miserably.

Proposals being debated:

Tightening up the political asylum system to allow immigration officers to immediately turn away people with suspected fraudulent claims.

Denying citizenship to babies born to illegal immigrants.

Deploying the military along the southern border.

Charging a $1 toll for every person entering the USA on foot, ferry, ship or by automobile, to raise $403 million for more Border Patrol agents.

Requiring a fraud-proof national ID card for every citizen to prevent illegal immigrants from getting jobs.

Even the advocates for immigrants want to repeal the 1986 law, which, among other things, bans hiring of illegal immigrants. The advocates argue that employer sanctions have caused widespread discrimination against citizens and legal residents who seem "foreign."

But advocates fear a get-tough attitude will prevail.

"We're right on the verge of a new era of anti-immigrant hysteria that could push us in the direction of policies based on misperceptions," says Lucas Guttentag, of the Immigrant Rights Project of the American Civil Liberties Union.

The USA Today/CNN/Gallup Poll reflects some of those attitudes:

Two-thirds say immigrants take low-paying jobs that most Americans don't want. At the same time, 64% say immigrants hurt the economy by driving down wages.

Many are uncomfortable with the rising numbers of blacks and Hispanics arriving.

About two-thirds believe too many immigrants are coming from Latin America, Asian and Mideast countries, while only 33% say too many are coming from European countries.

Many are willing to embrace some controversial remedies. Fifty-seven percent back the idea of a national ID; 40% would deny illegal immigrants use of hospitals and schools.

Some critics say the current mood could lead to immigrant-targeted violence of the kind now prevalent in Germany and other European countries.

"If leaders do not address the public's legitimate concerns, that leaves the door open for demagogues to take over," warns Ira Mehlman, of the Federation for American Immigration Reform, a leading anti-immigration group.

But Lawrence Fuchs, acting chairman of the U.S. Commission on Immigration Reform, thinks that's unlikely.

Today, he argues, mainstream politicians no longer warn of "inferior" immigrants, as generations did before.

Help? Foreign-born residents now make up 7.9% of the population, compared with about 15% at the end of the 19th century.

And today, most new immigrants come here under family reunification laws.

Says Fuchs: "People will say on surveys they're against more immigration, but when their neighbor calls them up and says, 'I've petitioned for my spouse and little children to come here,' the next thing out of the neighbor's mouth will be 'What can I do to help?'"

Adds immigration expert Helton: "That poem on the Statue of Liberty is more persuasive than some people think."

Immigrants' effect on American culture

[In percent]

Improve	35
Threaten	55
Immigration should stay at present level	27
Be increased	6
Be decreased	65

There are too many immigrants from countries in:

	Now	1992	1984
European	33	36	26
Latin American	62	69	53
African	44	47	31
Asian	62	58	49
Mideast	64	.....	.....

Anti-immigrant feeling running high in a USA Today/CNN/Gallup poll shows many Americans don't think immigrants are taking away jobs, but feel immigrants are hurting the economy by holding down wages and using government services, such as public schools and hospitals. Many of those surveyed want restricted immigration and tougher immigration laws. A look at how Americans view immigration and immigrants:

Immigration

[In percent]

Many want reduced immigration until economy improves—those who think immigration should:	
Stop	27
Slow	49
Most think government can do more to stop illegal immigration:	
Can do more	69
Doing all it can	28
Immigrants less likely than their children to favor restricting immigration:	
Immigrants	42
1st generation	54
2nd generation	61
Patrolling borders a popular option—percentage favoring the following to stop illegal immigration:	
Stricter patrol of borders	90
National ID card	57
Bar illegal immigrants from American schools, hospitals	40
Erect wall on Mexican border	27
Job skills important—Important criteria in admitting immigrants:	
Job skills	78
Religious persecution	65
Political persecution	64
American relatives	56
Money to invest	50
Economic hardship	47

THE NEW IMMIGRANT

[Perception of immigrants worsens; percentage saying these nationalities generally benefit the country or create problems]

	Benefit country		Create problems	
	1993	1985	1993	1985
Irish	75	78	11	5
Poles	65	72	15	7
Chinese	59	69	31	13
Koreans	53	52	33	23
Vietnamese	41	47	46	30
Mexicans	29	44	59	37
Haitians	19	31	65	35
Iranians	20	32	68	40
Cubans	24	29	64	55

[Asian, Hispanic stereotypes; percentage saying these apply]

	Asian immigrants	Latin American immigrants
Work very hard	74	65
Often end up on welfare	38	60
Do very well in school	74	42
Significantly increase crime	43	62
Have strong family values	77	72
Are too competitive	40	26

Comparing new, older immigrants—many say new immigrants less likely to make good citizens than earlier immigrants:

	In percent
More likely	9
Less likely	42
Same	46

Economic impact

Most say immigrants take more than they give—percentage who say that, in the long run:	
Immigrants productive citizens, pay fair share of taxes	37
Immigrants cost taxpayers by using government services	56
Most say immigrants hurt economy—those saying immigrants:	
Help economy by providing low cost labor	28
Hurt economy by holding down wages	64

By Mr. DECONCINI (for himself and Mr. KERREY):

S. 1885. A bill to amend the National Security Act of 1947 to provide a uniform framework for the classification and declassification of information in the interests of national security; to the Select Committee on Intelligence.

THE SECURITY CLASSIFICATION ACT OF 1994

• Mr. DECONCINI. Mr. President, on behalf of Senator KERREY and myself, I am introducing today a bill that would provide for the first time a statutory basis for the security classification system.

I am also pleased that the chairman of the House Intelligence Committee, Representative DAN GLICKMAN of Kansas, offered a bill yesterday in the House of Representatives to accomplish the same purpose. The two bills differ substantially, but they strive toward the same objective. It is my hope that in the months ahead, working together, we can come up with a legislative solution that makes sense not only to us but to the administration as well.

Heretofore, Mr. President, the classification system has rested entirely upon Executive order. Over the years, that system has been the subject of much complaint and much abuse. It has also been overly cumbersome and costly to administer. In my view, the time has come for Congress to become involved. The end of the cold war presents us with an opportunity for greater openness and accountability. At the same time, there are many secrets we must yet protect, and the President must have sufficient authority to protect what needs protecting as long as protection is needed.

With this bill, Mr. President, I have tried to strike a balance between these two important competing interests: the need for openness and the need for security. Clearly, this has required a subjective judgment on my part. Others will undoubtedly differ on where that line should be drawn, and, indeed, none of this is etched in stone.

I do think, however, that this is an area where Congress ought to act.

For example, there are a number of other statutes which are based upon the classification system, notably, the espionage laws and the Freedom of Information Act. We put people in jail for giving away classified information, and yet the system for classifying that information is not in law but is in Executive order which can be changed at the whim of the Executive. We carve out all classified information from the Freedom of Information Act, putting it off limits to the American public, and yet Congress has had no say on what is classified and what is not. It has been a matter of Executive discretion.

To me, putting the security classification system itself in statute would provide a much firmer legal basis for these other laws. It would be the Congress and not simply the President who determined what was classified and what was not.

Putting the security classification system into law would also tie in the legislative and judicial branches to it for the first time. Heretofore, there has been nothing that required the legislative and judicial branches to protect classified information which they handle. While I am not saying that the President should have control over the other branches, I do think that requiring all branches to respect the classification system by providing a statutory basis for it would be a positive step forward.

Mr. President, my bill would leave the President with sufficient authority to protect what he believes needs protection in the interests of national security, but it would greatly simplify the system, reduce its costs, prevent more abuses, and make more classified information available sooner, than under the current system. These are legitimate goals not only for the Congress but for the President as well.

I have come to find out, Mr. President, that there is no one who actually knows how much classified information there is. The Congress and the President receive an annual report each year which estimates the number of new classified documents created annually at 6 to 7 million. As far as how many classified documents actually exist in files or archives of the Government, I do not think an estimate as high as 100 million would be out of line.

What does it cost the U.S. Government to protect all of this information? I cannot begin to guess. What I do know is that we have spent, and continue to spend, an inordinate amount of money, particularly when it comes to protecting very sensitive special access programs. The Select Committee on Intelligence continues to hear horror stories from contractors in the defense and intelligence communities about the exorbitant costs of security measures being imposed by the various departments and agencies with whom they deal. Security requirements can vary from contract to contract, and often involve costly and needless expenditures of taxpayers' money.

How much of this information is no longer sensitive and should be released to historians and archivists who are

trying to find out what role our Government played in the events that marked our history? I do not think anyone can say. What I do know is that there is, as a practical matter, no means of getting this information into the hands of archivists and historians today. I am told that only a very small proportion of the classified documents which become eligible each year for declassification when they reach 30 years of age actually declassified each year, and the number is shrinking rather than increasing. This is because there are literally mountains of documents to cope with and relatively few people to do the job. The system is bogged down in paper without the resources necessary to extricate itself.

Mr. President, I know that the administration is attempting to come to grips with the problem by drafting a new Executive order. I applaud them for it. But the bureaucratic interests here are stifling, and furthermore, I am not certain that ultimately the system can be fixed short of legislation. I recognize that historically this has been the domain of the executive branch, and clearly its authorities and prerogatives must be accommodated, but I think legislating the system would provide a stronger, firmer foundation that we currently have. If the executive branch were to come to the same conclusion, I would pledge myself to working with it to develop legislation to achieve our mutual objectives consistent with our respective authorities and prerogatives.

Mr. President, I now ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1885

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 "Security Classification Act of 1994".

SEC. 2. TABLE OF CONTENTS.

The table of contents of the National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding at the end the following:

"TITLE VIII—CLASSIFICATION OF INFORMATION IN THE INTERESTS OF NATIONAL SECURITY

"Sec. 801. Definitions.
"Sec. 802. Classification criteria.
"Sec. 803. Identification and marking of classified information.
"Sec. 804. Authority to classify information.
"Sec. 805. Duration of classification.
"Sec. 806. Protection of classified information.
"Sec. 807. Special access programs.
"Sec. 808. Declassification, generally.
"Sec. 809. Declassification pursuant to a request by a member of the public.
"Sec. 810. Declassification of permanently valuable records of the Government for historical reasons.
"Sec. 811. Special declassification reviews for topics of historical interest.
"Sec. 812. Oversight.
"Sec. 813. Sanctions.
"Sec. 814. Implementation.
"Sec. 815. Effect on information previously classified pursuant to Executive order.".

SEC. 3. AMENDMENT OF THE NATIONAL SECURITY ACT OF 1947.

The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by adding the following new title:

"TITLE VIII—CLASSIFICATION OF INFORMATION IN THE INTERESTS OF NATIONAL SECURITY

"SEC. 801. DEFINITIONS.

"As used in this title:

"(1) The term 'agency' has the meaning provided in section 552(f) of title 5, United States Code.

"(2) The term 'appropriate committees of the Congress' means the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and, for purposes of receiving reports regarding specific categories of information, such committees as may have jurisdiction over the subject matter of such information.

"(3) The term 'classified information' means information that has been determined pursuant to this title to require protection against unauthorized disclosure in the interests of national security.

"(4) The term 'declassification' means the authorized change in the status of information from classified to unclassified information.

"(5) The term 'information' means any knowledge that can be communicated or documentary material regardless of its physical form or characteristics.

"(6) The term 'international organization' means an organization designated under section 1 of the International Organizations Immunities Act (22 U.S.C. 288).

"(7) The term 'national security' means the national defense or foreign relations of the United States.

"(8) The term 'originating agency' means, with respect to information, the department, agency, or entity of the United States (or any officer or employee thereof of acting in his official capacity) that originates, develops, publishes, issues, or otherwise prepares that information or receives that information from outside the United States Government.

"(9) The term 'security clearance' means a determination, by appropriate governmental authority, based upon appropriate investigation, that a person can with reasonable certainty be trusted to protect classified information to which he or she may be given access.

"(10) The term 'unauthorized disclosure' means a communication or physical transfer of information to an unauthorized recipient.

"SEC. 802. CLASSIFICATION CRITERIA.

"(a) IN GENERAL.—Information may be classified under this title—

"(1) only if such information is owned by, produced by or for, or is under the control of the United States Government; and

"(2)(A) only if it can be specifically demonstrated that the public release of such information could reasonably be expected to—

"(i) impair the ability of the United States Government and its Armed Forces to defend the United States from armed aggression, to engage in armed conflict, or to participate in peacekeeping or multinational operations abroad;

"(ii) increase the vulnerability of the United States Government personnel, installations, weapons technology, or related systems to armed attack, loss or compromise, or measures that would weaken their effectiveness or counter their capabilities;

"(iii) damage relations between the United States and another country or international organization, impede current diplomatic negotiations, or reveal information provided in confidence by another country or international organization;

"(iv) reveal intelligence sources and methods, including those related to covert actions and cryptologic activities;

"(v) impair United States Government programs from safeguarding nuclear weapons or facilities;

"(vi) damage the ability of the United States to relate or apply critical research or technology to the national defense or foreign relations of the United States; and

"(vii) impair the ability of the United States Secret Service to provide protection to designated persons as required by applicable law; or

"(B) such information otherwise falls within a category designated by the President, after consultation with the appropriate committees of the Congress, the public release of which would, in a manner that can be specifically demonstrated, damage the national security, of the United States and such information is not covered by any of the clauses of subparagraph (A).

Categories designated under paragraph (2)(B) shall be published in the Federal Register prior to their effective date.

"(b) PROHIBITION.—In no case shall information be classified pursuant to this section in order to—

"(1) conceal violations of law, inefficiency, or administrative error;

"(2) prevent embarrassment to a person, organization, or agency;

"(3) restrain competition;

"(4) prevent or delay the release of information that does not require protection in the interests of national security;

"(5) control access to basic scientific research information not clearly related to the national security;

"(6) control information after it has been released to the public or a member thereof under proper authority; or

"(7) prevent the public release of a compilation of items of information which individually are not classified.

"SEC. 803. IDENTIFICATION AND MARKING OF CLASSIFIED INFORMATION.

"(a) CLASSIFICATIONS.—All information classified pursuant to this title shall be clearly identified in an appropriate fashion as either 'TOP SECRET' or 'SECRET', in accordance with subsections (b) and (c).

"(b) 'TOP SECRET' CLASSIFICATION.—Classification as 'TOP SECRET' shall be limited to information which meets the criteria for classification established by subsection 802(a) of this title, whose disclosure to unauthorized persons would have the most serious adverse consequences for the national security, as determined in accordance with regulations to be issued by the President pursuant to section 814 of this title.

"(c) 'SECRET' CLASSIFICATION.—Classification as 'SECRET' shall apply to all other information which meets the criteria for classification established by section 802(a).

"(d) ADDITIONAL INFORMATION.—All information classified pursuant to this title shall also be marked in an appropriate manner at

the time of classification to provide the following information:

"(1) The agency and office of origin, if not otherwise evident.

"(2) A date or event for declassification assigned pursuant to section 805.

"(3) A determination whether the document or material contains information which falls within one or more of the categories set forth in section 810(b).

"(e) MARKING PORTIONS FOR CLASSIFICATION.—Each classified document shall, by marking or other means, indicate which portions are classified and which portions are unclassified and shall identify the classified portions with the appropriate classification.

"(f) EXCLUSIVITY OF CLASSIFICATIONS.—Except as provided by section 807 of this title, and the Atomic Energy Act of 1954, no classifications other than those authorized by this section shall be utilized to identify classified information.

"SEC. 804. AUTHORITY TO CLASSIFY INFORMATION.

"(a) EXECUTIVE BRANCH.—Information may be classified only by originating agencies within the executive branch of Government, in accordance with procedures promulgated by the President pursuant to section 814, and only by persons authorized by such procedures to classify information.

"(b) LEGISLATIVE AND JUDICIAL BRANCHES.—Documents or materials created by the legislative and judicial branches of Government which contain classified information originated by a department or agency of the executive branch shall be assigned the same classification as was assigned to the information by the department or agency which originated the information concerned.

"SEC. 805. DURATION OF CLASSIFICATION.

"(a) DATE OR EVENT FOR DECLASSIFICATION.—At the time a classification is made, the originating agency of the information shall attempt to establish a specific date or event for declassification of that information based upon the expected duration of the national security sensitivity of the information, and, if this can be done, shall mark the material for declassification by that date, pursuant to subsection 803(d)(2). The date or event shall not exceed the time period prescribed in subsection (b)(1) or subsection (b)(2), as the case may be.

"(b) DURATION OF CLASSIFICATIONS.—If the originating agency cannot determine a specific date or event for declassification:

"(1) Classified information designated as 'TOP SECRET' shall be marked for declassification no later than 15 years from the date of the original decision to classify the information.

"(2) Classified information designated as 'SECRET' shall be marked for declassification no later than 10 years from the date of the original decision to classify the information.

"(c) APPLICATION OF CLASSIFICATION TO DERIVED DOCUMENTS.—All documents or materials which contain classified information derived from other classified documents or materials shall be marked with the same date or event for declassification as the documents or materials which were the source of the classified information concerned. When multiple classified sources are used, the latest of the dates assigned for declassification shall be applied.

"SEC. 806. PROTECTION OF CLASSIFIED INFORMATION.

"(a) ELIGIBILITY FOR ACCESS.—Except as otherwise provided by subsections (d), (e), and (f), access to classified information shall be limited to persons who have received a security clearance permitting such access and only to the extent needed by such persons for the performance of an official governmental function.

"(b) CONTROL BY REGULATION.—In accordance with section 814, the President shall issue regulations which provide for a uniform system for the protection of information classified pursuant to this title applicable to all elements of the executive branch of Government. These controls shall ensure that classified information is used, processed, stored, reproduced, transmitted, and destroyed in a manner that prevents access by persons who do not possess a security clearance and an official need for access to such information. Such controls shall also require more stringent security measures for the protection of information classified as 'TOP SECRET', pursuant to section 803(b), than is required for the protection of information classified as 'SECRET' pursuant to section 803(c).

"(c) LEGISLATIVE AND JUDICIAL BRANCHES.—The legislative and judicial branches of Government shall adopt the same or similar procedures to provide a comparable degree of protection for classified information provided by departments and agencies of the executive branch of Government.

"(d) ACCESS BY ELECTED OFFICIALS AND JUDICIAL APPOINTEES.—By virtue of their elected or appointed positions, the President and Vice President of the United States, Members of Congress, and persons appointed by the President to the Federal judiciary shall have access to such classified information as may be needed for the performance of their official duties without receiving a security clearance.

"(e) PERSONS NOT HOLDING SECURITY CLEARANCES.—In accordance with the regulations issued pursuant to section 814, the President may permit access to classified information to persons who do not have a security clearance who are engaged in historical research, or who previously occupied policy-making positions to which they were appointed by the President, if appropriate measures are taken to preclude access by other persons who have not been specifically authorized access under this subsection.

"(f) FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS.—Whenever the President determines that it would be in the interests of the United States to permit access to classified information to a foreign government or to an international organization, the President is authorized to do so if such government or organization agrees in advance to provide a comparable degree of protection to such information to preclude its disclosure to unauthorized persons, and the President determines that such government or organization is capable of providing such protection.

"SEC. 807. SPECIAL ACCESS PROGRAMS.

"(a) AUTHORIZATION.—The President may authorize, in regulations issued pursuant to section 814, the establishment of special access programs by the Secretaries of State, Defense, and Energy, or the Director of Central Intelligence. The President may establish such programs in any other department or agency of the executive branch of Government if the President notifies the appropriate committees of the Congress 30 days in advance.

"(b) REQUIREMENTS.—(1) Special access programs under this section shall be created only where there is a need, due to the national security sensitivity of the information concerned, for a formal mechanism to establish an official need for access to the information concerned and for more stringent security measures than are applicable to classified information generally to protect such information.

"(2) To the extent possible, such special access programs shall not involve security requirements in addition to those required for the protection of information classified as 'TOP SECRET' other than the creation of a list of persons with appropriate security clearances who are permitted access to the classified information covered by the program for an official governmental purpose and such mechanisms as may be necessary to implement such controls.

"(3) Wherever an agency head determines that security measures in addition to those which apply to information classified as 'TOP SECRET' are necessary to protect information within a special access program, such additional measures shall conform to and not exceed a single, uniform set of security measures approved by the President, or the President's designee, for this purpose.

"(4) Information protected within an authorized special access program shall be designated only as 'RESTRICTED', and dissemination of such information shall be limited to persons who have been authorized access to such program by an appropriate official of the department or agency concerned.

"(5) Each department or agency head authorized to establish special access programs shall establish and maintain a system of accounting for such programs consistent with regulations promulgated by the President, or the President's designee, for this purpose.

"(6) Such special access programs shall be subject to oversight by the senior oversight official appointed by the President pursuant to section 812, who shall be afforded such access to these programs as may be necessary to perform his or her responsibilities.

"(7) Each department or agency head authorized to establish special access programs pursuant to this section shall ensure that each such program is reviewed annually to determine whether it continues to meet the requirements of this section.

"(c) RULE OF STATUTORY CONSTRUCTION.—Nothing in this section shall affect the provisions of section 119 of title 10, United States Code.

"SEC. 808. DECLASSIFICATION, GENERALLY.

"Information which is classified pursuant to this title shall remain classified until one of the following has occurred:

"(1) If a specific date or event has been assigned for declassification, the date or event assigned has occurred.

"(2) In response to a request from a member of the public, submitted pursuant to section 552 or 552a of title 5, United States Code, or otherwise, for documents or materials containing such information, the head of the originating agency, or the agency head's designee for this purpose, has determined that such information no longer meets the criteria for classification established by this title in accordance with section 809.

"(3) The information is contained in documents or materials reviewed in accordance with section 810 or 811, and the head of the originating agency, or the agency head's designee for this purpose, has determined that such information does not meet the criteria for continued classification established pursuant to that section.

"(4) Such information has been declassified by an appropriate authority within the executive branch in accordance with this title.

"(5) Such information has been determined to have been improperly classified by a court

of competent jurisdiction, and a final order has been issued requiring the release of such information.

"SEC. 809. DECLASSIFICATION PURSUANT TO A REQUEST BY A MEMBER OF THE PUBLIC.

"(a) DECLASSIFICATION REVIEW.—Except as provided by subsection (c), any document or material containing classified information which is requested by a United States citizen or permanent resident alien, a Federal agency, or a State or local government, shall be subjected to a review for declassification by the originating agency at any time after the information has been created in accordance with this section.

"(b) REFERRAL TO ORIGINATING AGENCY.—All requests for declassification review which are received by a department or agency which did not originate the information concerned, or by an element of the legislative or judicial branches, shall be referred to the department or agency of the executive branch which originated such information, and the requester shall be apprised of such referral.

"(c) GROUNDS FOR DENIAL OF DECLASSIFICATION REVIEW.—Any originating agency which receives a request to review classified information for declassification pursuant to this section may decline to conduct such review if—

"(1) the requester is unable to identify the document or material concerned with sufficient specificity to enable the originating agency to locate it with a reasonable amount of effort; or

"(2) a review of the same document or material has taken place within the last year, in which case the requester shall be apprised of the results of the previous review.

"(d) ELIGIBILITY FOR DECLASSIFICATION.—(1) For purposes of the declassification reviews required by this section—

"(A) information shall be declassified if it no longer meets the criteria established by this title; and

"(B) classified information shall be presumed to no longer meet the criteria for classification established by this title if, at the time of review, the date or event assigned for declassification has passed, unless the agency head or senior agency official determines in writing, citing specific reasons, that the information concerned clearly continues to meet the criteria for classification established by this title.

"(2) In the case of information described in paragraph (1)(B), a new date shall be assigned for declassification of the information concerned which shall not exceed 5 years from the date of such determination and the requester shall be apprised of this determination.

"(3) Notwithstanding a determination that the information requested continues to meet the criteria for classification pursuant to paragraph (1), an agency head or the senior agency official shall declassify such information if the public interest in disclosure of the information outweighs the national security interest in its continued classification.

"SEC. 810. DECLASSIFICATION OF PERMANENTLY VALUABLE RECORDS OF THE GOVERNMENT FOR HISTORICAL REASONS.

"(a) IN GENERAL.—In addition to the reviews required by section 809, departments and agencies which originate classified information shall establish programs to require review for declassification of all classified documents and materials which are at least 25 years old, which are determined to constitute permanently valuable records of the Government, prior to their being transferred to the National Archives of the United States in accordance with applicable law.

"(b) EXCEPTION.—Documents or materials subject to the review required by subsection (a) shall be declassified unless they contain information the release of which could reasonably be expected to—

"(1) identify a confidential human intelligence source;

"(2) reveal information not publicly available that would clearly assist in the development or use of weapons of mass destruction;

"(3) reveal information not publicly available that would clearly impair United States cryptologic systems or activities; or

"(4) violate a statute, treaty, or international agreement.

"(c) EXPEDITED REVIEW.—For purposes of making the determination required by subsection (b), if the document or material has been classified pursuant to this title and has been marked pursuant to subsection 803(d)(3) as not containing information falling within one or more of the categories established by subsection (b), the document or material shall be declassified without further review by the originating agency, except that where an originating agency determines that the document or material concerned should have been marked as containing such information, the originating agency may treat such document or material in accordance with subsection (d).

"(d) TREATMENT OF EXEMPTED DOCUMENTS.—Wherever documents and materials subject to review in accordance with subsection (a) are found to contain information which falls into one of the categories set forth in subsection (b), the originating agency shall—

"(1) assign a specific date or event upon which the document or material shall be reevaluated for declassification, except that such date or event shall be no later than 5 years after the date of the initial review;

"(2) set aside in one physical location a copy of the documents and materials determined to contain such information;

"(3) establish a system which facilitates the continuous review of such documents or materials at the date or event assigned (which shall not exceed 5-year intervals) until the document or material is declassified; and

"(4) report annually to the senior oversight official appointed by the President pursuant to section 812 regarding the volume and status of such documents and materials.

"SEC. 811. SPECIAL DECLASSIFICATION REVIEWS FOR TOPICS OF HISTORICAL INTEREST.

"In addition to the declassification reviews required by sections 809 and 810, the President shall establish procedures pursuant to section 814 to provide for special declassification reviews to be undertaken by affected departments and agencies of the executive branch leading to the declassification of information regarding topics of significant and current historical interest. Such procedures shall, at a minimum—

"(1) provide for the appointment of a National Security Historical Advisory Panel, consisting of representatives from the public and private sector, that shall, after appropriate consultations with affected departments and agencies, historians, archivists, and others with interests in the classified records concerned, be authorized to direct, consistent with available resources, special governmentwide declassification reviews of classified documents and materials relating to topics of significant and current historical interest;

"(2) provide that special reviews ordinarily will be limited to topics or events which occurred more than 25 years in the past unless the Panel determines an overriding public interest in undertaking such a review of a more recent event or topic;

"(3) give precedence, where necessary, in terms of the use of available resources, to the accomplishment of special reviews, over the accomplishment of declassification reviews required by section 810; and

"(4) direct departments and agencies to provide such support to special reviews as may be necessary to meet the objectives established by the Panel.

"SEC. 812. OVERSIGHT.

"(a) APPOINTMENT.—(1) A senior oversight official shall be appointed by the President, by and with the advice and consent of the Senate, who shall be responsible for monitoring the overall implementation of this title within the executive branch and shall report annually to the President and to the appropriate committees of the Congress with respect to the operation of this title, together with any recommendation for statutory or regulatory change. Such official shall also be authorized to consider and take appropriate action with respect to complaints and suggestions from persons within or outside the Government with respect to the administration of this title, including the declassification of information which has been improperly classified.

"(2) Nothing in this section establishes a legal right or entitlement for any person within or outside the Government, nor subjects the official appointed pursuant to this section to suit in any court of law to require performance under this title.

"(b) ACCESS TO CLASSIFIED INFORMATION.—The senior oversight official appointed pursuant to subsection (a) shall have access to such classified information as may be required for the performance of his or her duties.

"(c) DESIGNATED AGENCY OFFICIALS.—The head of each originating agency shall designate a senior agency official who shall have overall responsibility within the agency for the implementation of this title. Each such official shall keep the senior oversight official appointed pursuant to subsection (a) fully and currently informed with respect to the implementation of this title within his or her respective department or agency, including the reporting of any violations of this title which may have been identified and the remedial actions taken as a result.

"(d) CHALLENGES TO CLASSIFICATIONS.—Any authorized holder of classified information who, in good faith, believes that such information should not be classified or should be classified at a different level, may challenge the classification status in accordance with regulations to be promulgated by the President pursuant to section 814. Such regulations shall, at a minimum, assure that—

"(1) individuals are not subject to retribution for bringing such challenge;

"(2) an opportunity is provided for review of such challenge by an impartial official; and

"(3) the right to appeal the decision of such official to a higher level is guaranteed.

"SEC. 813. SANCTIONS.

"(a) UNLAWFUL CLASSIFICATION ACTIVITY.—Persons with authorized access to classified information who are determined to have—

"(1) knowingly and willfully classified information in violation of section 802 of this title;

"(2) knowingly and willfully continued a classification in violation of sections 808 and 809 of this title; or

"(3) demonstrated reckless disregard in applying the classification criteria of section 802 of this title,

shall be removed from access to classified information and shall be subjected to disciplinary actions that may include official reprimand, suspension without pay, or removal from employment, as may be appropriate.

"(b) UNLAWFUL DISCLOSURE.—Persons with authorized access to information classified pursuant to this title who knowingly and willfully disclose such information to an unauthorized person shall, in addition to incurring potential criminal liability under chapter 37 of title 18, United States Code, or section 4 of the Subversive Activities Control Act of 1950 (50 U.S.C. 783), be removed from access to classified information and shall be subjected to disciplinary actions that may include official reprimand, suspension without pay, or removal from employment, as may be appropriate.

"SEC. 814. IMPLEMENTATION.

"(a) REGULATIONS REQUIRED.—Not later than 180 days after the date of enactment of this Act, the President shall issue regulations to implement this title with respect to agencies of the executive branch. Such regulations shall take effect 1 year after the date of enactment of this Act.

"(b) PROCEDURES.—Pursuant to subsection (a), the President shall, at a minimum—

"(1) require the heads of departments and agencies to appoint a senior agency official to direct and administer this title;

"(2) require the heads of departments and agencies to identify by category information originated by their respective agencies which meets the criteria for classification established by this title, and to issue appropriate regulations, consistent with this title, to require the classification of such information by their employees; and

"(3) require that the systems established by law or regulation for evaluating the performance of civilian or military personnel or contractors include the management and handling of classified information as a critical element or item to be evaluated in the rating of all persons whose duties involve the creation or handling of such information.

"(c) PROCEDURES WITHIN THE LEGISLATIVE AND JUDICIAL BRANCHES.—After the issuance of the regulations required by subsection (a), the Majority and Minority Leaders of the Senate, the Speaker and Minority Leader of the House of Representatives, and the Director of the Administrative Office of the United States Courts, shall ensure that procedures exist within their respective bodies to provide comparable protection to information classified pursuant to this title which may be provided by the executive branch for the conduct of their respective functions.

"SEC. 815. EFFECT ON INFORMATION PREVIOUSLY CLASSIFIED PURSUANT TO EXECUTIVE ORDER.

"(a) REDESIGNATION NOT REQUIRED.—Information classified pursuant to Executive order before the effective date of this Act shall retain the classification assigned without redesignation pursuant to section 803 of this title.

"(b) DECLASSIFICATION OF PREVIOUSLY CLASSIFIED INFORMATION.—(1) Information previously classified as 'CONFIDENTIAL', pursuant to Executive order, which is subject to a request pursuant to section 809 of this title, shall, if more than 5 years old, be declassified and furnished to the requester. If less than 5 years old, such information shall be treated as 'SECRET' information for purposes of this title until it reaches 5 years of age and the requester shall be advised of the date of declassification.

"(2) Declassification of information previously classified as 'SECRET' or 'TOP SECRET', pursuant to Executive order, in response to a request or review made after the effective date of this title, shall be governed by the provisions of this title, regardless of the duration of classification or conditions for declassification previously provided by Executive order.".

SEC. 4. EFFECTIVE DATE.

The amendments made by sections 2 and 3 of this Act shall take effect 1 year after the date of enactment of this Act.●

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

S. 1886. A bill to amend the Water Supply Act of 1958 to provide for the funding of capital improvements at the Washington aqueduct, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

WASHINGTON AQUEDUCT IMPROVEMENTS ACT OF 1994

Mr. WARNER. Mr. President, I rise today to introduce legislation to allow the U.S. Army Corps of Engineers access to the Federal Financing Bank for the purposes of financing capital improvements of the Washington aqueduct. I am pleased that Senator ROBB has joined in cosponsoring this legislation. I would like to express my appreciation to my legislative assistants Ann Loomis and Ellen Stein for their work in crafting this legislation.

The Washington aqueduct system, which consists of the Dalecarlia and McMillan water treatment plants, has been owned by the Federal Government since it was constructed in 1853. Upon completion, the system was placed under the control of the Corps of Engineers for appropriate management and maintenance. Over the years, many additions and improvements have been made to the system including the construction of the McMillan Reservoir, filtering and chemical treatment facilities and additional intake structures.

Today, the Washington aqueduct system has the capacity to distribute a maximum of 250 million gallons per day to the over 1 million customers in the Metropolitan Washington area.

Mr. President, for 3 days beginning on December 8, 1993, this region was practically crippled by the Environmental Protection Agency's order to boil tap water prior to consumption. Area residents were fearful that their water supply was contaminated and it was an enormous undertaking for local governments to notify everyone of the gravity of this situation, particularly non-English speaking residents.

The preliminary reports following this incident indicate that human error affected the results of the water quality testing. In an effort to gain more information on the circumstances that led to the December event and daily operating procedures of the system, two investigations are underway for the Environmental Protection Agency. It is my hope that these reports will analyze the factors that led to the December order, as well as other incidents involving monitoring and reporting violations. While these reports will be useful, our first responsibility is to ensure that the water from this system is safe for consumption and that public confidence is restored.

In discussions with the affected local Virginia jurisdictions of Arlington and Fairfax Counties and the city of Falls Church, the Corps of Engineers and the Environmental Protection Agency following the December situation, I have learned that capital improvements of the system are critical to ensure that metropolitan Washington area residents have safe drinking water.

While fees collected from the system's users are deposited into the District of Columbia Water and Sewer Enterprise Fund and provide the resources necessary to cover the system's annual operating costs, there are no means available to the corps to finance expensive capital improvements. The Enterprise Fund receives approximately $6 million-per-year directly from the sale of water to citizens in the affected jurisdictions in Virginia. Revenue from this fund, however, is used for the annual operations and maintenance of the system. Any capital improvements must also be financed by the fund and must be paid for in advance of the work. The inability of the corps to provide long-term financing for capital projects will cause the water users to be subject to extremely high water bills in the coming years.

The legislation I am offering today will address this problem by granting the corps access to money from the Federal Financing Bank to underwrite the cost of these improvements to the Washington aqueduct. The Federal Financing Bank has become the vehicle through which many Federal agencies finance programs involving construction projects. Rather than using the Treasury Department as an interim lender and the market as a permanent source of funds, the Federal Financing Bank borrows all funds from the Treasury and matches the terms and conditions of its borrowing from the Treasury with the terms and conditions of its loans.

The legislation is necessary because of this unique situation of Federal ownership of the Washington aqueduct. In this instance, the Corps of Engineers provides a local service to the region much like other public service authorities. The Corps of Engineers, however, is unable to borrow directly to finance needed capital projects. The corps has identified approximately $100 million in capital improvements that are required immediately or that are necessary within the next 5 years to meet Federal drinking water standards.

Other publicly or privately owned facilities are able to issue bonds or borrow from other sources in order to am-

ortize the capital improvement costs over the useful life of the project. This normal means of financing is not available to the Corps of Engineers. As such, area residents are faced with two unacceptable options: possibly unsafe drinking water or exorbitant water rates. Customers which rely on the Washington aqueduct system for safe, reliable drinking water must be allowed the same amortization options available to other public and private utilities. My legislation will provide that equity.

Mr. President, I must also add that it is not my intention that Federal funds be used to address this essentially local situation. Local water users will bear the costs of these improvements with increasing water rates that will be used to repay the loan from the Federal Financing Bank over a reasonable period of time.

Mr. President, I was astonished to read coincidentally in the Washington Post an article entitled "D.C. Water Troubles Run Deep." This is the water that each of us is dependent on in this institution every day. This is water in the Nation's Capital for all of our Government. This is the water that is in Maryland and the District of Columbia. And it is questionable as to its potability.

Just stop to think if we were to experience a major catastrophe in connection with this water supply on which the Nation's Capital, the Nation's Government, is dependent on each day to operate.

I am putting in today a bill to remedy this problem, namely, to allow the U.S. Army Corps of Engineers to have legal access to certain areas to begin to step in and correct this problem.

I urge my colleagues to look at this in the hopes that we can get a number of cosponsors and at the earliest possible date begin to get the Corps of Engineers to work with local government in correcting this problem.

Mr. President, I ask unanimous consent that the bill and the Washington Post article be printed in the RECORD at the conclusion of my remarks.

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

S. 1886

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

SECTION 1. CAPITAL IMPROVEMENTS AT WASHINGTON AQUEDUCT.

Section 301 of the Water Supply Act of 1958 (43 U.S.C. 390b) is amended by adding at the end the following new subsection:

"(e) Notwithstanding any other provision of law—

"(1) the Chief of Engineers of the Army Corps of Engineers may borrow from the Federal Financing Bank such amounts as the Chief determines are necessary to finance capital improvements at the Washington Aqueduct;

"(2) upon request of the Chief, the Board of Directors of the Federal Financing Bank shall make loans to the Chief for the purpose described in paragraph (1); and

"(3) any amounts borrowed by the Chief under this subsection shall be repaid by users of the Washington Aqueduct over such period of time, and shall be subject to such other terms and conditions, as the Board determines to be appropriate.".

[From the Washington Post]

D.C.'s WATER TROUBLES RUN DEEP—RECENT CRISIS PART OF A PATTERN OF PROBLEMS AT TWO PLANTS

(By D'Vera Cohn)

The accident that forced a million area residents to boil drinking water in December was not an isolated event. Records from the two treatment plants serving the District and parts of Northern Virginia show a previous pattern of unreported pollution incidents, contradicting statements by the U.S. Army Corps of Engineers that December's accident was an exception in the plants' otherwise smooth operations.

The December boil-water order was triggered by readings of high cloudiness—known as turbidity—in water at the corps' Dalecarlia plant in Nortwest Washington, which officials said meant filters were working so poorly that they could be letting in dangerous parasites. But both Dalecarlia and the corps' other plant, McMillan, had other serious turbidity problems last year that were not made public.

For the month of July, water that McMillan pumped to local faucets was cloudier than federal law allows and should have been reported to the Environmental Protection Agency, according to records made available under the Freedom of Information Act. But the EPA did not learn of the violation until it began investigating December's infraction. The agency has not announced whether it will fine or reprimand the corps for that incident.

Likewise, records show that for two days in early April, turbidity levels shot to dangerous highs at the Dalecarlia plant, on MacArthur Boulevard at the Maryland line. The EPA learned of the problem last month. The April readings were worse than those in December and remained high for a longer period. But at the time, the readings were legal. Standards were tightened July 1.

The corps' two treatment plants, the pipes leading from them and the District's network of reservoirs also are plagued by persistent summer bacteria contamination. EPA officials say in internal memos that they increasingly are suspicious that practices at the plants may be partly to blame.

Despite the recent troubles, corps and EPA officials say water from the two treatment plants is safe to drink—especially now, with investigations underway into what went wrong. And the area begins with a big advantage: The Potomac River, which supplies the plants, is relatively clean. The water has bacteria pollution but few industrial or agricultural chemicals.

There were no known report of illness from the December water crisis.

"Yes, the water is safe," said Stuart Kerzner, a top official in the EPA's Philadelphia regional office, citing recent samplings. But he added, "The plant is a concern * * * the standard operating procedures that go on in the plant need to be tightened up."

Environmentalists, local officials and, privately, some EPA officials say they are troubled by the record of contamination and its potential to recur.

"It's clear this was part of a long-standing pattern of problems," said Erik D. Olson, senior attorney with the Natural Resources Defense Council, an environmental group that also examined plant records. "I think there's a lot more we need to learn before we're complacent."

The public also lacks confidence in public water according to a recent survey by the Atlanta-based Centers for Disease Control and Prevention, which found that more than a third of District households drink bottle water.

The two corps plants supply the District, Arlington, Falls Church, parts of Fairfax County and 100 homes in Prince George's County. They also serve National Airport, the Pentagon and the White House.

Some of the blame for deteriorating water quality rests with loose operations, understaffing and outdated equipment.

Plant records show, for instance, that the corps routinely did not clean filters as often as its own rules required. It also has played down the presence of eels burrowed into the plant's sand filters, a factor an outside consultant suggested may allow contamination leaks.

RESPONSIBLITY LIES IN SEVERAL PLACES

Some fault lies with the EPA regional office's self-confessed weak oversight; the office regulates the two plants and the District's pipes.

The EPA spent $173,000 last year on oversight in Washington but returned $124,500 of its regulatory budget to the Treasury.

"If we'd known the plant was having the kind of problems they were having," the EPA would have spent more, said Jeffrey Hass, chief of the regional drinking-water-protection branch.

Area governments also share responsibility.

The District snubbed requests from the corps to flush its pipes regularly to counter bacteria contamination. And contrary to law, the public was not told when tests found bacteria contamination at the Arlington courthouse two years ago.

The water system's troubles burst into public view Dec. 8, when EPA officials declared the cloudy water undrinkable without first being boiled. The agency feared the presence of a microscopic parasite that sickened thousands of people in Milwaukee last spring.

The edict disrupted life in the Washington area for three days until tests failed to find the parasite, called cryptosporidium, that had worried the EPA.

Corps officials attributed the accident mainly to workers who had failed to add enough of a chemical to counter sediment left in the water by rains. The error was aggravated by an equipment breakdown and a shortage of another critical chemical, plant officials said.

After the order was lifted, they said procedures had been tightened and called the violation a one-time problem.

"The plant has turned out good water for a long time," Col. J. Richard Capka, commander of the corps' Baltimore District, said last month.

Dalecarlia plant records, however, show that on April 3 and 4, cloudiness levels jumped to several times higher than what most plant operators consider safe.

Most plant operators are concerned when water leaving filters has cloudiness higher than 1 "nephelometric turbidity unit," or NTU—a measure of how much light passes through water. The corps and other plants try to maintain levels below 0.2 NTU. The law now says any reading above 5 NTUs is a violation.

At Dalecarlia in December, water leaped above 5 NTUs for three hours, peaking at 9 NTUs. In April, it shot above 5 NTUs for at least five hours, peaking at 14, records show.

The corps faulted employee mistakes for the April pollution and said it did not tighten procedures then because turbidity was not a big problem. The corps was not required to report the incident to EPA officials, and it didn't.

EPA officials say they understand why the corps didn't call, because many in the industry did not draw a link between turbidity and cryptosporidium until Milwaukee's problems later that month. The corps now has a strict procedure to call the EPA as levels start to rise, it says.

Water plant operators elsewhere, though said they would have told the state agency that regulates them had they seen the sort of problems the District was having. In Des Moines, for example, water cloudiness levels reached 2 NTU two years ago, and local officials informed the state.

Records also show that the McMillan plant violated federal standards in July because nearly 20 percent of its hourly water samples were cloudier than 0.5 NTU. The legal limit is 5 percent.

The corps reported the excessive readings in its monthly report to the EPA, but it didn't flag them. EPA officials didn't notice the violation, and the public was not warned.

"It was not reported in the manner it should have been reported," Capka now says.

"We're very concerned that this information The Post has learned concerning these past problems appears never to have been communicated to us," said Richard Hebert, a spokesman for D.C. City Administrator Robert L. Mallett. "As a customer, we deserve to know when they have problems."

Despite the law requiring immediate notification, the public also has not always been told when bacteria readings in water exceeded legal levels.

Bacteria contamination can cause stomach illness in healthy people and can be dangerous to those with cancer, AIDS or otherwise weakened immune systems.

To keep tabs on bacteria, local governments are required to sample regularly throughout their jurisdictions. If tests find general bacteria in more than 4 percent of each month's samples, the public must be told. Arlington issued such an alert in August; the District did the same in September.

If an individual location tests positive for harmful fecal bacteria or E. coli—the kind found in human and animal waste—the public also is supposed to be told, as was done when the bacteria was found in September at a closed school in Northeast Washington. Yet last fall, corps officials found an overlooked incident of fecal bacteria contamination that had occurred at a District firehouse in June. They blamed laboratory understaffing for not catching the problem earlier.

The same bacteria problem occurred two years ago in Arlington, according to water plant records. A water sample at the county courthouse tested positive for fecal contamination.

Virginia Health Department officials say Arlington never notified them. Arlington officials say that they did but that the state did not require them to tell the public because the problem cleared up a day later.

WORKERS TOLD NOT TO DRINK WATER

A question about public disclosure also was raised after workers at the Dalecarlia plant were ordered not to drink water there because of bacteria in the plant's own water supply for several days in November. Corps officials say the plant's water is distinct from the supply that goes into the rest of the city.

But some EPA officials contend that the plant water is drawn from a city reservoir that serves all customers, and therefore the entire city should have been alerted to boil its water, according to an internal EPA memo.

Records show that the corps regularly finds bacteria contamination in a half-dozen sampling points at reservoirs in the District.

Although other water systems report reservoir test results to their supervising agency, the corps does not, because the EPA does not require it. George Rizzo, the EPA official who oversees the District's water supply, said the agency is considering tighter regulation of city reservoirs because the matter is "obviously of concern."

In August, for example, tests were positive for bacteria 23 times at city reservoirs—in some cases twice at the same place on the same day, records show. Samples at 15 faucets also tested positive.

The cause of the contamination is a mystery, but corps officials say that they plan to clean their reservoirs, which are not regularly cleaned, in hopes that it will alleviate the problem.

Although bacteria readings did not violate the legal limits until September, the city skirted violations several times.

In August, 4.76 percent of samples in the District tested positive for bacteria. Records show the number did not exceed 5 percent only because officials took an unusually high number of extra samples during the last week of August. The cleaner samples at the end of the month canceled out dirtier readings taken earlier and dropped the average reading for August to within legal limits.

To try to remedy nagging bacteria contamination, corps officials say they tried for years to persuade the District to flush its pipes. Most big cities regularly flush by opening fire hydrants. The District did not—saying they saw no need to—until the EPA ordered it to do so in late September, invoking a law that gives it emergency power to protect public health.

Agency memos show that the EPA now suspects that recurring high readings may track to more than the stagnant water in pipes and could reflect loose practices at the treatment plants.

That fear was fueled when EPA officials learned in September that tests on water just as it exits the two plants—when it should be cleanest—were positive for bacteria. Before September, those samples had not been included in the corps' report to the EPA.

Adding to the suspicions about plant operations was the fact that corps policy was to clean Dalecarlia's rapid-sand filters every 96 hours to prevent bacteria growth. But plant records show that the rule frequently is violated.

In August, the filters never ran for less than 102 hours. At times in the last two years, there was as much as 493 hours between cleanings.

The EPA recently told the corps to wash filters every 72 hours. Fairfax County officials say their policy is to wash filters at least every 48 hours.

Dalecarlia also failed to disinfect filters with chlorine after they were taken out of service for repairs last spring and did not monitor the quality of water coming off individual filters, according to a consultant hired by the EPA, Science Applications International Corp.

The consultant also cited a concern that Potomac River eels are burrowing into the filters, potentially digging holes that allow bacteria inside.

Capka said the corps is modernizing equipment to provide more precise information on when filters need washing. Each Dalecarlia filter will be equipped by the end of the month with a turbidity monitor and a new gauge to measure its effectiveness, he said.

But other outdated equipment also may have played a role in problems.

Until the December accident, Dalecarlia operators used manual controls to set doses of needed chemicals. After the accident, Dalecarlia installed mechanical controls.

Local officials have complained that they have little voice in how the corps operates.

To try to improve relations, the corps has promised to create a customer committee to share information with local governments.

"We don't expect Third World service delivery in the nation's capital," said Fairfax County Board Chairman Thomas M. Davis III (R). "Clearly, some changes are going to have to be made."

By Mr. COCHRAN:

S.J. Res. 165. Joint resolution to designate the month of September 1994 as "National Sewing Month"; to the Committee on the Judiciary.

NATIONAL SEWING MONTH JOINT RESOLUTION

• Mr. COCHRAN. Mr. President, today I am introducing legislation to designate the month of September as "National Sewing Month."

National Sewing Month was previously designated by the Congress each year from 1984 to 1988 to increase interest in home sewing.

It is estimated that over 30 million Americans sew at home. Many of these individuals have used their acquired sewing skills to enter fashion design, retail merchandising, interior design, patternmaking, and textiles.

The great majority of these careers had their beginning in seventh or eighth grade home economics classes where the enjoyment and pride associated with sewing was first encountered. For generations, the fundamentals of home sewing have also been learned in the context of the family.

The sewing industry employs thousands of individuals in the manufacture, wholesale, retail, and service sectors. The industry generates over $3.5 billion in sales annually and each year invests millions of dollars in plants and machinery.

This September will mark a continuation of a industrywide effort to revitalize the sewing spirit in America, as the American Home Sewing Association conducts an extensive nationwide promotion of "National Sewing Month."

A wide variety of civic organizations will be invited to participate, including home economic teachers, county extension agents, 4–H Clubs, the Girl Scouts, American Sewing Guild Chapters, Future Home Makers of America, and many others.

Mr. President, I invite my colleagues to join me in this effort to cosponsor

this joint resolution designating September as "National Sewing Month."●

SENATE RESOLUTION 184—RELATIVE TO THE MASSACRE IN HEBRON

Mr. LEVIN (for himself, Mrs. BOXER, Mr. PELL, Mr. METZENBAUM, and Mrs. FEINSTEIN) submitted the following resolution; which was considered and agreed to:

S. RES. 184

Whereas, immediately after Prime Minister Rabin and Chairman Arafat shook hands on the White House lawn last September, extremists on both sides vowed that the Declaration of Principles signed that day would never come to fruition, and

Whereas, since the signing of the Declaration of Principles on September 13, 1993, many innocent people have been the victims of vicious acts of terrorism, and

Whereas, the massacre that took place on February 25, 1994 at the Tomb of the Patriarchs in Hebron was an act of murderous terrorism directed against innocent persons at prayer, and

Whereas, the purpose of these acts of terror was to derail the Middle East peace talks, and

Whereas, as diplomats have inched their ways toward fulfilling each article of the Declaration, extremists have just as painstakingly plotted disruptions, preyed on innocents and haphazardly killed and maimed people, and

Whereas, if the chances of peace in the Middle East are harmed by the act of terror in Hebron or other acts of terrorism, then these acts will have achieved their purpose, and

Whereas, to prevent terrorism from achieving its purpose, all parties must now redouble their efforts to gain success in those talks,

Now, therefore, be it *resolved*, That the Senate expresses its condemnation of the massacre perpetrated in Hebron as violative of all standards of civilized human behavior, and as violative of the policies of the government of Israel and every other government that has spoken on this atrocity, and

Be it further resolved, That the Senate condemns all act of terror intended to disrupt the peace process or for any other purpose, and

Be it further resolved, That the Senate commends the government of Israel for its strong condemnation of the Hebron killings, for reaching out to the victims' families, and for taking swift and appropriate action to respond to the threat posed by extremists, and

Be it further resolved, That the Senate urges all parties and others involved in the Middle East peace talks to apply renewed energy to achieve the prompt and just conclusion which is the only way to obtain long term security for all people in the area and as the best way in the short term to deny terror any measure of success.

ADDITIONAL COSPONSORS

S. 88

At the request of Mr. LUGAR, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 88, a bill to amend the National School Lunch Act to remove the requirement that schools participating in the school lunch program offer students specific types of fluid milk, and for other purposes.

S. 588

At the request of Mr. ROBB, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 588, a bill to regulate aboveground storage tanks used to store regulated substances, and for other purposes.

S. 1116

At the request of Mr. BURNS, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 1116, a bill to amend the Internal Revenue Code of 1986 to clarify the deduction for expenses of certain home offices, and for other purposes.

S. 1208

At the request of Mr. WOFFORD, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor 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. 1350

At the request of Mr. INOUYE, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 1350, a bill to amend the Earthquake Hazards Reduction Act of 1977 to provide for an expanded Federal program of hazard mitigation and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, and for other purposes.

S. 1458

At the request of Mrs. KASSEBAUM, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 1458, a bill to amend the Federal Aviation Act of 1958 to establish time limitations on certain civil actions against aircraft manufacturers, and for other purposes.

S. 1495

At the request of Mr. INOUYE, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 1495, a bill to repeal the reduction in the deductible portion of expenses for business meals and entertainment.

S. 1560

At the request of Mr. BINGAMAN, his name was added as a cosponsor of S. 1560, a bill to establish the Social Security Administration as an independent agency, and for other purposes.

S. 1690

At the request of Mr. PRYOR, the name of the Senator from Idaho [Mr. KEMPTHORNE] was added as a cosponsor of S. 1690, a bill to amend the Internal Revenue Code of 1986 to reform the rules regarding subchapter S corporations.

S. 1806

At the request of Mr. NICKLES, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 1806, a bill to rescind the fee required for the use of public recreation areas at lakes and reservoirs under the jurisdiction of the Army Corps of Engineers, and for other purposes.

S. 1860

At the request of Mr. DODD, the names of the Senator from Missouri [Mr. DANFORTH] and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 1860, a bill to authorize the minting of coins to commemorate the 1995 Special Olympics World Games.

SENATE JOINT RESOLUTION 151

At the request of Mr. LIEBERMAN, the names of the Senator from New Mexico [Mr. BINGAMAN], the Senator from Rhode Island [Mr. PELL], the Senator from Arkansas [Mr. PRYOR], the Senator from Maine [Mr. MITCHELL], the Senator from Georgia [Mr. NUNN], the Senator from New York [Mr. MOYNIHAN], the Senator from Oklahoma [Mr. BOREN], the Senator from Wisconsin [Mr. FEINGOLD], the Senator from Massachusetts [Mr. KERRY], the Senator from Michigan [Mr. RIEGLE], the Senator from California [Mrs. FEINSTEIN], the Senator from Delaware [Mr. BIDEN], the Senator from Florida [Mr. MACK], the Senator from South Dakota [Mr. PRESSLER], the Senator from Missouri [Mr. BOND], the Senator from Missouri [Mr. DANFORTH], the Senator from Colorado [Mr. BROWN], the Senator from North Carolina [Mr. HELMS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Texas [Mrs. HUTCHISON], the Senator from South Carolina [Mr. THURMOND], the Senator from Arizona [Mr. MCCAIN], the Senator from New Mexico [Mr. DOMENICI], the Senator from Oklahoma [Mr. NICKLES], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Alaska [Mr. STEVENS], the Senator from Oregon [Mr. PACKWOOD], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Joint Resolution 151, a joint resolution designating the week of April 10 through 16, 1994, as "Primary Immune Deficiency Awareness Week."

SENATE JOINT RESOLUTION 161

At the request of Mr. BUMPERS, the names of the Senator from North Dakota [Mr. CONRAD], the Senator from New Jersey [Mr. BRADLEY], the Senator from Hawaii [Mr. INOUYE], the Senator from Louisiana [Mr. BREAUX], the Senator from New Mexico [Mr. DOMENICI], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of Senate Joint Resolution 161, a joint resolution to designate April 1994, as "Civil War History Month."

SENATE JOINT RESOLUTION 163

At the request of Mr. LEAHY, the names of the Senator from Alaska [Mr. STEVENS], the Senator from Maine [Mr. MITCHELL], and the Senator from Texas [Mrs. HUTCHISON] were added as cosponsors of Senate Joint Resolution 163, a joint resolution to proclaim March 20, 1994, as "National Agricultural Day."

SENATE CONCURRENT RESOLUTION 60

At the request of Mr. GRAMM, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Connecticut [Mr. LIEBERMAN] were added as cosponsors of Senate Concurrent Resolution 60, a concurrent resolution expressing the sense of the Congress that a postage stamp should be issued to honor the 100th anniversary of the Jewish War Veterans of the United States of America.

SENATE CONCURRENT RESOLUTION 61

At the request of Mr. WOFFORD, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of Senate Concurrent Resolution 61, a concurrent resolution expressing the sense of the Congress in support of the President's actions to reduce the trade imbalance with Japan.

SENATE RESOLUTION 183

At the request of Mr. KERRY, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of Senate Resolution 183, a resolution expressing the sense of the Senate that the action taken by the Government of France against United States seafood products is a totally unwarranted action that is having severe repercussions on United States seafood producers and, in general, the United States fishing industry.

AMENDMENTS SUBMITTED

SOCIAL SECURITY ADMINISTRATION INDEPENDENCE ACT OF 1993

COHEN (AND OTHERS) AMENDMENT NO. 1474

Mr. COHEN (for himself, Mr. DOLE, Mrs. KASSEBAUM, Mr. DOMENICI, Mr. THURMOND, Mr. GRASSLEY, Mr. NICKLES, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. DANFORTH, Mr. KOHL, Mr. LUGAR, Mr. CHAFEE, Mr. WARNER, Mr. BENNETT, Mr. STEVENS, Mr. MATHEWS, Mr. HOLLINGS, and Mr. COCHRAN) proposed an amendment to the bill (S. 1560) to establish the Social Security Administration as an independent agency, and for other purposes; as follows:

At the appropriate place insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Social Security Disability and Rehabilitation Act of 1994".

SEC. 2. REFORM OF MONTHLY INSURANCE BENEFITS BASED ON DISABILITY INVOLVING SUBSTANCE ABUSE.

(a) SOCIAL SECURITY DISABILITY INSURANCE.—

(1) IN GENERAL.—Section 223 of the Social Security Act (42 U.S.C. 423) is amended by adding at the end the following new subsection:

"Limitation on Payment of Benefits by Reason of Substance Abuse

"(j)(1)(A) Notwithstanding any other provision of this title, no individual whose disability is based in whole or in part on a medical determination that the individual is a drug addict or alcoholic shall be entitled to benefits under this title based on such disability with respect to any month, unless such individual—

"(i) is undergoing, or on a waiting list for, any medical or psychological treatment that may be appropriate for such individual's condition as a drug addict or alcoholic (as the case may be) and for the stage of such individual's rehabilitation at an institution or facility approved for purposes of this paragraph by the Secretary (so long as access to such treatment is reasonably available, as determined by the Secretary), and

"(ii) demonstrates in such manner as the Secretary requires, including at a continuing disability review not later than one year after such determination, that such individual is complying with the terms, conditions, and requirements of such treatment and with the requirements imposed by the Secretary under subparagraph (B).

"(B) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in subparagraph (A), in order to assure such compliance and to determine the extent to which the imposition of such requirements is contributing to the achievement of the purposes of this title. The Secretary may retain jurisdiction in the case of a hearing before the Secretary under this title to the extent the Secretary determines necessary to carry out the preceding sentence. The Secretary shall annually submit to the Congress a full and complete report on the Secretary's activities under this paragraph.

"(C) The representative payee and the referral and monitoring agency for any individual described in subparagraph (A) shall report to the Secretary any noncompliance with the terms, conditions, and requirements of the treatment described in subparagraph (A) and with the requirements imposed by the Secretary under subparagraph (B).

"(D)(i) If the Secretary finds that an individual is not complying with the terms, conditions, and requirements of the treatment described in subparagraph (A), or with the requirements imposed by the Secretary under subparagraph (B), or both, the Secretary, in lieu of termination, may suspend such individual's benefits under this title until compliance has been reestablished, including compliance with any additional requirements determined to be necessary by the Secretary.

"(ii) Any period of suspension under clause (i) shall be taken into account in determining any 24-month period described in subparagraph (E) and shall not be taken into account in determining the 36-month period described in such subparagraph.

"(E)(i) Except as provided in clause (ii), no individual described in subparagraph (A) shall be entitled to benefits under this title for any month following the 24-month period beginning with the determination of the disability described in such subparagraph.

"(ii) If at the end of the 24-month period described in clause (i), the individual furnishes evidence in accordance with subsection (d)(5) that the individual continues to be under a disability based in whole or in part on a medical determination that the individual is a drug addict or alcoholic, such individual shall continue to be entitled to benefits under this title based on such disability.

"(iii) Subject to clause (iv), if such an individual continues to be entitled to such benefits for an additional 24-month period following a determination under clause (ii), clauses (i) and (ii) shall apply with regard to any further entitlement to such benefits following the end of such additional period.

"(iv) In no event shall such an individual be entitled to benefits under this title for more than a total of 36 months, unless upon the termination of the 36th month such individual furnishes evidence in accordance with subsection (d)(5) that the individual is under a disability which is not related in part to a medical determination that the individual is a drug addict or alcoholic.

"(2)(A) Any benefits under this title payable to any individual referred to in paragraph (1), including any benefits payable in a lump sum amount, shall be payable only pursuant to a certification of such payment to a qualified organization acting as a representative payee of such individual pursuant to section 205(j).

"(B) For purposes of subparagraph (A) and section 205(j)(4), the term 'qualified organization'—

"(i) shall have the meaning given such term by section 205(j)(4)(B), and

"(ii) shall mean an agency or instrumentality of a State or a political subdivision of a State.

"(3) Monthly insurance benefits under this title which would be payable to any individual (other than the disabled individual to whom benefits are not payable by reason of this subsection) on the basis of the wages and self-employment income of such a disabled individual but for the provisions of paragraph (1), shall be payable as though such disabled individual were receiving such benefits which are not payable under this subsection."

(2) CONFORMING AMENDMENTS.—

(A) Section 205(j)(1) of such Act (42 U.S.C. 405(j)(1)) is amended by inserting ", or in the case of any individual referred to in section 223(j)(1)(A)" after "thereby".

(B) Section 205(j)(2)(D)(ii)(II) of such Act (42 U.S.C. 405(j)(2)(D)(ii)(II)) is amended by striking "legally incompetent or under the age of 15" and inserting "legally incompetent, under the age of 15, or a drug addict or alcoholic referred to in section 223(j)(1)(A)".

(b) SUPPLEMENTAL SECURITY INCOME.—Paragraph (3) of section 1611(e) of the Social Security Act (42 U.S.C. 1382(e)) is amended to read as follows:

"(3)(A)(i) No person who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1614(a)(3)) shall be an eligible individual or eligible spouse for purposes of this title with respect to any month if such individual's disability is based in whole or in part on a medical determination that the individual is a drug addict or alcoholic, unless such individual—

"(I) is undergoing, or on a waiting list for, any medical or psychological treatment that may be appropriate for such individual's condition as a drug addict or alcoholic (as the case may be) and for the stage of such individual's rehabilitation at an institution or facility approved for purposes of this paragraph by the Secretary (so long as access to such treatment is reasonably available, as determined by the Secretary), and

"(II) demonstrates in such manner as the Secretary requires, including at a continuing disability review not later than one year after such determination, that such individual is complying with the terms, conditions,

and requirements of such treatment and with the requirements imposed by the Secretary under clause (ii).

"(ii) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in clause (i), in order to assure such compliance and to determine the extent to which the imposition of such requirements is contributing to the achievement of the purposes of this title. The Secretary may retain jurisdiction in the case of a hearing before the Secretary under this title to the extent the Secretary determines necessary to carry out the preceding sentence. The Secretary shall annually submit to the Congress a full and complete report on the Secretary's activities under this subparagraph.

"(iii) The representative payee and the referral and monitoring agency for any individual described in clause (i) shall report to the Secretary any noncompliance with the terms, conditions, and requirements of the treatment described in clause (i) and with the requirements imposed by the Secretary under clause (ii).

"(iv)(I) If the Secretary finds that an individual is not complying with the terms, conditions, and requirements of the treatment described in clause (i), or with the requirements imposed by the Secretary under clause (ii), or both, the Secretary, in lieu of termination, may suspend such individual's benefits under this title until compliance has been reestablished, including compliance with any additional requirements determined to be necessary by the Secretary.

"(II) Any period of suspension under subclause (I) shall be taken into account in determining any 24-month period described in clause (v) and shall not be taken into account in determining the 36-month period described in such clause.

"(v)(I) Except as provided in subclause (II), no individual described in clause (i) shall be entitled to benefits under this title for any month following the 24-month period beginning with the determination of the disability described in such clause.

"(II) If at the end of the 24-month period described in subclause (I), the individual furnishes evidence in accordance with section 223(d)(5) that the individual continues to be under a disability based in whole on a medical determination that the individual is a drug addict or alcoholic, such individual shall be entitled to benefits under this title based on such disability for no more than an additional 36 months.

"(III) Subject to subclause (IV), if such an individual continues to be entitled to such benefits for an additional 24-month period following a determination under subclause (II), subclauses (I) and (II) shall apply with regard to any further entitlement to such benefits following the end of such additional period.

"(IV) In no event shall such an individual be entitled to benefits under this title for more than a total of 36 months, unless upon the termination of the 36th month such individual furnishes evidence in accordance with section 223(d)(5) that the individual is under a disability which is not related in part to a medical determination that the individual is a drug addict or alcoholic.

"(B)(i) Any benefits under this title payable to any individual referred to in subparagraph (A), including any benefits payable in a lump sum amount, shall be payable only pursuant to a certification of such payment to a qualified organization acting as a representative payee of such individual pursuant to section 1631(a)(2)(A)(ii).

"(ii) For purposes of clause (i) and section 1631(a)(2)(D), the term 'qualified organization'—

"(I) shall have the meaning given such term by section 1631(a)(2)(D)(ii), and

"(II) shall mean an agency or instrumentality of a State or a political subdivision of a State."

(c) EFFECTIVE DATES; AUTHORIZATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to benefits payable for determinations of disability made 90 or more days after the date of the enactment of this Act.

(2) CURRENT DETERMINATIONS.—

(A) IN GENERAL.—With respect to any individual described in subparagraph (B), the Secretary of Health and Human Services shall provide during the 3-year period beginning after the date of the enactment of this Act for the application of the amendments made by this section to such individual with the time periods described in such amendments to begin upon such application.

(B) INDIVIDUAL DESCRIBED.—An individual is described in this subparagraph if such individual is entitled to benefits under title II or XVI of the Social Security Act based on a disability determined before the date described in paragraph (1) to be based in whole or in part on a medical determination that the individual is a drug addict or alcoholic.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of the provisions of, and the amendments made by, this section.

SEC. 3. PRIORITY OF TREATMENT.

The Secretary of Health and Human Services, through the Administrator of the Substance Abuse and Mental Health Services Administration, shall assure that every individual receiving disability benefits under title II or XVI of the Social Security Act based in whole or in part on a medical determination that the individual is a drug addict or alcoholic be given high priority for treatment through entities supported by the various States through any substance abuse block grant authorized under law.

SEC. 4. ESTABLISHMENT OF REFERRAL MONITORING AGENCIES REQUIRED IN ALL STATES.

The Secretary of Health and Human Services shall, within 1 year of the date of the enactment of this Act, provide for the establishment of referral and monitoring agencies for each State for the purpose of carrying out the treatment requirements under sections 223(j)(1) and 1611(e)(3)(A) of the Social Security Act (42 U.S.C. 423(j)(1) and 1382(e)(3)(A)).

SEC. 5. PROCEEDS FROM CERTAIN CRIMINAL ACTIVITIES CONSTITUTE SUBSTANTIAL GAINFUL EMPLOYMENT.

(a) SOCIAL SECURITY DISABILITY INSURANCE.—Section 223(d)(4) of the Social Security Act (42 U.S.C. 423(d)(4)) is amended by inserting the following after the first sentence: "If an individual engages in a criminal activity to support substance abuse, any proceeds derived from such activity shall demonstrate such individual's ability to engage in substantial gainful activity.".

(b) SUPPLEMENTAL SECURITY INCOME.—Section 1614(a)(3)(D) of the Social Security Act (42 U.S.C. 1382(a)(3)(D)) is amended by inserting the following after the first sentence: "If an individual engages in a criminal activity to support substance abuse, any proceeds derived from such activity shall demonstrate such individual's ability to engage in substantial gainful activity.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disability determinations conducted on or after the date of the enactment of this Act.

SEC. 6. CONSISTENT PENALTY PROVISIONS FOR SSDI AND SSI PROGRAMS.

(a) FELONY PENALTIES FOR FRAUD.—

(1) IN GENERAL.—Subsection (a) of section 1631 of the Social Security Act (42 U.S.C. 1383a) is amended by striking "shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both" and inserting "shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both".

(2) REPRESENTATIVE PAYEES.—

(A) SSDI.—Subsections (b) and (c) of section 208 of such Act (42 U.S.C. 408) are amended to read as follows:

"(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse or an entity described in section 223(j)(2)(B)(ii)), shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both.

"(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

"(3) Any person or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j).

"(c) For the purpose of subsection (a)(7), the terms 'social security number' and 'social security account number' mean such numbers as are assigned by the Secretary under section 205(c)(2) whether or not, in actual use, such numbers are called social security numbers."

(B) SSI.—Subsection (b)(1) of section 1632 of such Act (42 U.S.C. 1383a) is amended by striking "(other than such person's spouse)" and all that follows through the period and inserting "(other than such person's spouse or an entity described in section 1611(e)(3)(B)(ii)(II)), shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both."

(b) CIVIL ADMINISTRATIVE PENALTIES.—

(1) SSDI.—Section 208 of the Social Security Act (42 U.S.C. 408) is amended by adding at the end the following new subsections:

"(e) For administrative penalties for false claims and statements with respect to which an individual or other entity knows or has reason to know such falsity, see chapter 38 of title 31, United States Code.

"(f) In the case of the second or subsequent imposition of an administrative or criminal penalty on any person or other entity under this section, the Secretary may exclude such person or entity from participation in any program under this title and titles V, XVI, XVIII, and XX, and may direct that such per-

son or entity be excluded from any State health care program (as defined in section 1128(h)) and any other Federal program as provided by law."

(2) SSI.—

(A) IN GENERAL.—Section 1632 of such Act (42 U.S.C. 1383a) is amended by adding at the end the following new subsections:

"(c) For administrative penalties for false claims and statements with respect to which an individual or other entity knows or has reason to know such falsity, see chapter 38 of title 31, United States Code.

"(d) In the case of the second or subsequent imposition of an administrative or criminal penalty on any person or other entity under this section, the Secretary may exclude such person or entity from participation in any program under this title and titles II, V, XVIII, and XX, and may direct that such person or entity be excluded from any State health care program (as defined in section 1128(h)) and any other Federal program as provided by law."

(B) CONFORMING AMENDMENT.—The heading for section 1632 of such Act (42 U.S.C. 1383a) is amended by striking "FOR FRAUD".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective on or after the date of the enactment of this Act.

McCAIN AMENDMENT NO. 1475

Mr. McCAIN proposed an amendment to the bill S. 1560, supra; as follows:

At the appropriate place in the bill, add the following:

Title —Social Security Earnings Test.

SECTION . SHORT TITLE.

This title may be cited as the "Older Americans' Freedom to Work Act of 1994."

SEC. . ELIMINATION OF EARNINGS TEST FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.

Section 203 of the Social Security Act is amended—

(1) in paragraph (1) of subsection (c) and paragraphs (1)(A) and (2) of subsection (d), by striking "the age of seventy" and inserting "retirement age (as defined in section 216(l))";

(2) in subsection (f)(1)(B), by striking "was age seventy or over" and inserting "was at or above retirement age (as defined in section 216(l))";

(3) in subsection (f)(3), by striking "33⅓ percent" and all that follows through "any other individual," and inserting "50 percent of such individual's earnings for such year in excess of the product of the exempt amount as determined under paragraph (8)," and by striking "age 70" and inserting "retirement age (as defined in section 216(l)";

(4) in subsection (h)(1)(A), by striking "age 70" each place it appears and inserting "retirement age (as defined in section 216(l))"; and

(5) in subsection (j), by striking "Age Seventy" in the heading and inserting "Retirement Age", and by striking "seventy years of age" and inserting "having attained retirement age (as defined in section 216(l))".

SEC. . CONFORMING AMENDMENTS ELIMINATING THE SPECIAL EXEMPT AMOUNT FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE.

(a) UNIFORM EXEMPT AMOUNT.—Section 203(f)(8)(A) of the Social Security Act is amended by striking "the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable" and inserting "a new exempt amount which shall be applicable".

(b) CONFORMING AMENDMENTS.—Section 203(f)(8)(B) of such Act is amended—

(1) in the matter preceding clause (i), by striking "Except" and all that follows through "whichever" and inserting "The exempt amount which is applicable for each month of a particular taxable year shall be whichever";

(2) in clause (i), by striking "corresponding"; and

(3) in the last sentence, by striking "an exempt amount" and inserting "the exempt amount".

(c) REPEAL OF BASIS FOR COMPUTATION OF SPECIAL EXEMPT AMOUNT.—Section 203(f)(8)(D) of such Act is repealed.

SEC. . ADDITIONAL CONFORMING AMENDMENTS.

(a) ELIMINATION OF REDUNDANT REFERENCES TO RETIREMENT AGE.—Section 203 of the Social Security Act is amended—

(1) in the last sentence of subsection (c), by striking "nor shall any deduction" and all that follows and inserting "nor shall any deduction be made under this subsection from any widow's or widower's insurance benefit if the widow, surviving divorced wife, widower, or surviving divorced husband involved became entitled to such benefit prior to attaining age 60."; and

(2) in subsection (f)(1), by striking clause (D) and inserting the following: "(D) for which such individual is entitled to widow's or widower's insurance benefits if such individuals became so entitled prior to attaining age 60, or".

(b) CONFORMING AMENDMENT TO PROVISIONS FOR DETERMINING AMOUNT OF INCREASE ON ACCOUNT OF DELAYED RETIREMENT.—Section 202(w)(2)(B)(ii) of such Act is amended—

(1) by striking "either"; and

(2) by striking "or suffered deductions under section 203(b) or 203(c) in amounts equal to the amount of such benefit".

(c) CONTINUED APPLICATION OF RULE GOVERNING ENTITLEMENT OF BLIND BENEFICIARIES.—The second sentence of section 223(d)(4) of such Act is amended by inserting after "subparagraph (D) thereof" where it first appears the following: "(or would be applicable to such individuals but for the amendments made by the Older Americans' Freedom to Work Act of 1994".

SEC. . EFFECTIVE DATE.

The amendments made by this Act shall apply only with respect to taxable years beginning after December 31, 1994.

HEALTH SECURITY ACT

HATFIELD (AND HARKIN) AMENDMENT NO. 1476

(Ordered to lie on the table.)

Mr. HATFIELD (for himself and Mr. HARKIN) submitted an amendment intended to be proposed by him to the bill (S. 1775) to ensure individual and family security through health care coverage for all Americans in a manner that contains the rate of growth in health care costs and promotes responsible health insurance practices, to promote choice in health care, and to ensure and protect the health care for all Americans; as follows:

At the appropriate place in title III, insert the following new subtitle:

Subtitle ___—Health Research

SEC. ____1. SHORT TITLE.

This subtitle may be cited as the "Health Research Act of 1994".

SEC. ____2. FINDINGS.

The Congress finds the following:

(1) Nearly 4 of 5 peer reviewed research projects deemed worthy of funding by the National Institutes of Health are not funded.

(2) Less than 2 percent of the nearly one trillion dollars our Nation spends on health care is devoted to health research, while the defense industry spends 15 percent of its budget on research.

(3) Public opinion surveys have shown that Americans want more Federal resources put into health research and support by having a portion of their health insurance premiums set aside for this purpose.

(4) Ample evidence exists to demonstrate that health research has improved the quality of health care in the United States. Advances such as the development of vaccines, the cure of many childhood cancers, drugs that effectively treat a host of diseases and disorders, a process to protect our Nation's blood supply from the HIV virus, progress against cardiovasculor disease including heart attack and stroke, and new strategies for the early detection and treatment of diseases such as colon, breast, and prostate cancer clearly demonstrates the benefits of health research.

(5) Among the most effective methods to control health care costs are prevention and cure of disease and disability, thus, health research which holds the promise of cure and prevention of disease and disability is a critical component of any comprehensive health care reform plan.

(6) The state of our Nation's research facilities at the National Institutes of Health and at universities is deteriorating significantly. Renovation and repair of these facilities are badly needed to maintain and improve the quality of research.

(7) Because the Omnibus Budget Reconciliation Act of 1993 freezes discretionary spending for the next 5 years, the Nation's investment in health research through the National Institutes of Health is likely to decline in real terms unless corrective legislative action is taken.

(8) A health research fund is needed to maintain our Nation's commitment to health research and to increase the percentage of approved projects which receive funding at the National Institutes of Health to at least 33 percent.

SEC. ____3. NATIONAL FUND FOR HEALTH RESEARCH.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States an account, to be known as the "National Fund for Health Research" (hereafter referred to in this section as the "Fund"), consisting of such amounts as are transferred to the Fund under subsection (b) and any interest earned on investment of amounts in the Fund.

(b) TRANSFERS TO FUND.—

(1) IN GENERAL.—The Secretary of the Treasury shall transfer to the Fund an amount equal to the amounts designated under paragraph (2) and received in the Treasury.

(2) AMOUNTS.—

(A) IN GENERAL.—With respect to each calendar year beginning with the first full calendar year during which a comprehensive health care reform program utilizing a regional and corporate health alliance structure has been implemented, each such alliance shall set aside and transfer to the Treasury of the United States the applicable

amount under subparagraph (B) and under section 6097 of the Internal Revenue Code of 1986.

(B) APPLICABLE AMOUNT.—The applicable amount under this subparagraph with respect to a regional or corporate alliance shall be equal to—

(i) with respect to the first full calendar year described in subparagraph (A), .25 percent of all health premiums received by the alliance for such year;

(ii) with respect to the second calendar year described in subparagraph (A), .50 percent of all health premiums received by the alliance for such year;

(iii) with respect to the third calendar year described in subparagraph (A), .75 percent of all health premiums received by the alliance for such year; and

(iv) with respect to the fourth and succeeding calendar years described in subparagraph (A), 1 percent of all health premiums received by the alliance for such year.

(3) DESIGNATION OF OVERPAYMENTS AND CONTRIBUTIONS.—

(A) IN GENERAL.—Subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to returns and records) is amended by adding at the end the following new part:

"PART IX—DESIGNATION OF OVERPAYMENTS AND CONTRIBUTIONS FOR THE NATIONAL FUND FOR HEALTH RESEARCH

"Sec. 6097. Amounts for the National Fund for Health Research.

"SEC. 6097. AMOUNTS FOR THE NATIONAL FUND FOR HEALTH RESEARCH.

"(a) IN GENERAL.—Every individual (other than a nonresident alien) may designate that—

"(1) a portion (not less than $1) of any overpayment of the tax imposed by chapter 1 for the taxable year, and

"(2) a cash contribution (not less than $1),

be paid over to the National Fund for Health Research established under section _____3 of the Health Research Act of 1994. In the case of a joint return of a husband and wife, each spouse may designate one-half of any such overpayment of tax (not less than $2).

"(b) MANNER AND TIME OF DESIGNATION.—Any designation under subsection (a) may be made with respect to any taxable year only at the time of filing the original return of the tax imposed by chapter 1 for such taxable year. Such designation shall be made either on the 1st page of the return or on the page bearing the taxpayer's signature.

"(c) OVERPAYMENTS TREATED AS REFUNDED.—For purposes of this section, any overpayment of tax designated under subsection (a) shall be treated as being refunded to the taxpayer as of the last day prescribed for filing the return of tax imposed by chapter 1 (determined with regard to extensions) or, if later, the date the return is filed.

"(d) DESIGNATED AMOUNTS NOT DEDUCTIBLE.—No amount designated pursuant to subsection (a) shall be allowed as a deduction under section 170 or any other section for any taxable year.

"(e) TERMINATION.—This section shall not apply to taxable years beginning in a calendar year after a determination by the Secretary that the sum of all designations under subsection (a) for taxable years beginning in the second and third calendar years preceding the calendar year is less than $5,000,000.".

(B) CLERICAL AMENDMENT.—The table of parts for subchapter A of chapter 61 of such Code is amended by adding at the end the following new item:

"Part IX. Designation of overpayments and contributions for the National Fund for Health Research.".

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall apply to taxable years beginning after December 31, 1993.

(c) EXPENDITURES FROM FUND.—

(1) IN GENERAL.—The Secretary of the Treasury shall pay annually, within 30 days after the President signs an appropriations Act for the Departments of Labor, Health and Human Services, and Education and related agencies, or by the end of the first quarter of the fiscal year, to the Secretary of Health and Human Services on behalf of the National Institutes of Health, an amount equal to the amount in the National Fund for Health Research at the time of such payment, to enable the Secretary to carry out the purpose of section 404F of the Public Health Service Act, less any administrative expenses which may be paid under paragraph (3).

(2) PURPOSES FOR EXPENDITURES FROM FUND.—Part A of title IV of the Public Health Service Act (42 U.S.C. 281 et seq.) is amended by adding at the end the following new section:

"SEC. 404F. EXPENDITURES FROM THE NATIONAL FUND FOR HEALTH RESEARCH.

"(a) IN GENERAL.—From amounts received for any fiscal year from the National Fund for Health Research, the Secretary of Health and Human Services shall distribute—

"(1) 2 percent of such amounts during any fiscal year to the Office of the Director of the National Institutes of Health to be allocated at the Director's discretion for the following activities:

"(A) for carrying out the responsibilities of the Office of the Director, National Institutes of Health, including the Office of Research on Women's Health and the Office of Research on Minority Health, the Office of Alternative Medicine and the Office of Rare Diseases Research; and

"(B) for construction and acquisition of equipment for or facilities of or used by the National Institutes of Health;

"(2) 2 percent of such amounts for transfer to the National Center for Research Resources to carry out section 1502 of the National Institutes of Health Revitalization Act of 1993 concerning Biomedical and Behavioral Research Facilities;

"(3) 1 percent of such amounts during any fiscal year for carrying out section 301 and part D of title IV with respect to health information communications; and

"(4) the remainder of such amounts during any fiscal year to member institutes of the National Institutes of Health and Centers in the same proportion to the total amount received under this section, as the amount of annual appropriations under appropriations Acts for each member institute and Centers for the fiscal year bears to the total amount of appropriations under appropriations Acts for all member institutes and Centers of the National Institutes of Health for the fiscal year.

"(b) PLANS OF ALLOCATION.—The amounts transferred under subsection (a) shall be allocated by the Director of NIH or the various directors of the institutes and centers, as the case may be, pursuant to allocation plans developed by the various advisory councils to such directors, after consultation with such directors.".

(3) ADMINISTRATIVE EXPENSES.—Amounts in the National Fund for Health Research shall be available to pay the administrative expenses of the Department of the Treasury directly allocable to—

(A) modifying the individual income tax return forms to carry out section 6097 of the Internal Revenue Code of 1986;

(B) carrying out this section with respect to such Fund; and

(C) processing amounts received under this section and transferring such amounts to such Fund.

(4) TRIGGER AND RELEASE OF FUND MONIES.—No expenditures shall be made pursuant to section ___3(c) during any fiscal year in which the annual amount appropriated for the National Institutes of Health is less than the amount so appropriated for the prior fiscal year.

(d) BUDGET ENFORCEMENT.—Amounts contained in the National Fund for Health Research shall be excluded from, and shall not be taken into account for purposes of, any budget enforcement procedures under the Congressional Budget Act of 1974 or the Balanced Budget Emergency Deficit Control Act of 1985.

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NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will be holding an oversight hearing on Thursday, March 3, 1994, beginning at 9:30 a.m., in 485 Russell Senate Office Building on the President's Fiscal Year 1995 Budget for the Indian Health Service.

Those wishing additional information should contact the Committee on Indian Affairs at 224–2251.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JOHNSTON. Mr. President, I would like to announce for my colleagues and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The purpose of the hearing is to receive testimony on the role of oceans in global climate change.

The hearing will take place on Tuesday, March 8, 1994, at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building, First and C Streets NE., Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the printed hearing record should send their comments to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510, Attention: Leslie Black Cordes.

For further information, please contact Leslie Black Cordes of the committee staff at 202–224–9607.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Wednesday, March 2, 1994, at 9:30 a.m., in open and closed session, to receive testimony from the unified commanders on their military strategy

and operational requirements, and the defense authorization request for fiscal year 1995 and the future years defense program.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, March 2, beginning at 10 a.m. to conduct a hearing on regulatory consolidation.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to conduct a hearing on NASA authorization on March 2, 1994, beginning at 2:30 p.m.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to conduct a hearing on S. 1822, the Communications Act of 1994, on March 2, 1994, beginning at 9:30 a.m.

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

COMMITEE ON FOREIGN RELATIONS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate of Wednesday, March 2, 1994, at 3 p.m. to hold nominating hearings on the following nominees: Mr. Donald M. Blinkin, of New York, to be Ambassador to the Republic of Hungary; Mr. Richard Dale Kauzlarich, of Virginia, to be Ambassador to the Republic of Azerbaijan; and Mr. Derek Shearer, of California, to be Ambassador to the Republic of Finland.

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

COMMITTEE ON THE JUDICIARY

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, March 2, 1994, to hold a hearing on the nomination of Thomas A. Constantine, to be administrator of Drug Enforcement.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on "ESEA: Framework for Change" during the session of the Senate on March 2, 1994, at 10 a.m.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. LEVIN. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on "The Health Security Act: Early Retirees"—chaired by Senator WOFFORD—during the session of the Senate on March 2, 1994, at 2:30 p.m.

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

COMMITTEE ON SMALL BUSINESS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Small Business Committee be authorized to meet during the session of the Senate on Wednesday, March 2, 1994, at 10 a.m. The committee will hold a full committee hearing on the Small Business Administration's 7(a) Guaranteed Business Loan Program and the SBA's Disaster Assistance Loan Program.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. LEVIN. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a joint hearing with the House Committee on Veterans' Affairs to receive legislative presentations from the Disabled American Veterans. The hearing will be held on March 2, 1994, at 9:30 a.m. in room 345 of the Cannon House Office Building.

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

SUBCOMMITTEE ON SUPERFUND, RECYCLING, AND SOLID WASTE MANAGEMENT

Mr. LEVIN. Mr. President, I ask unanimous consent that the Subcommittee on Superfund, Recycling and Solid Waste Management, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Wednesday, March 2, beginning at 10 a.m., to conduct a hearing on the Superfund cleanup process, delegation to the States, and community participation.

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

SUBCOMMITTEE ON FORCE REQUIREMENTS

Mr. LEVIN. Mr. President, I ask unanimous consent that the Subcommittee on Force Requirements and Personnel of the Committee on Armed Services be authorized to meet on Wednesday, March 2, at 2 p.m. in open session, to discuss the Uniformed Services University of the Health Sciences.

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

ADDITIONAL STATEMENTS

NONQUALIFIED DEFERRED COMPENSATION CLARIFICATION ACT OF 1994

• Mr. PRYOR. Mr. President, on February 28, 1994, I introduced the Nonqualified Deferred Compensation Clarification Act of 1994, S. 1877, in order to clarify the confusion created over treatment of interest under a nonqualified compensation plan in the wake of the December 1993 Ninth Circuit Court ruling in Albertson's versus Commissioner.

The bill was referred to the Finance Committee, of which I am a member. I am happy to have Senator DAVID BOREN as a cosponsor, and I look forward to working with the chairman and my colleagues on the Finance Committee, and all of my colleagues in the Senate to resolve this issue.

Mr. President, I ask that a copy of S. 1877 be included in the RECORD.

The text of S. 1877 follows:

S. 1877

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

SECTION 1. DEDUCTION OF INTEREST AND SIMILAR AMOUNTS ATTRIBUTABLE TO DEFERRED COMPENSATION.

(a) IN GENERAL.—Section 404 of the Internal Revenue Code of 1986 (relating to deductions for compensation under a deferred payment plan) is amended by adding at the end the following new subsection:

"(m) DEDUCTIBILITY OF INTEREST AND SIMILAR AMOUNTS ACCRUED WITH RESPECT TO DEFERRED COMPENSATION.—

"(1) IN GENERAL.—For purposes of this chapter, the determination of the taxable year in which a deduction is allowed for amounts described in paragraph (2) shall be made under this section and in the same manner as if such amounts were compensation.

"(2) APPLICABLE AMOUNTS.—An amount is described in this paragraph if it is—

"(A) interest or a similar amount based on the time value of money, and—

"(B) an integral part of the method used to calculate the total amount of deferred compensation to be paid.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts accruing in taxable years beginning before, on, or after the date of the enactment of this Act.•

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, REGARDING EDUCATIONAL TRAVEL

• Mr. BRYAN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received notification under rule 35 for Senator BILL BRADLEY, to participate in a program in Berlin, Germany, sponsored by Haniel Stiftung, from February 9–11, 1994.

The committee determined that no Federal statute or Senate rule would

prohibit participation by Senator BRADLEY in this program.

The select committee received notification under rule 35 for Mark Ashby, a member of the staff of Senator BREAUX, to participate in a program in India, sponsored by the Rajiv Gandhi Foundation, from February 12–19, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Ashby in this program.

The select committee received notification under rule 35 for Dr. Weiss, a member of the staff of Senator GLENN, to participate in a program in Japan, sponsored by the Japan Atomic Industrial Forum, Inc., from February 12–19, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by Dr. Weiss in this program.

The select committee received notification under rule 35 for Senator COHEN, Senator COCHRAN, Senator BROWN, Senator GLENN, Senator MIKULSKI, Senator KEMPTHORNE, and Senator SMITH to participate in a program in the Federal Republic of Germany sponsored by the Europaische Wehrkunde Organization, from February 4–6, 1994.

The committee determined that no Federal statute or Senate rule would prohibit participation by the above named Senators in this program.●

COMMITTEE ON ENERGY AND NATURAL RESOURCES: CORRECTION OF REPORTS

● Mr. JOHNSON. Mr. President, on February 2, 1994, the Committee on Energy and Natural Resources ordered reported S. 208, the National Park Service Concessions Policy Reform Act of 1994, and H.R. 1134, the Clear Creek County, Colorado, Public Lands Transfer Act. The report accompanying S. 208 (Calendar No. 360) was filed on February 11, 1994 (S. Rept. 103–226); the report accompanying H.R. 1134 (Calendar No. 372) was filed on February 23, 1994. Both reports contain a typographical error in the tabulation of votes. Senators BINGMAN and MATHEWS are reflected in both reports as voting by proxy when in fact they voted in person in both instances.●

FACES OF THE HEALTH CARE CRISIS

● Mr. RIEGLE. Mr. President, I rise this morning in my continuing effort to put real faces on the health care crisis confronting our Nation. Today I would like to share the story of Joseph Alessandrini from Redford, MI. In a letter he wrote to me in December of this past year, Joseph related his experience of having his health insurance terminated just 3 days before his open heart surgery. As a result, Joseph is currently uninsured and facing over $30,000 in unpaid medical bills.

Joseph is a 25-year-old full-time student at Wayne State University where he is working toward a degree in physical therapy. His wife, Elisa, is 24 years old and works as a business manager for a local radio station. Fortunately, she has health care benefits for herself through her employer. Joseph did have excellent health benefits through his former employer, but when he left his position last August to go back to school full-time, he purchased an individual health insurance policy through a company that his insurance agent recommended. His new policy, which costs $106 per month, went into effect at the beginning of last September.

The following month, Joseph was diagnosed with a heart condition called atrial septal defect—more commonly known as a hole in the heart. Joseph's medical condition was discovered as part of a routine physical by a family physician and further confirmed by a cardiologist. Joseph was referred to a surgeon who recommended open heart surgery as soon as possible. Joseph, being in the middle of his first semester back at school, asked the surgeon if he could have the procedure done during his Christmas break. The surgeon agreed but indicated that the surgery should be performed before the end of the year. The surgery was scheduled for December 30.

After this diagnosis, Joseph's insurance company began to review his claims for a preexisting condition. During the 2 months before his surgery, Joseph and his doctors tried to convince the insurance company that his condition was not preexisting. But the insurance company claimed that the condition was related to an emergency room visit in June, when Joseph was covered under his former employer's insurance.

Joseph had gone to the emergency room late one night in June because he was having symptoms of dizziness and vomiting. The emergency room doctor said that he was reacting to something he had eaten earlier that evening and that his blood sugar had dropped. The doctor did not indicate that anything was wrong with his heart.

During the 2 months prior to his December surgery, Joseph and his doctors tried to get answers from the insurance company about the review process and his coverage. Joseph wanted to make sure that when he went into the operating room he would have the coverage he had purchased. A week and a half before his surgery, the insurance company sent Joseph a letter stating that they were sending his case to underwriting to review it for a possible misstatement on his application.

On December 27, 3 days before his surgery, Joseph received a call from the insurance company to notify him that they were voiding his insurance contract because he did not fill out his application adequately. They claimed that Joseph's June emergency room visit qualified as a preexisting condition and since he did not indicate any preexisting conditions on his application, they were terminating his insurance. This is all very ironic, because the supposed preexisting condition was not diagnosed until 3 months after the emergency room visit and Joseph had no idea he even had the heart condition when he filled out the application.

After having his insurance policy taken away, Joseph went into surgery with no insurance. He had to face the enormity of the hospital bills in addition to the embarrassment and discrimination of being uninsured. Just 2 hours before his surgery, Joseph was required to give the hospital a $2,000 deposit since he did not have health care coverage. Several days after Joseph returned home, he had to be readmitted to the hospital because of excess fluid developing around his heart. At first, the hospital would not admit him because he was uninsured. It took a call from the senior partner in his cardiologist's office to get Joseph readmitted to the hospital for the critically needed treatment.

In his letter to me Joseph states: "I feel that I am an honest person and I have done nothing wrong. [The insurance company] has caused my wife, my family, and myself a great deal of stress that we don't deserve." Not only has the insurance company given him a lot of stress, but they have also left him with a $30,000 hospital bill. This is a tremendous burden for a young, single-income family, and it is not fair to a hard-working young couple who are just starting their lives together.

Joseph is a responsible person, and he took every measure possible to make sure he did not go without health insurance. Joseph is finding out what many Americans are experiencing—that the apparent security of health insurance under the current system is not real insurance, nor is it secure.

Since Joseph's surgery, I have received another letter, this one from his mother-in-law. She writes that Joseph has experienced complications from the open heart surgery, but because he has no insurance he is being treated at home for a condition that would normally require hospitalization.

Mr. President, we must enact comprehensive health care reform to keep insurance companies from taking advantage of honest people like Joseph Alessandrini. I will continue to work with my colleagues in the Senate and with the White House to make sure that health care reform is a reality this year.●

ORDERS FOR TOMORROW

Mr. LEVIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m., Thursday,

March 3; that following the prayer, the Journal of proceedings be approved to date and the time for the two leaders reserved for their use later in the day; that there then be a period for morning business, with Senators permitted to speak therein for up to 10 minutes each; with 10 minutes under Senator WALLOP's control and 10 minutes under Senator HATCH's control; and that immediately following the Chair's announcement, Senator WOFFORD be recognized to speak for up to 30 minutes.

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

RECESS UNTIL TOMORROW AT 10 A.M.

Mr. LEVIN. Mr. President, if there is no further business to come before the Senate today, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate at 6:03 p.m., recessed until Thursday, March 3, 1994, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate on March 2, 1994:

DEPARTMENT OF STATE

RALPH R. JOHNSON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS COORDINATOR OF THE SUPPORT FOR EAST EUROPEAN DEMOCRACY [SEED] PROGRAM.

CHARLES H. TWINING, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO CAMBODIA.

AFRICAN DEVELOPMENT FOUNDATION

MARION M. DAWSON, OF CONNECTICUT, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR A TERM EXPIRING SEPTEMBER 22, 1999, VICE JOHN TRAIN, TERM EXPIRED.

SMALL BUSINESS ADMINISTRATION

JERE WALTON GLOVER, OF MARYLAND, TO BE CHIEF COUNSEL FOR ADVOCACY, SMALL BUSINESS ADMINISTRATION, VICE THOMAS P. KERESTER, RESIGNED.

ADVISORY COMMISSION ON PUBLIC DIPLOMACY

MARIA ELENA TORANO, OF FLORIDA, TO BE A MEMBER OF THE U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 1994, VICE RICHARD B. STONE, TERM EXPIRED.

MARIA ELENA TORANO, OF FLORIDA, TO BE A MEMBER OF THE U.S. ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 1997. (REAPPOINTMENT.)

CONFIRMATIONS

Executive nominations confirmed by the Senate March 2, 1994:

NATIONAL LABOR RELATIONS BOARD

WILLIAM B. GOULD IV, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE REMAINDER OF THE TERM EXPIRING AUGUST 27, 1993.

WILLIAM B. GOULD IV OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF 5 YEARS EXPIRING AUGUST 27, 1998.

MARGARET A. BROWNING, OF PENNSYLVANIA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 16, 1997, VICE JOHN N. RAUDABAUGH.

FREDERICK L. FEINSTEIN, OF MARYLAND, TO BE GENERAL COUNSEL OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF 4 YEARS.

CHARLES I. COHEN, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL RELATIONS BOARD FOR THE TERM OF 5 YEARS EXPIRING AUGUST 27, 1996.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.