

In addition, I am concerned about this legislation's provisions on federalized documents.

The bill would bar Federal agencies from accepting birth certificates and drivers' licenses that do not meet new Federal standards.

This will force States to conform to Federal standards in issuing these documents, because States' citizens will want to be able to use them for Federal purposes.

It is an intrusion into an area properly subject to State control and another step toward a national identification system. It is unnecessary and it should not be undertaken.

Mr. President, I also have reservations concerning the bill's provisions on the deportability of criminal aliens. If these provisions are adopted, they will significantly weaken many of the important reforms this Congress adopted last session in the Anti-terrorism and Effective Death Penalty Act to facilitate deportation of criminal aliens.

As I have made clear throughout consideration of the immigration bill, I draw a sharp distinction between immigrants who come to this country to make better lives for themselves and those who come to break our laws and prey upon our citizens.

I have made no secret of my strong concerns about the conference report's repeal of important provision this Congress enacted into law in the Anti-terrorism Act last spring. Along with my colleague Senator D'AMATO, I have sent a letter to the immigration conferees outlining these concerns, which I would like briefly to mention here.

First the draft conference report unconditionally restores immigration judges' ability to grant so-called hardship or section 212(c) waivers to large categories of criminals who have committed serious felonies. When Congress enacted section 212(c) in 1952 as part of the Immigration and Nationality Act, it made clear that it was to apply only to those cases where extenuating circumstances clearly require such action."

Unfortunately, unelected and irresponsible immigration judges have completely and permanently ended deportation proceedings against thousands of convicted felons under this provision.

The Anti-terrorism Act corrected this outrage by barring individuals from using section 212(c) if they had been convicted of aggravated felonies, firearms, and narcotics crimes, or repeated serious offenses.

But now the conference report would restore these waivers for all criminal aliens other than aggravated felons. Repeat offenders, illegal firearms and narcotics dealers and, most shocking of all, terrorists, all would now be able to have deportation proceedings against themselves terminated.

And, even in those cases when a waiver is not granted, the request itself will delay the deportation process and make it harder to detain criminal

aliens pending deportation. That means that more criminal aliens will be released and will never be found again to be deported.

Why has this pernicious invitation to immigration judges to abuse their power been restored? I have heard no explanation. Yet, if it is because my colleagues now believe that these judges can be trusted not to abuse their discretion recent experience shows otherwise.

Even now, with section 212(c) eliminated by the Anti-terrorism Act, some immigration judges are granting the relief for criminal aliens who are in exclusion proceedings.

This plainly defies the clear meaning of the statute. The Anti-terrorism Act applies to aliens who are deportable for having committed certain crimes. It contains no reference to any proceedings in which the immigrant might be engaged, be they exclusion or deportation proceedings. The choice of proceedings is irrelevant. It is the commission of proscribed felonies on American soil that dictates the criminal alien's removal.

Fortunately, by establishing a unified system for removing aliens who do not comply with our laws, the conference report eliminates the availability of this particular misconstruction. But its restoration to the same immigration judges who devised this misconstruction of the authority to grant these waivers to large classes of criminals is simply incomprehensible.

Removal of these felons will be made even more difficult under the conference report because the bill significantly weakens the Anti-terrorism Act's requirements relating to the detention of criminal aliens. Under that act the Attorney General was required to detain all criminal aliens who have committed certain serious crimes, pending deportation.

The conference report would allow the Attorney General to release large categories of these individuals, on certifying that insufficient space exists to detain them, for 2 full years.

Again, the question is why? The Justice Department has not stated in any formal communication to Congress that there is currently or will be in the near future insufficient detention space to detain these and other dangerous individuals. Indeed, the Department not only failed to volunteer that it had any such problem, it made no such statement even in response to a letter asking for any concerns the Department might have about the Anti-terrorism Act's criminal aliens provisions. The closest the Department came was to suggest that it was theoretically possible that such a shortage might develop at some point.

Such hypothetical concerns are no reason at all to grant the Attorney General the authority to release thousands of convicted criminals back into the population, to prey on our people and perhaps never be caught again, let alone deported. If the Attorney General

needs that authority because the Immigration and Naturalization Service projects an immediate shortage of detention space, the Department knows how to ask for it. If it did, we could then assess the plausibility of the projection, as well as whether the matter could be better addressed by providing additional detention space instead. We also could ask why no request for additional space had been forthcoming.

The conference report's decision to grant this unilateral release authority without even the justification that the Department, albeit late in the day, has said it needs to have that authority on account of an imminent shortage, is frankly incomprehensible to me.

As I believe is clear, Mr. President, I have some rather serious problems with this legislation. However, we face a more serious problem, for which this legislation, even with its flaws, is needed.

I am speaking, of course, of the problem of illegal immigration. This bill contains a number of provisions that I believe are crucial to our fight to bring illegal immigration under control.

For example, the bill includes the Kyl-Abraham amendment adopted in committee. This amendment will increase by 1,000 the number of Border Patrol agents in each of the next 5 fiscal years (1997-2001).

The bill also would sharply increase penalties for alien smuggling and document fraud.

In addition, the bill includes a revised form of an Abraham amendment to impose stiff sanctions on visa-overstayers, who make up fully one-half of the illegal aliens in this country.

I regret that the "good cause" exception in my amendment was omitted from final bill. But visa-overstayers must be punished like anyone else who breaks the rules.

Finally, this legislation makes those who sponsor aliens into the country legally responsible for their support, and allows the Government to collect reimbursement for any welfare moneys spent.

In sum, Mr. President, I am concerned that identification provisions in this legislation are leading us on a path away from America's well-worn road of personal liberty toward a bureaucratic nightmare. And I am worried that this bill will allow too many criminals to stay in this country.

But we are in the midst of a serious conflict. We cannot allow law-breakers into our country. And that is exactly what an illegal immigrant is: someone who willingly and knowingly flouts our laws.

This legislation makes needed reforms to our immigration system so that we may deal more efficiently with these lawbreakers. To my mind this is an important step toward a more fair and open immigration system.

SEC. 343. CERTIFICATION REQUIREMENTS FOR FOREIGN HEALTHCARE WORKERS

Mr. SPECTER. Mr. President, I would appreciate it if Senator SIMPSON

would clarify the intent of a provision in the conference report on H.R. 2202, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which is now Division C of H.R. 3610, the Department of Defense Appropriations Act, 1997. I am interested in the intent of section 343 with regard to the establishment of a procedure for the approval of organizations to prescreen foreign healthcare workers.

Mr. SIMPSON. Mr. President, it is Congress' intent that the Attorney General, in consultation with the Secretary of Health and Human Services, shall establish a procedure for the review and approval of credentialing organizations equivalent to the Commission on Graduates of Foreign Nursing Schools for the purpose of prescreening aliens seeking to enter the United States for employment as healthcare workers. It is our intent that the Attorney General and the Secretary of Health and Human Services will actively review entities that petition to perform this prescreening and approve those that qualify.

#### HOMESTEAD, FL'S EDA PROJECT

Mr. MACK. Mr. President, I would like to engage the distinguished chairman of the Commerce, Justice, State, and Judiciary Appropriations Subcommittee in a colloquy concerning an economic development project of great significance to South Dade County, FL.

Mr. GREGG. I would be happy to engage the Senator from Florida in a colloquy.

Mr. MACK. Mr. President, my colleagues will remember that in 1992, Hurricane Andrew, one of the worst natural disasters in our Nation's history, struck the city of Homestead and South Dade County, FL with terrible flurry. Today, 4 years later, the physical devastation to the community can still be seen. The residents of the area continue to experience severe economic hardship due to the destruction of homes and businesses, the loss of income and tax revenue, and the dislocation of residents. I dare say that there are few places in the country that deserve economic development assistance more than Homestead/South Dade.

In recent years, the city of Homestead has brought forward a public/private partnership project which promises to become a significant economic development engine for the community. The project is a 60,000 square foot motor sports exhibition and education facility to be located at the existing South Dade/Homestead Motorsports Complex. This project is expected to attract more than half a million visitors per year, generate considerable tax revenue, and create hundreds of new jobs.

The city of Homestead will shortly approach the Economic Development Administration to request an economic development assistance grant which will be matched equally by State and private contributions.

Mr. President, I strongly support this project which I believe will build upon

the economic development success of the Motorsports Complex. This hard-hit community is doing the right thing in putting together public-private partnerships to share the cost burden of such economic development projects. The proposal to EDA for fiscal year 1997 funds deserves favorable consideration, and I am hopeful that the chairman of the Commerce, Justice, State, and Judiciary Subcommittee will lend his support, as well, to this worthy project.

Mr. GREGG. Mr. President, I would say to the Senator from Florida that I am well aware of the devastation experienced in Homestead and South Dade and the work he has done to revitalize the community. The need for further economic development assistance in the area is abundantly clear. I would, therefore, be happy to work with the Senator in bringing the city of Homestead's proposal to the attention of EDA and doing what I can to see that the proposal for funding receives fair consideration.

Mr. LEAHY. Mr. President, one of the most egregious differences between the immigration bill passed by the Senate many months ago and the bill now thrust on us for final passage is the permanent and nationwide waiver of our environmental laws for border control activities.

Like most of the American public, I am fed up with attacks on our important environmental laws. Failing to gut the Endangered Species Act and the National Environmental Policy Act, some Members of Congress have resorted to backdoor stealth attacks on these laws. Now Republicans include a gratuitous attach on our wildlife and ecosystems through, of all things, an immigration bill.

The nationwide scope of the environmental waivers in the immigration bill reaches far and beyond the goals of strong immigration control. By exempting all road construction, bridge construction, and barrier construction along the entire U.S. border from the Endangered Species Act, the waiver will permanently weaken national and international wildlife conservation.

Like many provisions in the immigration bill, this provision was inserted during the Republican-only House-Senate conference, and now the bill grants a permanent and nationwide waiver of the National Environmental Policy Act, the fundamental charter of our environmental protection.

Claims that the Endangered Species Act or the National Environmental Policy Act delay or stop the INS from controlling illegal immigration are wholly unsubstantiated. These laws should not be waived or exempted without full congressional consideration, hearings and public debate, and need not be waived in these circumstances.

Simply put, the ESA requires all Federal agencies to avoid adverse impacts on endangered and threatened species. Immigration and Naturalization Service staff are not biology ex-

perts. When the INS makes plans to build a road through a remote border area on public lands they consult with the Fish and Wildlife Service biologists to ensure that their plans are ecologically sound. For instance, when INS wanted to build a border bridge in Texas, biologists asked them to minimize impact on nearby wetlands by lifting the bridge out of the flood plain 2 feet. That was all that it took.

Consultation with the Fish and Wildlife Service is painless—it usually costs little in time or money to the INS, but it can mean the difference between recovery and extinction for a border species like the Sonoran Pronghorn antelope or the ocelot, an endangered cat.

The Fish and Wildlife Service has consulted with Federal agencies over 195,000 times in the last 16 years. Only 0.05 percent of those projects have been withdrawn or canceled because of the ESA. The ESA is flexible enough to accommodate even emergency situations and Fish and Wildlife biologists can review an INS construction project in a matter of hours when necessary.

The National Environmental Policy Act, signed by President Nixon in 1969, requires INS to give taxpayers a chance to review and comment on the environmental impacts of INS projects. Republicans now want to shortchange citizen's opportunities to participate in decisionmaking affecting their communities. NEPA also requires INS to examine reasonable alternatives to a project before investing taxpayer funds.

It is also flexible enough to accommodate emergency situations. For example, Bureau of Land Management recently requested an expedited NEPA review to build roads and a helicopter landing pad near the border area. It seems that high illegal alien use and high forest fire risk required quick action. The NEPA review was completed within 24 hours and the road construction took place immediately.

In a September 16 letter, Janet Reno, Bruce Babbitt, and Katie McGinty stated their unequivocal opposition to these waivers in the immigration bill. They know, as I do, that granting future Attorneys General the ability to sidestep important environmental laws will mean disaster for our Nation's environmental integrity.

The administration is currently negotiating environmental agreements with Canada and Mexico, and the passage of these waivers could undermine the future of these agreements. How can we possibly expect Mexico to take actions to protect their ecosystems on one side of the border when we so flagrantly disregard the laws protecting our own natural heritage?

I object to the immigration bill because it differs so wildly from the bill we passed earlier this year. The stealth environmental waivers in this bill are unnecessary, unjustified, and mean-spirited. They will harm our children's right to inherit an environmentally-sound nation and set a terrible precedent for environmental waivers.

## DIVISION D

Mr. BOND. Mr. President, I rise today in support of the Small Business Programs Improvement Act of 1996, which has been incorporated as division D of the omnibus appropriations bill. The language of this bill comes includes the substitute amendment to H.R. 3719, which I offered with the ranking Democrat on the Committee on Small Business, Senator DALE BUMPERS. H.R. 3719 is a comprehensive bill that proposes to change numerous programs at the Small Business Administration, which are discussed in this statement. Most of the changes will go into effect on October 1, 1996.

## ACCESS TO CAPITAL FOR SMALL BUSINESSES

Earlier this year, when the Clinton administration and the Small Business Administration submitted their fiscal year 1997 budget request, it was revealed that SBA's flagship loan programs had been experiencing considerably higher losses than had previously been revealed to the Congress. In the case of the 7(a) Guaranteed Business Loan Program, the credit subsidy rate, which is the calculation by OMB that projects losses from loans that are originated in fiscal year 1997, was increased from 1.06 percent to 2.68 percent, an increase of 150 percent. The losses facing 504 Development Company Loan Program are even greater, and the credit subsidy rate has increased from 0.57 percent to 6.85 percent, an increase of over 1,200 percent.

As chairman of the Committee on Small Business, I was alarmed by the size of these increases, which were so large as to threaten the future of both programs. These two programs, however, are critical to tens of thousands of small businesses, who each year have come to rely on the availability of Government guaranteed financing to assure them adequate access to capital. They provide a very important source of capital to startup small businesses and to established small business seeking to expand to create more jobs. Because of the great importance of these programs to small businesses, the Senate and House Committees on Small Business chose to make some fundamental changes in the programs in order that they can continue through fiscal year 1997.

## 504 DEVELOPMENT LOAN PROGRAM

With a credit subsidy rate of 6.85 percent in the fiscal year 1997 budget request—versus 0.57 percent in fiscal year 1996—Congress would need to appropriate over \$220 million to fund fully the 504 loan program in fiscal year 1997. Although such an increased appropriation would not be possible, committee staff worked on a solution that would combine additional program fees and a modest appropriation. This legislation adds new fees to be paid by the lender, the development company and the borrower and will support a \$2 billion program level in fiscal year 1997.

## 7(A) GUARANTEED BUSINESS LOAN PROGRAM

The legislation before us today includes a section calling for SBA to

issue a regulation covering the sale of the unguaranteed portion of 7(a) loans by banks and Small Business Lending Companies [SBLC's]. Under current SBA regulations, only SBLC's are permitted to pool and sell the unguaranteed portion of 7(a) loans to outside investors. It is the intent of the bill to expand this authority to banks by directing SBA to promulgate new regulations requiring a uniform set of rules governing this transaction by banks and SBLC's. In addition, SBA is directed to set safety and soundness standards, including appropriate reserve requirements, to protect the taxpayers' exposure under this program.

Last year, when the Senate unanimously adopted S. 895, we agreed to lower the government's guarantee rate on most 7(a) loans to 75 percent. Our intention was to increase SBA lenders' exposure on each loan in order to focus the lenders' attention on the quality of their loan making activities. Although this section the bill will allow SBA lenders to reduce their exposure on these loans, it is our belief that SBA can craft sufficient safeguards to protect the Government's position while granting the lenders an opportunity to raise more capital which can be loaned to small businesses. When the Senate Committee on Small Business takes up the 3-year reauthorization of SBA early next year, it will be my plan for the committee to study closely the impact of the new SBA regulations that are to be adopted as a result of this bill.

## SBA FINANCE PROGRAM IMPROVEMENTS

This legislation directs SBA to create an ongoing system of management information about its 7(a) Business Loan Program. In order for SBA to monitor the performance of this loan portfolio, which is greater than \$25 billion, it is essential that SBA collect and evaluate, on an ongoing basis, facts about both good and bad loans. This legislation emphasizes the importance of this program and expands the data gathering requirement to include key underwriting experience on each loan.

In addition, the bill directs SBA to contract with a private firm to conduct a comprehensive study of the historical performance of the 7(a) Program. Further, it directs that specific attention be paid to the economic model used by OMB to calculate the credit subsidy rate. We concurred with the House Committee on Small Business in the need for this study.

## STRENGTHENING 7(A) PROGRAM PERFORMANCE

Over the past 18 months, the Senate and House Committees on Small Business have seen time and again evidence that SBA has failed to liquidate failed 7(a) loans in a prompt and effective manner. The result has been greater program losses, which have driven up the credit subsidy rate and caused the need for high borrower and lender fees and a larger appropriation. On average, it takes SBA 2 years to liquidate a defaulted loan after SBA pays off the

guarantee to the bank. On the other hand, it takes a commercial bank, on average, 6 months to liquidate a loan after it is placed in default.

The legislation takes a strong step to make improvements in SBA's performance in this area. SBA is directed to make better use of the expertise of its most experienced lenders who have been designated "preferred lenders" within the 7(a) program. Preferred lenders have the staff and ability to take on a greater share of the burden now carried by SBA and to increase recoveries for the government after a loan fails. In addition, the bill directs SBA to begin using its licensed "certified lenders" to undertake liquidation efforts when the certified lender is deemed to have the experience and capability to undertake liquidation efforts.

## DISASTER LOAN SERVICING

This legislation directs SBA to undertake a demonstration program to have private sector loans servicing companies contract to service SBA's disaster home loan portfolio. In our analysis of this demonstration program, we concluded that a large sample of home loans would be necessary to conduct a fair and conclusive demonstration of the ability of the private sector to service these loans. Therefore, the bill directs that 30 percent of the disaster home loan portfolio be included in the demonstration program. It is our belief that with a sample this size, the private sector servicing companies will have a large enough pool of loans to create the economies of scale so their performance can be evaluated fairly. It is our expectation that SBA will be able to solicit bids on this contract within 90 days of passage of this bill, and the test can be underway during fiscal year 1997.

## SMALL BUSINESS PROGRAM EXTENSIONS

This legislation would extend the STTR Program for 1 year. This program allows universities and small businesses that specialize in R&D to combine forces and receive modest R&D grants. The STTR program was created in 1992, when the SBIC program was reauthorized and extended through fiscal year 2000. The purpose of our amendment is to extend the STTR program for 1 year, in order that the Committee on Small Business can take a closer look at the program next year when it takes up the 3 year reauthorization of SBA. It is my understanding the proponents of the STTR Program would like to see the program expanded, and it is my plan that the Committee on Small Business will consider this request and other program adjustments next year.

In addition, the legislation extends the Small Business Competitiveness Demonstration Program for 1 year. It is scheduled to terminate on September 30, 1996. The House-passed version of H.R. 3719 included a 4-year extension. It also included some program

changes, and the supporters of the program have made additional recommendations to improve the program. There is sufficient support to keep the program alive for an additional year in order that both the Senate and House Committees on Small Business can have an opportunity to evaluate fully the impact of the program and to consider legislation to make a longer term extension with some program adjustments.

IMPROVEMENTS TO THE SMALL BUSINESS  
INVESTMENT COMPANY PROGRAM

Earlier this year, the Senate passed unanimously S. 1784, the Small Business Investment Company [SBIC] Improvement Act of 1996, which proposed numerous changes to the Small Business Investment Act of 1958 designed to improve, strengthen, and expand the availability of investment capital under SBA's SBIC Program. S. 1784 was considered thoroughly by the Senate Committee on Small Business. After the committee held a series of hearings on the need for improving the SBIC Program, thorough briefings were conducted for the staffs of each committee member to explain the program changes that were being recommended by committee staff, SBA, and outside organizations such as the National Association of Investment Companies [NAIC] and the National Association of Small Business Investment Companies [NASBIC].

Following the input from the above groups and others, I chaired a public hearing on a discussion draft of the bill prepared by the committee staff. After this hearing, interested parties, including SBA, NAIC, and NASBIC, were invited and participated in drafting proposed changes to the legislation for consideration by the committee staff as it prepared the final version of S. 1784.

After extensive public hearings and open meetings with all interested parties, the Senate Committee on Small Business met in a markup session, and recommended S. 1784 to the full Senate by a vote of 18 to 0.

Division D of the omnibus appropriations bill includes S. 1784, substantially in the form in which it passed the Senate. Prior to its inclusion in this bill, some inaccurate charges were made about the background and effect of S. 1784. In fact, officials from NAIC, who had participated in drafting S. 1784 and whose recommendations were included in the bill, found fault with the bill when Senator BUMPERS and I attempted to bring it to the Senate floor as an amendment to H.R. 3719, the Small Business Programs Improvement Act. Their objections to the bill which they helped draft and which had previously passed the Senate unanimously led one Senator to object to Senate consideration of S. 3719.

S. 1784 was written to place the SBIC Program on a sound, long-term footing. Historically, this program has been plagued by many abuses that have been well chronicled by the press. The pur-

pose of the bill was to strengthen the rules and management of the SBIC Program, while allowing the program to substantially to meet the investment needs of America's small businesses. With the financial future of many small businesses depending on passage of this bill, we looked for ways to clear up the objections.

In an attempt to resolve this stalemate, I agreed to several changes in the Senate-passed S. 1784 to make it absolutely clear that financially sound specialized SBIC's would not be hurt by the terms of S. 1784. Still unable to proceed with consideration of H.R. 3719, we began to hear from SBIC's and special SBIC's about the importance of passing this legislation. Their comments revealed the importance of adopting the improvements to the SBIC Program that were contained in S. 1784, and I ask unanimous consent that a letter from Mr. A. Fred March, president of Ventures Opportunities Corp., a New York-based special SBIC, be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. President, last week as we approached the end of the 104th Congress, I decided to look for another avenue to insure that this important bill would become law. As part of this effort, I sought the support of the Senate leadership to incorporate S. 1784 in the omnibus appropriations bill. At the same time, JAN MEYERS, chair of the House Committee on Small Business, undertook a similar effort in the House of Representatives, and S. 1784 was included in the omnibus appropriations bill which passed the House of Representatives on Saturday, September 28, 1996.

This legislation builds on the improvements on the SBIC Program contained in the law passed by Congress in 1992 by making the following changes to reduce the risk of SBIC defaults and losses to the Federal Government:

First, increases the level of private capital needed to obtain an SBIC license from SBA.

Second, requires experienced and qualified management for all SBIC's.

Third, requires diversification between investors and the management team.

In addition, S. 1784 makes these important changes to the Small Business Investment Act to increase the availability of investment capital to small businesses:

First, increases fees paid by SBIC's which reduces the credit subsidy rate.

Second, eliminates the distinction between SBIC's and SSBIC's, while grandfathering successful SSBIC's into the new program.

Third, places a greater emphasis on SBIC investments in smaller enterprises or smaller small businesses.

In 1958, Congress first approved the Small Business Investment Act creat-

ing Small Business Investment Companies, which are private investment companies licensed by SBA, whose sole activity is to make investments in small businesses. An SBIC raises private capital which is matched by additional funds guaranteed by SBA. The private capital and SBA-guaranteed funds are invested by SBIC's in small businesses.

SBIC's fill a void that is not addressed by private venture capital firms, most of which are so large they are usually unwilling to make investments in smaller firms, which generally seek investments in the range of \$500,000 to \$2.5 million each. Since the beginning of the SBIC program, nearly \$12 billion has been invested in approximately 77,000 small businesses. Some SBIC's make equity investments in small businesses, while others make long-term loans, which are frequently coupled with rights to purchase an equity interest in the company—sometimes called warrants. The lending-type or debenture SBIC's provide long-term financing that is generally not available from banks or private venture capital firms.

Today, there are 185 active regular SBIC's and 89 specialized SBIC's [SSBIC's] in the SBIC Program. SSBIC's invest only in minority owned and controlled businesses. Together, these SBIC's and SSBIC's have raised nearly \$4 billion in private capital and have received \$1.02 billion in SBA-guaranteed funds.

Today's SBIC Program has been shaped in large part by the Small Business Equity Enhancement Act of 1992. The genesis of this important legislation resulted from the hard work of SBA's Investment Capital Advisory Council, a public-private working group formed in 1991 to address the problems confronting the SBIC Program. The 1992 act produced the first major change in the SBIC Program since its formation in 1958. It created the Participating Security Program, which incorporates some of the best practices of the private venture capital industry. The 1992 act came about in response to the persistence of my good friend and colleague from Arkansas, Senator BUMPERS, who as the chairman of the Committee on Small Business held a series of hearings focusing attention on the problems under the program. The result of the act was to strengthen the SBIC Program and to correct serious weaknesses that had been expected by well publicized problems of the past.

Since the 1992 act became law, more than 30 new participating security SBIC's with nearly \$50 million in private capital have been licensed by SBA, and 17 new SBIC's with over \$200 million of private capital have been licensed as debenture SBIC's.

There is a significant difference between the SBIC's licensed before the 1992 act and the SBIC's licensed under the most strict guidelines set forth under the 1992 act. While the 1992 act increased the minimum private capital

threshold for licensing to \$2.5 million for each debenture SBIC and \$5 million for each new participating security SBIC, SBA has imposed even more strict standards in its regulations. Under the SBA rules, debenture SBIC's must have a minimum of \$5 million in private capital and participating security SBIC's must have \$10 million in private capital.

Since the 1992 act has created two distinct types of SBIC's, it allows for investments to be tailored to meet the needs of small businesses. For example, when a small business needs a loan and can meet projected interest payments, the traditional lending-type or debenture SBIC's are available to make debt investments. For small businesses that need non-interest-bearing investment capital, the participating security SBIC's can offer an equity-type investment which anticipates an extended period of time, such as 2 to 3 years, before the small business is expected to being repayment of this investment. In this latter case, interest payments are deferred until the investments begin to generate a positive return. Under the Participating Security Program, the Federal Government's return is not limited to repayment of principal and interest—it can also share in the profits of the SBIC.

During this Congress, I have chaired three hearings investigating the success and problems associated with the SBIC Program. Testimony before the Senate Committee on Small Business has been supportive and positive. Numerous small business entrepreneurs have testified about their inability to obtain investment capital from banks and other traditional investment sources, and SBIC's are frequently their only source of investment capital. Last year, Jerry Johnson, the chief executive office of Williams Brothers Lumber Co. located near Atlanta, testified that not one bank in the Atlanta area would speak with him about asset based lending. After a lengthy search, he and his partner turned to Allied Capital Corp., a Washington, D.C.-based SBIC. Within 60 days of their first contact with Allied Capital Corp., Mr. Johnson was able to conclude his financing arrangement. Being able to clear this financing hurdle with the help of an SBIC, Mr. Johnson's company has grown significantly, adding many new employees and increasing its tax base.

Often we hear about major success stories like Federal Express and the Callaway Golf Club Co. that received SBIC funding at critical times in their early growth stages. It is, however, far more likely that businesses like the Williams Brothers Lumber Co. will be typical beneficiaries of the SBIC Program. These are Main Street enterprises located across America who have looked to traditional money sources and been turned away. The SBIC Program is filling this niche—a large niche to say the least—that picks up where banks fear to tread and Wall Street is

not interested because the investment size is too small. There are thousands of companies like Williams Brothers Lumber Co. across the country that need investment financing to support growth and new jobs and have nowhere to turn but to the SBIC Program to meet their demand for capital.

During the past year, the Senate and House Committees on Small Business have received a great deal of information about the need to strengthen the SBIC Program. In July 1995, Patricia Cloherty, chair of SBA's private sector SBIC Reinvention Council, testified on the council's recommendation to strengthen and expand the program. In addition, last summer the National Association of Investment Companies forwarded to the Senate Committee on Small Business a copy of their recommendations to improve the SSBIC program, which was also submitted to SBA's SSBIC Advisory Council.

The involvement of the private sector in analyzing the performance of the SBIC program and the insight provided by these recommendations are commendable—and very helpful to this committee. In 1995, the SBIC Reinvention Council recommended that new fees be imposed to lower the credit subsidy rate so that the program can provide a significant increase in leverage to licensed SBIC's. It also recommended certain administrative changes to improve the management and operations of the SBIC Program.

The National Association of Investment Companies [NAIC], which represents SSBIC's, also recommended in 1995 that all statutory and regulatory distinctions between SBIC's and SSBIC's be eliminated, including the deletion of all references to social or economic disadvantage from the Small Business Investment Act. NAIC proposed creating a single, combined SBIC Program that would retain an important focus on investments in small business at the smaller end of the eligible size standards. They recommended sensible improvements to make more investment capital available to more small businesses and proposed to remove the current restrictions that prohibit Specialized SBIC's from investing in companies not owned by socially or economically disadvantaged persons. This legislation includes many of their recommendations.

#### NEW FEES FOR SBIC'S

The President's fiscal year 1997 budget request included a recommendation that fees paid by SBIC's be increased to finance a significant reduction in the credit subsidy rate. The Office of Management and Budget, recognizing the positive effect of some of the regulatory changes already implemented by SBA, now is using a lower projected default rate, thereby reducing the credit subsidy rate for debenture and participating security licensees under the SBIC Program.

The administration's recommendation to lower the credit subsidy rate by increasing fees is similar to one made

last year in their amended fiscal year 1996 budget request for the 7(a) Guaranteed Business Loan Program. Accompanying their request for a fee increase were statements by SBA about how well the 7(a) program was performing.

What happened following SBA's positive predictions for the 7(a) program has been alarming. Based in part on SBA's glowing report card on the 7(a) program, Congress passed legislation to raise fees and lower the subsidy rates of the program. The changes became law in October 1995, which is about the same time SBA and OMB were beginning to work on their most recent budget request which raises the 7(a) credit subsidy rate by 150 percent and the cost of the program by \$180 million. This higher cost is the direct result of greater losses from loan defaults and lower recoveries from liquidations.

The Senate and House Committees on Small Business believe it is prudent for Congress to take steps so that we do not allow a repeat of the 7(a) problem with the SBIC Program. Based on the experience of last year, Congress should not approve any decrease in the credit subsidy rate through the increase of fees without taking some corresponding steps to strengthen the safety and soundness of the SBIC Program.

#### SBIC'S IN LIQUIDATION

In addition, evidence before the Committee on Small Business about the failure of SBA to maximize its recoveries from failed SBIC's is alarming. SBA acknowledges there are assets with a value of approximately \$500 million tied up with SBIC's in liquidation. To make this situation even more alarming, many of these failed SBIC's have been in liquidation for over 10 years, including one that was transferred into liquidation on January 5, 1967.

S. 1784 directs SBA to submit to the Senate and House Committees on Small Business, no later than January 15, 1996, a detailed plan to expedite the orderly liquidation of all licensee assets in liquidation. This plan should include a timetable for liquidating the liquidation portfolio of assets owned by SBA.

In addition, SBA needs to take a hard look at how it manages failed SBIC's that are in receivership. It is not a sufficient explanation for SBA to claim it is at the mercy of the court system in winding up the affairs of SBIC's in receivership. In each case, the court acts in response to SBA's petition, has named SBA the receiver, and SBA has retained independent contractors to act as principal agents for the receivership. These principal agents are paid hourly and appear to have little or no incentive to wind up the affairs of an SBIC. In fact, the opposite is true, and the real incentive appears to be to drag out the receivership as long as possible. Based on SBA replies to requests for information from the Committee on Small Business, we have learned that these principal receivers agents bill significant hours each year. In fiscal

year 1995, one principal agent billed over 3,200 hours for one year, the equivalent of over 8 hours per day for 365 days. Other principal agents billed over 2,500 hours each for fiscal year 1995.

At the time of the committee's inquiry into these billing practices, SBA gave no indication that it felt they were unusual. It is clear to me that without incentives to complete action on these SBIC's in receivership, the current system used by SBA will allow these abuses to continue. Although the committee did not reach a consensus on my proposal to create an incentive based system to improve recoveries from SBIC's in receivership, we will continue to monitor SBA's performance closely in this area.

For several months starting late last year, the Senate Committee on Small Business worked on draft legislation to strengthen and enhance the SBIC Program. The small business investment company improvements section of this bill is the result. It incorporates recommendations from SBA's SBIC Re-invention Council, the National Association of Investment Companies, the National Association of Small Business Investment Companies, and the President's fiscal year 1997 budget request.

Legislation essentially equivalent to the SBIC provisions of this bill was approved by the Senate Committee on Small Business by a unanimous 18 to zero vote and later was passed unanimously by the full Senate. It makes substantial progress toward our goal of strengthening the SBIC Program, while allowing the program to expand, providing more investment capital to small businesses as the cost and risk to the Government declines. It was only after nearly 18 months of study and investigation that we were able to produce such a bill. It is sound legislation that improves the safety and soundness of the SBIC Program and makes more investment capital available to small businesses. And it accomplishes all of these goals while reducing the risk of loss to the Government.

Mr. President, this legislation is very important to small businesses across the United States and the millions of employees who work for these small companies. I urge all my colleagues in the Senate to vote "yes" on this landmark bill.

EXHIBIT No. 1

VENTURE OPPORTUNITIES CORP.,

New York, NY, September 24, 1996.

DEAR CONGRESSMAN LAFALCE: Recently, I received a copy of a memo that you distributed to the Democratic members of the Small Business Committee urging them to oppose the SBIC plan set forth by Senator Bond. The reason for your opposition is its provision for the elimination of the distinction between SSBICs and SBICs, thereby melding the two programs and effectively converting 301(d) licensees into regular SBICs. As the president of Venture Opportunities Corporation, an SSBIC licensed for over 18 years, I firmly oppose your position and support Senator Bond's call for combining the two programs.

For the last several years, all SSBICs have been operating businesses without any clear

understanding of the future of the industry. We have been attempting to establish and grow our businesses in spite of the pushing and pulling that has been all too evident in this most recent Congress. One thing though, has been made very clear—all the incentives for making investments in minority-owned and controlled enterprises and maintaining our SSBIC licenses have been stripped from us. Subsidized debentures, which were the primary advantage for establishing and operating an SSBIC, were eliminated without any possibility of being reinstated. Leverage has been hard to come by. Regulations and new reporting requirements are excessive and work against any SSBIC trying to expand or raise fresh capital. Why do you think that, in spite of the tax advantages for rolling over investment profits into an SSBIC, not one investor of any size has invested in any of our companies? The answer lies in the fact that there is no true advantage to being an SSBIC and that the existing regulations and uncertain political environment present clear disadvantages.

If SSBICs are not included in the mainstream SBIC program, we will cease to exist as a vehicle to make investments in the minority community anyway. No one will have any incentive to remain active in a dying program which offers no subsidies, little leverage, excessive regulation, and limited deal flow. By including us in the mainstream program, the additional investment opportunities will strengthen our companies without diminishing our commitment to make investments in the "disadvantaged" communities for which we were originally licensed.

I urge you to please look at the reality of the situation. What you are proposing is the worst of all worlds. I, too, am a Democrat who wants to help minority communities. I put my own money into this business over 18 years ago to set up a profitable investment business while, at the same time, helping "socially or economically disadvantaged" individuals create their own businesses. I have been successful. The results of your opposition to the current proposal, however, only serves to lock our company, and our fellow SSBICs, into a dying industry without any incentive to continue to make "minority investments." We have already faced the reality of the loss of our SSBIC advantages. At least allow us the freedom to become regular SBICs while continuing to remain true to ourselves and voluntarily make investments in the minority community.

Thank you for your time. I look forward to a satisfactory resolution of this issue.

Sincerely,

A. FRED MARCH,

President.

Mr. CHAFFEE. Mr. President, I was pleased to see that the House of Representatives incorporated the Small Business Administration authorization bill into the omnibus appropriation bill. This is important legislation. Before we go to final passage of the appropriation bill, I wonder if I could get the distinguished chairman of the Small Business Committee, Senator BOND, to comment on a proposal I have, related to small business development centers.

Mr. BOND. I would be happy to.

Mr. CHAFFEE. I thank the Senator, and I will be brief. Very simply, my proposal would create a 1-year pilot program aimed at linking SBDC's with export assistance centers.

Right now, some 35 colleges and universities across the country have both an SBDC and an export assistance cen-

ter on their campus. Bryant College in Rhode Island is one such facility. The folks up there have done a super job on behalf of our State's small businesses. But in no instance that I am aware of are two of these important facilities connected to each other. I think a lot of good could come out of taking that step. Therefore, my proposal would permit eligible SBDC's to do two things: one, hire export professionals to work on-site, and two, make the technological adjustments necessary to establish a computer link with an export assistance center.

Mr. BOND. If the Senator would yield for a question, is it his thought that such a proposal would make it easier for small business to start exporting their products overseas?

Mr. CHAFFEE. Most definitely.

One of the key services offered by the export assistance centers is access to a system called the International Trade Data Network. The ITDN works as follows. A small businessperson will come into an export assistance center, anxious to learn how to export a particular product. And by logging on to this system, the individual can find out what countries are interested in that product with a just few simple keystrokes. As I understand it, a small businessperson can even get information about potential contracts.

Unfortunately, under the contract arrangement, it is impossible to connect to that computer network at the SBDC. Instead, the individual must find the closest export assistance center, and develop a relationship with an entirely different staff, in order to learn what international trade opportunities might be available. The ITDN has proven to be a very successful tool for opening foreign trade markets. In my view, therefore, small businesses in Rhode Island and States across the country stand to benefit greatly from better access to it.

Now, my preference would have been to offer this proposal as an amendment to the SBA authorization bill. I understand, however, that the chairman and the members of the committee would like more time to mull over the idea before signing on to it. In that case, I wonder if the chairman would be willing to consider including the SBDC proposal in next year's bill?

Mr. BOND. As my friend from Rhode Island may know, the Senate Small Business Committee is scheduled to undertake a regular, 3-year authorization of our small business programs early next year. I long have been a strong supporter of efforts to increase American exports, particularly when it comes to small businesses. For this reason, I want to assure the Senator that the committee will take a hard look at this SBDC proposal as part of our review process. We would welcome his input at that time.

Mr. CHAFFEE. I thank the Senator for his willingness to examine this matter further, and look forward to working with him on it. I yield the floor.

Mr. LAUTENBERG. Mr. President, I would like to clarify the intent of the chairman of the Small Business Committee with respect to language in division D of the omnibus appropriation bill, which incorporates the Senate substitute amendment to H.R. 3719 relating to the sale of the unguaranteed portion of loans made under the 7(a) program. It is my understanding that until the Small Business Administration issues a new, final regulation setting forth the terms and conditions under which the unguaranteed portion of 7(a) loans may be permitted, or until March 31, 1997, whichever is earlier, lenders currently eligible to securitize may continue to do so under the existing regulation.

Mr. BOND. My colleague from new Jersey is correct. The securitization language contained in this legislation in no way preempts the existing SBA regulations that currently apply to participants in the 7(a) program on the sale of the unguaranteed portion of such loans until SBA finalizes a new regulation on this matter or until March 31, 1997, whichever occurs first.

Mr. LAUTENBERG. I thank my friend from Missouri and I would like to commend him for crafting another bipartisan small business bill. It is my hope that we will work closely together next year to provide guidance from the Small Business Committee to SBA as they are formulating their new securitization regulation.

#### RESTORATION OF THE ELWHA RIVER ECOSYSTEM

Mrs. MURRAY. Mr. President, section 114 of the Interior portion of this omnibus appropriations bill addresses the Elwha River Ecosystem and Fisheries Restoration Act, Public Law 102-495. I would like to reflect on some of the legislative history of that section.

While section 114 slightly amends the Elwha Act, it also sustains and confirms the Elwha Act itself. The amendment simply provides for one new option in this restoration process: The State of Washington may purchase the dams for \$2 after the Federal Government has bought them for \$29.5 million from the current private owner.

Should the State wish to acquire two aging dams, it must enter into an agreement with the Secretary of the Interior to discharge all of the obligations of the Federal Government, as established in the Elwha Act. Although it is almost impossible to envision a basis on which the State might choose to purchase these projects, this amendment at least makes such a decision possible.

It is important to reiterate, the State may acquire the dams only if it agrees to remove the two dams, restore the fisheries, provide numerous tribal obligations, protect the local water quality, and do everything the Federal Government was committed to doing under the original Elwha Act. I specifically want to stress that the State must undertake all of the obligations of the Act, including section 3 (a), (c), and (d), as well as sections 4, 7, and 9.

In case my colleagues were not aware of the current State responsibilities for fisheries in Washington, the State manages fishery resources within State waters. It is required to manage these resources in a manner consistent with the Boldt decision regarding tribal treaty rights to fishery resources. The obligations under the Elwha Act are far more expansive.

I need to clarify a mistake made this weekend. Senator GORTON and my staff agreed Friday to report language that provided: "None of the requirements of the Elwha Act are changed unless the State elects to exercise its option to purchase and remove the projects." As a colloquy between Senator GORTON and myself at the end of the bill reflects, that is the intent of the managers.

This colloquy makes clear an implied intention of the amendment: If the State does not exercise its new option, then the Secretary and the United States remain fully obligated under this act to acquire the dams, remove them, restore the river's ecosystem and fisheries, and deal honorably with the tribes. Until such time as the binding agreement provided for in this amendment is offered by the State and approved by the Federal Government, the Federal Government must continue to carry out its responsibilities under the Elwha Act with all due speed.

I do not support the approach taken by this amendment. However, my solace lies in my belief that the State would not—and should not—accept this option. Restoration of the Elwha ecosystem is a Federal responsibility. It is on Federal land, in one of this nation's most amazing parks and rainforests, the Olympic National Park. Only the Federal Government is responsible, via its trust obligations, to the S'Klallam people who have sacrificed so much as others have destroyed an historic religious and cultural icon, the abundant salmon runs of the Elwha.

Despite reservations about this amendment, I am pleased with the true appropriations work done in this bill, that is allocation of funds to acquire these dams. I strongly support the \$4 million appropriated for fiscal year 1997. The Congress provided the same amount last year. I look forward to working to ensure the next administration demonstrates its commitment to this project with a substantial increase in its budget request for this important fisheries restoration project.

The Elwha River and ecosystem are precious to the tribes, environmentalists, Olympic Peninsula communities, commercial and sport fishers, and other people throughout the region and country. This river system was one of the most productive salmon rearing and spawning resources in the Pacific Northwest. Today, those fisheries are devastated. I appreciate the nearly \$300,000 allocated in this bill for emergency measures to provide some relief for species currently imperiled.

I am committed to working with Senator GORTON and the next Adminis-

tration in the 105th Congress to ensure the Elwha ecosystem is fully restored as soon as possible.

#### ELWHA ACT

Mrs. MURRAY. Mr. President, would the senior Senator from Washington yield for a question on the bill language amending the Elwha Act included in the Interior section of the omnibus appropriations bill?

Mr. GORTON. I will be happy to yield.

Mrs. MURRAY. Is it a correct interpretation of the language in section 114, that none of the requirements of the Elwha Act are changed if the State of Washington elects not to purchase the projects?

Mr. GORTON. The Senator is correct.

#### APPROPRIATIONS FOR CHILDREN

Mrs. MURRAY. Mr. President, I rise today to address my colleagues about a matter that concerns the American public deeply—the well-being of their children.

I have come to the floor myself several times these past 2 years to talk about our children's future. Since January of last year, when the House voted to cut school lunches and other nutrition programs; to this past spring, when I reported on my children's forums in Washington State; to just a month ago, when the Senate finally voted to require hospitals to allow new mothers to spend at least 48 hours in the hospital when delivering a baby, I have been a frequent and avid speaker on issues affecting children and families.

I have always tried to present children's issues in three basic categories: Their health, their education, and their ability to contribute to society in the long term. In my view, those ideas are pretty straightforward: every child has a right to good health; every child has a right to an education; and every child has a right to grow up in strong, nurturing communities. The cycle is simple: a child who is healthy is able to learn; a learned child is able to participate in society; a society of contributing adults is able to uphold its responsibilities to the children. Again, and again, and again.

This has been a very strange 2 years for children's policy. There have been great victories, such as health insurance portability and mandatory maternity care. Threats have been turned aside, such as cuts in school lunches, jeopardizing Medicaid services for children, and elimination of the Safe and Drug-Free Schools Program. And there have been defeats—reductions in student loans and direct lending, and a radical welfare bill that leaves millions of poor children in limbo.

As we near the end of the 104th Congress, I would like to take a moment to explore some of the highs and lows for children, some of the accomplishments we have made that will help children, and some of the problems we still face, and which will require our continuing attention in the next Congress.

After much wrangling, the fiscal year 1997 Omnibus Appropriations Act continues our investment in young people's well-being in some important areas:

In infant health, the Healthy Start Program has made significant gains against infant mortality in several high-rate communities around the Nation. In spite of initial attempts to cut it, Healthy Start funding was increased from \$75 million to \$96 million. Healthy Start has proven itself across partisan lines by creating effective models for other communities. And, like many other children's health programs, it is very deserving of an increase.

Also, the maternal and child health services block grant was funded at \$681 million. The block grant supports local communities in their efforts to provide many essential health services, including prenatal care, newborn screening, and care for children with disabilities.

Other health areas, such as funding for the National Institutes for Health, and funding for the Ryan White Act, and for AIDS research, also met at least minimum targets in the bill.

Head Start works toward the improvement of the health and education of needy youngsters. Arguably, this program has done more for young children in terms of getting them healthy and ready for school than any other. It demands to be retained and expanded. The level of \$3.98 billion in this bill will allow the program to keep pace with inflation. This is good, but this will be an obvious program to expand next year.

In the area of education funding, once Head Start has readied children for school, we must make sure they stay on equal footing with their peers. One way to do this is to assure they have access to educational technology. If we do not continue to give students access to the technology of today, they will not be able to get or hold the jobs of tomorrow. I am glad the appropriations bill continues our investments in new education technology and technology challenge grants.

We have made other positive efforts this year, such as my legislation which will put surplus government computers in schools. But these efforts will be less effective unless we are also investing in new technology, including networking capability, new hardware and software, and teacher training that schools will need to succeed.

The Safe and Drug Free Schools Program also fares better under this bill than I had hoped. This program increased by \$56 million, which pays for educational curriculum specifically designed to give students options to the violence and drug use we see young people combat daily in today's society. Every school district in the country gets some of this money, because there is no community in which drugs do not present a threat to the potential of young Americans.

Beyond technology, funding the School-to-Work Program is vital.

School-to-Work shows students the connection between what they learn in the classroom and what they must know in the workplace. These programs have been funded at \$400 million, which is a \$50 million improvement over last year's level. There is no better investment we can make for the 75 percent of high school graduates who do not end up with a college degree.

When it comes to education, we too often forget adult students. In most areas of this bill, we were only able to hold the line, and to survive. But in at least one area that is supported by Members of both parties, we were able to provide a much-needed increase for adult basic education—adult literacy. The students here are some of the most heroic people in our country.

Many adults in this country are unable to read to their own children, or are faced with tests in the workplace that mean the difference between employment and unemployment. It is very difficult for these same adults to go to programs at their local community college, or run by a nonprofit organization, and learn to read. It is truly courageous. As they learn, they get better jobs, they provide better help to their children in school, and they contribute more to our society. This was a great next step; but especially with the welfare bill taking effect now and in the near future, we need to do more.

In areas of citizenship, one of our best investments is Americorps. Americorps builds on the best traditions of the Civilian Conservation Corps, the G.I. bill, and the Peace Corps, by rewarding people for working to improve their communities. It was eliminated in the House version of the VA-HUD bill, so I am glad to see that Americorps programs were returned to their 1996 levels. We should have new investments here, but at least we are continuing our investment.

There are still several areas of this Appropriations Act that do not meet the test of providing at least the minimum basic standards for all young people in this country.

In basic child health, child immunization funding is \$20 million lower than the level necessary. To underfund such a vital area, when we have seen outbreaks of measles and other diseases in my State and around the Nation, is a move I do not understand and find troubling. We must move forward, and expand immunization to deal with the needs we know are out there. The prevention we provide, compared to the cost of treating the diseases we allow, is not only cost effective, but also the right thing to do. Additional appropriations would allow us to fund the infrastructure, education, and registries which would get immunizations to the underserved children who need them most.

On education, the huge task before us is in the area of teacher training. Goals 2000 was increased in this appropriations bill, but Eisenhower professional

development activities were cut this year. If our schools succeed in the next century in teaching job and thinking skills to students, it will be because of our teachers.

Our current teaching corps is aging and many will soon be retiring. Research shows that for one teacher to learn one new skill that she or he can reproduce in the classroom, they need to spend several hours practicing that skill under supervision of a master teacher.

When I look at the investments we must make to allow young people to be the best possible citizens in our communities, I see that the Senate has again made a mistake. The Summer Youth Employment Program is funded equal to 1996 funding, but here is one area where extra investment truly would pay off with results for our communities. Young people are always telling adults that they do not have anything to do, especially when school is out. Summer Youth Employment helps teach the skills of work and work attitudes that will reduce violence, and improve young people's confidence and self-control. Earlier versions of the bill would have meant 134,000 fewer jobs for young people this summer. When we are all working so hard to keep young people involved and interested in productive activities, this cut is absolutely the wrong thing to do.

Children and young people deserve their Senator's very best decisionmaking. I would argue that children and young people need our attention and best efforts more than any other group of people in our country. What we have done here in this Appropriations Act, is to reject the open assaults on children's programs we saw earlier in this Congress. In order to get beyond a survival level, to a place where we can say we are actually investing in the future, we must expand funding in preventive areas: in access to preventive health services, in the improvement of teacher training, and in the expansion of productive activities for youth.

This Congress has shown that it can muster the foresight and compassion it takes to deal with issues affecting children. This Congress has also made some decisions I fear may have disturbing effects on countless young people. I have worked hard during this Congress, as have others, to do the very best for all of our children. Let us build upon this fiscal year 1997 Appropriations Act, so our actions will be remembered well by this Nation's children when they are old enough to vote.

AMTRAK

Mr. LAUTENBERG. Mr. President, I am especially pleased with the additional funding included in this continuing resolution for Amtrak.

Funding for Amtrak's capital accounts has followed a very torturous path this year. The administration's budget request for fiscal year 1997 embodied its endorsement of the concept that Amtrak should strive for self-sufficiency—that it should be free of a



Federal operating subsidy within the next 6 years.

The administration recognizes that the key to self sufficiency for the railroad is substantially increased investment in its capital plant—that a self sufficient Amtrak will require state-of-the-art, first-class, reliable equipment—clean stations and modern, efficient service.

In its budget request for 1997, the administration called for a \$232 million increase in funding for Amtrak's principle capital accounts.

Unfortunately, our House colleagues met this challenge with a transportation bill that singled out Amtrak for devastating cuts. The House-passed transportation appropriations bill slashed Amtrak capital funding by \$145 million, more than 42 percent—providing zero for the Northeast Corridor Improvement Program—[NECIP].

Fortunately, thanks to the help and wisdom of Chairman HATFIELD and many of my colleagues, the Senate bill provided Amtrak an overall increase for these crucial capital accounts including the full \$200 million requested by the President for NECIP.

While the conference agreement on the regular transportation appropriations bill was still a substantial improvement upon the House-passed bill, funding for NECIP ended up 42 percent below the President's request.

During conference on the regular fiscal year 1997 transportation bill, I stated I would seek additional funding for NECIP in the continuing resolution. So I was pleased to work with Chairman HATFIELD to construct a provision for this continuing resolution that added \$60 million to NECIP while simultaneously providing \$22.5 million to keep several routes in operation—routes in various parts of our country that were slated for termination due to Amtrak's current financial difficulties. This funding was completely offset with a series of noncontroversial rescissions.

Mr. President, I have said time and time again that the key to Amtrak's future is the expeditious completion of the major infrastructure improvements in the Northeast corridor. Amtrak's own studies indicate that all of the increased revenue Amtrak can hope to capture in the near term will come from the Northeast corridor.

I have also long believed that we should have a financially healthy and adequately capitalized national railroad that serves as many areas as possible. As such, I was pleased to support Members' efforts to maintain service to their States and throughout the country.

But as we work to keep the national Amtrak network together and avoid route terminations, it has to be recognized that the key to Amtrak's self sufficiency—the key to Amtrak generating enough revenue to operate lines throughout the Midwest and the West, is adequate funding for Amtrak's Northeast corridor.

This is not just the opinion of a Senator from the Northeast. It is written

clearly across Amtrak's balance sheet. The Northeast corridor carries half of all of Amtrak's riders and generates well over half of Amtrak's passenger-related revenues.

Indeed, Amtrak's President, Tom Downs, recently testified to the Senate Commerce Committee that, were it not for the recent positive financial performance of the Northeast corridor, the trains that were slated for termination in the next few months would have been terminated several months ago.

As such, I am very pleased that this continuing resolution includes our amendment providing the additional \$82.5 million for Amtrak, including the additional \$60 million for NECIP. This will bring the final funding level for NECIP to \$175 million. While this is still \$25 million below the administration's request, it is well above last year's level.

This funding is essential to assure the development of efficient high-speed rail service throughout the entire Northeast before the end of the century. It will be that kind of service that will produce the revenue to allow Amtrak to avoid service cuts elsewhere in the country.

I thank my many allies in this effort. Most notably, I want to thank our Chairman, Senator HATFIELD, who stood firm throughout his negotiations with the House on this item. Also, Senator WYDEN, Senator BIDEN, Senator ROTH, Senator HUTCHISON, Senator BUMPERS, Senator PRYOR, Senator PELL, Senator SHELBY, and the majority leader Senator LOTT.

Mr. INOUE. Mr. President, I rise today to address section 330 of the Omnibus Appropriations Act, which amends the Rhode Island Claims Settlement Act to preclude the Narragansett Indian Tribe of Rhode Island from conducting gaming on its lands under the authority of the Indian Gaming Regulatory Act.

Contained in the general provisions of the bill relating to the Interior Department appropriations and the narrative which accompanies section 330, is a colloquy that I engaged in with Senators PELL and CHAFEE on September 15, 1988.

Should the inclusion of this colloquy in the measure be perceived as an indication of my support for this provision, I feel that I must set the record straight.

I believe that the record should show that at the time of our colloquy, there was an underlying premise upon which our discussion was based, which I have since learned, was erroneous.

That underlying premise was that there had been no intervening events of legal significance that would warrant any change in the provisions of the Rhode Island Indian Claims Settlement Act.

At the time that the Rhode Island Indian Claims Settlement was agreed to in 1978, the Narragansett people were organized as a State-chartered corporation. Given that status, it is perhaps

understandable that the settlement act provided for the extension of State criminal, civil, and regulatory laws to the settlement lands.

But in 1983, the Narragansett Indian Tribe achieved federally-recognized status, and in 1988, a few days before the September 15, 1988 colloquy, the tribe's settlement lands were taken into trust by the United States.

These two intervening events are important because federally-recognized status generally confers upon tribes exclusive jurisdiction over their lands, and when their lands are taken into trust, the protections of Federal law are extended to the lands, and the combination of Federal and tribal law and jurisdiction over the lands acts to preempt the application of State laws to such lands.

Indeed, the legal significance of these intervening events was of such import, that in 1994, the First Circuit Court of Appeals concluded that the provisions of the Rhode Island Indian Claims Settlement Act were affected by the two events, and that the State no longer has exclusive jurisdiction over the settlement lands. The first circuit held, instead, that the State's jurisdiction was concurrent with that of the Narragansett tribe.

Let us be clear about what section 330 of the Omnibus Appropriations measure has as its objective—it will effect a return to the State of the law as it was in 1978, notwithstanding the fact that the tribe is now federally-recognized and would otherwise enjoy the status of other federally-recognized tribes, and notwithstanding the fact that the tribe's settlement lands are now held by the United States in trust for the tribe and would otherwise not be subject to the exclusive jurisdiction of the State of Rhode Island.

Some might question why this extraordinary action is being taken—why this provision was so important that the jurisdiction of the authorizing committees was circumvented and this amendment to substantive law, which by the way, has absolutely nothing to do with the appropriation of funds in fiscal year 1997—was included in this spending bill. The answer, as I understand it, is to prevent the tribe from operating a bingo hall on tribal lands.

In my 17 years of service on the Committee on Indian Affairs, in my 8 years of service as the committee's chairman, and for the last 2 years, as the committee's vice-chairman, I have, for the most part, been proud of the manner in which the United States has dealt with the Indian nations on a government-to-government basis.

We have attempted to reverse or at a minimum address the effects of some of the darker chapters of our history as a Nation when it comes to our treatment of the indigenous people of this land. We have resolved to consult with them on any law or policy which will affect their lives or their Governments, and indeed, Federal law requires that we do so.

But today over the strenuous and adamant objections of this tribe, we are enacting into law a provision that holds the potential to forever change their lives, without the benefit of hearings, in the absence of any record that would serve to justify our action, and without any consultation with the affected tribe.

I have advised my colleagues from Rhode Island that I could not support this provision. I also so advised the President of the United States, the minority leader, and the Members of the House and Senate Appropriations Committees. And so, Mr. President, it will come as no surprise to my colleagues, when I state my intention, as I do today, to call for hearings early in the next session of the Congress on this matter.

And further, I want to put others on notice that as long as I continue to serve in this body, the action we approve today, will not serve as a precedent for similar action affecting other tribes, nor will it define the manner in which we deal with the Indian people.

Mr. President, our constitution establishes a distinctively different framework for our relations with the Indian tribes, and 200 years of Federal law and policy have been constructed on that foundation. We are a Nation which prides ourselves on our honor and integrity in our dealings with all people. We owe no less to this Nation's first Americans.

Ms. MIKULSKI. Mr. President, I will vote for the Omnibus Appropriations bill today.

I will vote for this bill because the funding levels it provides will help to meet the day to day needs of working Americans and their families.

This bill addresses Democratic priorities. Democrats are working for health security, paycheck security, personal security and national security. The American people have made clear that these Democratic priorities are theirs as well. So I am pleased that this bill provides support for programs in each of these areas.

Let me speak first about health security. I am pleased that health programs will receive increased funding so that scientists and researchers can continue to search for the cure for diseases like cancer, Alzheimer's and Parkinson's disease. Funding for the National Institutes of Health is increased. Funding for breast cancer research, AIDS and childhood immunization all receive needed funds to continue critical life saving work.

This funding is particularly important for Maryland, both in terms of the number of jobs generated by the NIH and the impact of the research. Institutions such as Johns Hopkins and the University of Maryland fund critical research programs through the NIH. Keeping the funding at needed levels for the NIH will truly save lives and save jobs in Maryland.

Democrats also value economic security, and know that support for edu-

cation is a key part of the opportunity structure that will create jobs now and in the future. I strongly support the education spending levels in this bill. The bill increases education spending over Fiscal year 1996 levels for key programs, including Goals 2000, Safe and Drug Free Schools, Title I, the PELL Grant program, and the TRIO Program.

For my State of Maryland, this means additional funds for cash-strapped local school districts. Maryland will receive nearly \$7 million for Goals 2000 reforms. These funds will enable local school districts to implement curriculum reform efforts to raise academic standards.

I am pleased that funding for safe and drug free schools has increased. Maryland will receive over \$7 million to help combat crime and drugs in schools. Title I is an important program to help disadvantaged students learn basic reading and math skills. Maryland will receive \$91 million for title I funding. Pell Grant funding has increased to \$2,700 for low-income college students. This means more funds will be available for thousands of Maryland college students.

The funding levels for the TRIO program have increased. TRIO provides college opportunities like Upward Bound to minority students. TRIO provides thousands of minority students in Maryland with access to higher education.

In addition to increased education funding levels, the omnibus spending bill increases funding for the Department of Labor's job training program and dislocated worker assistance program. I strongly support these initiatives, because thousands of Maryland residents will continue to receive job training assistance and help with job search and relocation assistance.

Programs that help to provide personal security are also well funded by this legislation. These programs help ensure that our communities will be safer and our children will be better protected from drugs and crime.

Perhaps most significant is that funding for the COPS program is preserved. This program has been one of the great successes in fighting crime. Thanks to this program, over 900 new police officers are patrolling the streets in Maryland's cities and towns. I am a strong supporter of this program because it is making a real difference—protecting our communities by putting more cops on the beat. This bill also includes more money to fund the Violence Against Women Act, and funds to fight juvenile crime and keep our kids away from drugs through drug prevention programs.

This bill also addresses important national security concerns. It funds the President's antiterrorism initiatives. It is a sad day that we must face the reality that terrorism has come to our communities. We must ensure that we do not experience another Oklahoma City. The best way to fight terrorism is to prevent it. This legislation takes

concrete steps to prevent terrorism by upgrading the security of our public buildings, increasing our intelligence capability, and expanding the number of criminal investigators to fight and prevent terrorism.

So key Democratic priorities are well-funded in this legislation. People will be safer in their homes and their communities, critical health research will be supported, and education and training so vital to a promising economic future will be provided. These are mainstream American values, and I am pleased to see that these values are implicit in this legislation.

In addition to providing appropriations for the agencies and Departments of the Federal Government for which individual appropriations were not approved, this bill also contains a major authorizing program. I refer to the illegal immigration bill. I am pleased that the negotiations on this portion of the bill have produced a measure which is tough on those who violate our immigration laws, but which is not punitive to those who have entered this country legally.

The illegal immigration legislation will strengthen our efforts to prevent undocumented immigrants from entering our country and obtaining employment. It will increase border patrols, create a voluntary pilot program for employment verification, and require additional INS investigators.

I had strong reservations about the conference report on this bill because of provisions which would have denied Federal assistance to legal immigrants. After all, legal immigrants have played by the rules, they pay taxes just like any U.S. citizen, and they contribute to the economy. I am pleased that the concerns I had have been addressed in this final compromise measure.

Under this compromise, we now focus on putting a halt to illegal immigration, which was our goal when we passed the Senate version of the bill. It is especially important that the so-called Gallegly amendment was dropped. Many of us were strongly opposed to this provision which would have denied a public education to illegal immigrant children. Children should not be punished for the errors of their parents.

I am very disappointed that we were not able to include the Senate-passed provisions for those seeking political asylum. The United States has always reached out to those fleeing persecution. The Leahy amendment which the Senate approved would have made sure that people seeking asylum were treated fairly. It would have given them the time they needed to present their case, and ensured that no Immigration official could send them back to their country without a fair hearing. It is disappointing that this good provision was not included in the measure. I hope we will be able to take care of this problem in the next Congress.

This omnibus appropriations bill represents the triumph of mainstream values. It rejects extremism. It addresses the concerns of America's families. The funding it provides for programs important to personal security, to national security, to economic security, and to health security ensure that we keep the promises we have made to help our working families and senior citizens. So I will vote to support this bill, and hope my colleagues will join me.

Mr. SHELBY. Mr. President, I am pleased to announce our success in passing the Shelby-Mack regulatory relief bill which is included as part of the omnibus appropriations bill. This bill will allow banks to devote additional resources to productive activities, such as making loans and extending credit to small businesses and potential homeowners. This hard fought, thoroughly debated legislation streamlines disclosure requirements, eliminates duplicative regulation and removes unnecessary filing and record keeping requirements.

I have been working diligently on a regulatory relief package for many years. It is only with tireless effort, conviction in market principles, and the blessing of a Republican Congress have we been able to turn the tides of banking legislation and provide significant regulatory relief for America's financial sector. In doing so, we have strengthened America's banking system and produced an environment conducive to competing in the rapidly changing, global financial market.

While I am convinced this bill will encourage economic growth and opportunity, by no means do I believe our job in Congress is complete. Over the years, we have witnessed an accumulation of banking laws with complete disregard to the burden it has placed on financial institutions and with very little value-added in terms of safety and soundness. I continue to believe that a more thoughtful structure of banking laws accentuating free market principles and jettisoning the heavy hand of Government regulation is the only way to ensure American financial institutions have the ability to compete in the dynamic marketplace of the 21st century. The Shelby-Mack bill is just the first deregulation bill a Republican Congress will give the American people. Next year I intend to move forward with another bill to increase the access of credit to consumers as well as strengthen the safety and soundness of the U.S. financial system.

In particular, the Community Reinvestment Act [CRA] places an enormous regulatory burden on banks—especially small banks. The truth of the matter is that banking, financial and labor regulations drive up the cost of low and moderate income housing for the very people they are intended to help. Indeed, Federal Reserve Governor Lawrence Lindsey has stated that “[a]n urban policy that increases the flexibility and creativity allowable under CRA and recognizes the wide va-

riety of financial services and the enormous diversity of the markets involved could be a powerful tool to those in the business of community development.” It is my intention to address these regulatory inequities in the 105th Congress.

Mr. President, as consumers and politicians realize the benefits of the efforts of the 104th Congress, it is my sincere hope that legislators will understand the value of independent thinking and the economic freedom we seek to bestow upon every American in the United States.

ASSET CONSERVATION, LENDER LIABILITY, AND DEPOSIT INSURANCE PROTECTION ACT OF 1996

Mr. SMITH. Mr. President, I would also like to pose a question to the chairman of the Senate Banking Committee to clarify the intent of the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 with respect to EPA'S authority to issue rules defining the scope of Superfund liability.

Mr. D'AMATO. I would be pleased to take part in such a colloquy.

Mr. SMITH. As you know, the United States Court of Appeals for the District of Columbia Circuit rules that CERCLA does not authorize EPA to issue binding rules that define the scope of liability under Superfund. *Kelley v. EPA*, 15 F.3d 1100 (D.C. Cir. 1994), 25 F.3d 1088 (D.C. Cir. 1994). Title V of this bill gives EPA limited and specific rulemaking authority on two narrow issues. The first one is the recognition of additional fiduciary capacities under new section 107(n)(5)(a)(i)(XI) of CERCLA. The second one is the involuntary acquisition of property by the United States Government under 40 CFR section 300.1105.

Mr. D'AMATO. The Senator is correct.

Mr. SMITH. It is my understanding that in granting EPA the authority to issue rules on these two narrow issues, title V does not in any way disturb the central holding in the Kelley case, namely that absent a specific delegation, that CERCLA, today, or as amended by this act, does not authorize EPA to issue rules defining the scope of CERCLA liability. I would like to confirm that my interpretation is the correct one, in order to avoid possible confusion and uncertainty in the future.

Mr. D'AMATO. That is correct.

Mr. SMITH. Finally, it is also my understanding that title V does not seek to confer upon EPA the authority to issue rules on any Superfund liability issues other than those actually specified in this bill. I would like to confirm this important point so that the actions of the Congress in adopting this legislation are not misinterpreted in the future.

Mr. D'AMATO. Again the Senator is correct. EPA is given authority only to address the two specific issues covered by title V. No other rulemaking authority is conferred or affected by this legislation.

Mr. SMITH. Thank you, Mr. President.

Mr. CHAFEE. Mr. President, it is my understanding that, under the terms of the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, the liability of a fiduciary cannot exceed the assets held in its fiduciary capacity.

Mr. D'AMATO. The Senator is correct.

Mr. CHAFEE. And, would the chairman further agree, in determining the fiduciary's liability, the language is meant to apply to the value of the assets after any improvement due to any cleanup activity which may be undertaken? In fact, Mr. Chairman, it is the intent of this entire provision to create incentives for cleanup and the productive reuse of contaminated properties.

Mr. D'AMATO. The Senator is correct.

Mr. CHAFEE. Thank you, Mr. President.

Mr. SMITH. Mr. President, I rise today to discuss language that has been included in the continuing resolution regarding clarifications to the liability of lending institutions under Superfund. During the past year, I have been working closely with Senator JOHN CHAFEE, the chairman of the Environment Committee, to enact comprehensive legislation to reform the Superfund program. The bill we introduced, S. 1285, the Accelerated Cleanup and Environmental Restoration Act of 1996, includes language to address the issue of lender liability. A version of our lender liability language is contained in the continuing resolution that we will be voting on today.

Unfortunately, S. 1285 will not make it into law before we adjourn. Despite months of daily negotiations with Senator MAX BAUCUS, the ranking member of the Environment Committee, Senator FRANK LAUTENBERG, the ranking member of the Superfund Subcommittee, as well as representatives of the Clinton administration, we were unable to obtain bipartisan agreement on this legislation. This is unfortunate, because I fervently believe that the Superfund program is badly in need of reform.

During the 104th Congress, Senator CHAFEE and I actively opposed efforts to carve out various liability concerns, deciding instead that issues such as lender liability should be included in a comprehensive reform package. Nonetheless, after discussing this issue personally with Senator ALPHONSE D'AMATO, the chairman of the Banking Committee, both Senator CHAFEE and I agreed that we would have our respective staff work together to include the provision contained in the continuing resolution. So, while I am saddened that we could not enact comprehensive Superfund reform legislation, I am pleased that we are able to address the problem of lender liability this year.

I would like to take a few minutes to discuss why this language is so important. As many of my colleagues may

know, liability under Superfund is strict, retroactive, joint and severe. As Superfund has been interpreted by the courts, banks that merely take possession of Superfund contaminated property by foreclosure, risk the possibility that they themselves could be held liable for any cleanup that may be required. Thus, a lender who had no direct involvement at the site could be on the hook for cleanup costs far exceeding the original value of the underlying property.

Because of the specter of potential Superfund liability, financial credit that is needed for redevelopment or cleanup is not extended. The results of the current liability provisions are all too evident. Homeowners cannot refinance homes, brownfields sit uselessly in our cities, and companies do not take part in voluntary cleanups for want of funds.

The language that Senator D'AMATO and I have included in the continuing resolution moves to correct this situation by clarifying when a lender is liable for environmental contamination. Lenders will not be liable unless they take an active role in management of the site. This change will significantly reduce lender concerns about making loans at these sites and will significantly increase the amount of redevelopment funding available in our Nation's inner-city brownfield areas. This development is vitally important to restore the large number of brownfields to productive use, to allow homeowners access to funds to refinance their homes, and companies to continue voluntary cleanups. The liability provisions in this bill will go a long way toward making these things possible.

I do want to clarify one issue; the language we are adopting today is not a liability carve out. Indeed, Superfund as originally passed, did not intend to hold lending institutions liable for this type of business activity. Unfortunately, a series of conflicting court decisions over the authority of the EPA to issue rules clarifying lender liability has left this issue unsettled. Thus, the language we are adopting today merely clarifies a liability outcome that was already intended by Congress.

The issue of brownfield redevelopment is a matter that has been long spearheaded by Republicans, most notably JOHN CHAFEE, and by making this one very logical change, we will be able to spur reinvestment by private financial markets in the blighted parts of our country.

As I alluded to earlier, although this issue is clearly within the jurisdiction of the Subcommittee of Superfund, Waste Control, and Risk Assessment, I was pleased to work with Senator D'AMATO to include this enlightened provision in the continuing resolution. I believe this is a positive change to Superfund, and I thank Senator D'AMATO for working with me on this issue of mutual concern.

#### PAYING-UP AT THE UNITED NATIONS

Mr. PELL. Mr. President, one aspect of the continuing resolution which

troubles me deeply is the level of funding for assessed U.S. contributions to the United Nations and other international organizations of which the United States is a member. The administration's adjusted request for this account was \$1.002 billion. The bill provides \$892 million. This level is \$110 million less than the request. It does not provide funds to pay any of our arrearages, and because it is insufficient to cover our assessments, the result will be further U.S. indebtedness, not only to the United Nations but also to some of its specialized agencies.

I know that many on the other side of the aisle, and perhaps some on this side as well, believe that the only way we can force the United Nations to make the administrative and management reforms we all seek is to withhold some or all of our contributions. I think they misunderstand the nature of the United Nations, and the U.N. environment, and also the degree to which our contributions provide leverage.

Certainly the United States is the last remaining superpower and the largest single contributor to the United Nations. But we are not the only power in the United Nations, and we cannot simply impose our demands on the organization. The United Nations is an organization comprised of 185 members. Many of the administrative and financial reforms that we hope to achieve must be voted on by the General Assembly. In order for us to succeed in that body, we must convince a majority of States that the proposed reform make sense, and do not hinder their own interests. For example, our effort to reduce the percentage of U.S. contributions to the United Nations will impact on the contributions made by other States, no doubt in the end requiring them to pay more. Certainly there are states that today can afford to pick up a greater share of the U.N.'s operating expenses. But we cannot force them to do so. We have to convince a majority of them, particularly the other major powers such as our European allies and Japan that changes in the assessment levels will, in the end, strengthen the United Nations as an institution, and thus be in the interest of all states.

Our ability to build support for reforms at the United Nations has been eroded by Congress' refusal to provide the necessary funds for the United States to pay its dues to the United Nations. Initially, the threat of withholding contributions may have been effective. It isn't anymore. This tactic has simply made the United States into a deadbeat debtor. As of this month the United States owes a total of \$1.7 billion to the United Nations—\$414 million for the regular U.N. budget, \$771 million for peacekeeping and \$542 million for the specialized agencies. Our failure to pay has subjected us to sharp criticism, particularly from our key European allies who also contribute a fair share of the U.N. budget,

and it has decreased, not increased, our leverage, particularly to promote reforms desired by the Congress.

The United Nations is very much an unruly debating society. Every member has a voice and a vote. Consensus is the primary method of decision-making. Certainly the positions of the United States carry great weight but our demands and needs, even with our veto, are not the only defining factor.

If we are serious about reforming the United Nations, we need to be serious about fulfilling our financial obligations to that institution. I hope that next year Congress and the administration will have a meeting of the minds on this issue. There must be agreement on a set of reforms that can be achieved over a reasonable time period and a formula for payment that will enable the United States to become current on its financial obligations. This kind of plan would make it clear to other U.N. members that the United States is serious, not only about reform but also about paying its dues. In my view, this is imperative if the United States is going to lead a successful reform effort at the United Nations.

#### NATIONAL INSTITUTE OF JUSTICE

Mr. ABRAHAM. Mr. President, I would like to engage the chairman in a brief colloquy to acknowledge the committee's support for initiatives under the National Institute of Justice [NIJ] account. In particular, I would like to address the NIJ's efforts to undertake a national study on correctional health care.

Mr. GREGG. I would be happy to accommodate the gentleman from Michigan.

Mr. ABRAHAM. I thank the chairman. Mr. President, let me first acknowledge the chairman and the committee for their diligent efforts to produce a fiscal year 1997 Commerce, State, Justice, and Judiciary appropriations bill.

Within the bill the committee has included language under the NIJ account that provides funding for a study on the potential health risks of soon-to-be-released inmates. This language is quite important to our Nation's criminal justice system and to nonprofit organizations devoted to assisting States with correctional health-care programs. For example, in my home State of Michigan, the National Commission on Correctional Health Care has been working with health and correctional officials to stem escalating costs and other problems associated with correctional health care. In light of the potential health risk associated with the nearly 11 million persons released each year from jails, prisons, and other correctional facilities, the National Commission is committed to assisting correctional and public health officials nationwide with correctional health-care concerns.

In addition to efforts at NIJ, I am also aware that the Centers for Disease Control believes an initiative along

these lines would be beneficial to its efforts to suppress the spread of infectious and highly communicable diseases within correctional settings. As we look to advance efforts to provide pertinent data relevant to the correctional system, we should encourage efforts like that of the National Commission, which effectively contributes to the development of information relevant to correctional and public health officials.

Mr. GREGG. My colleague from Michigan makes a strong case in support of this initiative and the work of the National Commission. I, too, appreciate the importance of NIJ programs and of nonprofit organizations that provide a better understanding of correctional health care.

Mr. ABRAHAM. Mr. President, I thank the chairman for his sensitivity to correctional health care issues.

LAW ENFORCEMENT SUPPORT CENTER

Mr. LEAHY. Mr. President, I would ask if the Senator from New Hampshire, Senator GREGG, would join me in a colloquy regarding a provision included in the Senate report for the appropriations bill funding the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies.

Mr. GREGG. Mr. President, I would be pleased to join in a colloquy with the senior Senator from Vermont.

Mr. LEAHY. I thank the Senator from New Hampshire. Mr. President, the appropriations bill reported from the Appropriations Subcommittee on Commerce, Justice, State, and Judiciary included within the immigration examinations fees account \$3,325,000 for the Law Enforcement Support Center in Vermont. It is my understanding that the \$567,550,000 provided in the omnibus appropriations conference report for immigration examinations fees includes the \$3.325 million for the Law Enforcement Center. Does the Senator from New Hampshire agree with my interpretation.

Mr. GREGG. The Senator from Vermont is correct. The funding provided for immigration examinations fees does include \$3.325 million to fund the Law Enforcement Support Center in Vermont.

FEDERAL LAW ENFORCEMENT DEPENDENTS ASSISTANCE ACT OF 1996

Mr. SPECTER. Mr. President, I would like to bring to Chairman GREGG's attention the passage of S. 2101, the Federal Law Enforcement Dependents Assistance Act of 1996, which I introduced with 10 Republican and Democrat cosponsors. S. 2101 authorizes, for the first time, educational and job training assistance for the spouses and children of Federal law enforcement officers killed or totally disabled in the line of duty. These benefits will be subject to the availability of appropriations and will be distributed to eligible dependents based on an application to be devised by the Attorney General.

This legislation passed the Senate on September 20 by unanimous consent

and passed the House of Representatives on September 26, which was too late to be taken into account by the Appropriations Committee in the fiscal year 1997 bill we are considering today. I would ask the Senator from New Hampshire for his thoughts on funding for this valuable program.

Mr. GREGG. Mr. President, the Senator from Pennsylvania has raised an important issue. The Federal Government has a responsibility for helping the families of Federal law enforcement officers who are lost or disabled in the line of duty. Educational and job training assistance is one appropriate response and deserves the support of the Congress. I would encourage the administration to consider reprogramming funds to support this effort.

Mr. D'AMATO. Mr. President, I wonder if the distinguished chairman of the Committee on Small Business would like to comment on the Senate substitute amendment to H.R. 3719, the Small Business Programs Improvement Act of 1996. Am I correct in my understanding that this legislation is included in the omnibus appropriations bill that will be considered by the Senate today, and that it contains important provisions designed to preserve and strengthen several SBA finance programs that benefit small businesses throughout the country.

Mr. BOND. The distinguished chairman of the Banking Committee is correct. Today the Senate will have an opportunity to pass a bipartisan bill that makes many improvements to the Small Business Act and the Small Business Investment Act and assures continued availability of capital and financing to small businesses through SBA's 7(a), 504 and SBIC programs. I thank the Senator for his longstanding and consistent support of small businesses, and for his understanding of their special needs in the financing area. This legislation includes the provision the chairman of the Banking Committee and I jointly developed to enhance the availability of SBIC leverage. I commend the Senator for his creativity and his support for new ways to improve small business access to capital.

Mr. D'AMATO. I am pleased that this very important new provision is included in this legislation. I believe it is appropriate for the Federal Home Loan Bank system to assist small businesses, by making additional leverage investments in SBIC's, as an element in fulfilling the Federal Home Loan Banks' community and economic development mission.

Mr. BOND. Mr. President, I ask unanimous consent to include in the record a short statement describing this new statutory provision and expressing the joint views of the Banking Committee and the Small Business Committee on this matter.

BANKING COMMITTEE AND SMALL BUSINESS COMMITTEE JOINT EXPLANATORY STATEMENT

The small business investment company improvements provisions in-

cluded in the omnibus appropriations legislation contains a conforming amendment to the Federal Home Loan Bank Act that preserves and strengthens existing law specifying that stock, obligations or other securities of certain small business investment companies are authorized investments for Federal Home Loan Banks. The current Federal Home Loan Bank Act provision refers only to small business investment companies formed pursuant to section 301(d) of the Small Business Investment Act.

This legislation amends the Federal Home Loan Bank Act to make clear that Federal Home Loan Banks are permitted, subject to any regulations, restrictions and limitations that may be prescribed by the Federal Housing Finance Board, to invest in stock, obligations or other securities of any small business investment company licensed and operating under the supervision of the Small Business Administration. This authority exists independently of whether the SBIC is owned by or affiliated with a banking organization. This amendment is intended to encourage Federal Home Loan Banks, on a prudent and financially sound basis, to play a part in satisfying the needs of small businesses for the kind of venture capital for business start-up or expansion that is made available by small business investment companies.

A Federal Home Loan Bank's loans to or investments in an SBIC will not be counted as private capital of the SBIC within the meaning of Section 103(9) of the Small Business Investment Act. The structure of the Small Business Investment Act contemplates that an SBIC, rather than raising its original private capital from governmental or quasi-governmental sources, should demonstrate an ability to raise a significant amount of capital from private sources that demand a market-based financial return. Once an SBIC has raised this private capital and has become licensed by SBA, however, Federal Home Loan Banks would be furthering the legitimate objective of economic and community development through promoting small business investment and growth.

In order to be attractive to SBICs that will, in most cases, be making long term portfolio investments, Federal Home Loan Bank investments to provide SBIC leverage should be made on a long term basis as well. Federal Home Loan Banks now routinely make long term advances to members in the normal course of business. However, under some circumstances a Federal Home Loan Bank may wish to sell or liquidate an SBIC investment prior to its stated maturity or prior to the date by which the Federal Home Loan Bank expects to receive a complete return on its investment. Because the Federal Home Loan Bank Act does not require that an investment in an SBIC be acquired directly from the SBIC, a Federal Home Loan Bank would be permitted to acquire and dispose of SBIC

investments in secondary transactions, including transactions with other Federal Home Loan Banks. In addition, a Federal Home Loan Bank, for purposes of liquidity, diversification or otherwise, may want to structure its investments in SBIC's through a trustee relationship or other special purpose intermediary. This structure is permissible under the Federal Home Loan Bank Act as long as the Federal Home Loan Bank's beneficial ownership interest in the SBIC investment is sufficiently documented and the trustee or special purpose intermediary holds only stock, obligations or other securities of an SBIC or other authorized Federal Home Loan Bank investments.

The Small Business Investment Act prescribes limits on the amount of SBA leverage made available to an SBIC. These statutory limits on SBA leverage are designed in part to achieve a fair distribution of SBA leverage among all SBICs in a situation where there may be more requests for leverage than SBA has authorization or appropriations to satisfy. A Federal Home Loan Bank should not invest in a single SBIC an amount in excess of any aggregate limits or percentages established by the Bank or by the Federal Housing Finance Board, but the statutory maximum on SBA leverage set forth in the Small Business Investment Act does not apply to Federal Home Loan Banks.

In establishing the terms and conditions on which SBIC loans or investment will be made, Federal Home Loan Banks may want to take into account both the terms and conditions on which SBA now makes leverage available to its SBIC licensees, as well as the expected risk-adjusted return and other terms on which Federal Home Loan Banks structure their advances to members. Some SBIC's receive "participating security" leverage from SBA, structured as an equity instrument rather than debt of the SBIC. Other SBICs obtain traditional debt leverage from SBA through the issuance of debentures. The language of the Federal Home Loan Bank Act gives Federal Home Loans Banks the discretion to provide leverage to an SBIC on terms similar to the equity or debt securities SBIC's now issue to obtain leverage through SBA, or on any other terms approved by the banks and the Federal Housing Finance Board.

SBA's participating security leverage offers some advantages for SBIC's planning to make equity oriented portfolio investments that are not expected to generate sufficient early stage cash flows to satisfy regular interest payment requirements. Leverage structured as equity also makes it easier for SBIC's to attract private capital from certain institutional investors that would not invest private capital in an SBIC planning to obtain debt leverage. If a Federal Home Loan Bank provides equity leverage to an SBIC, the investment could be structured as a preferred investment or otherwise sen-

ior in priority over the private equity capital of the SBIC.

If a Federal Home Loan Bank investment in an SBIC is structured as debt, the Federal Home Loan Bank could obtain a first priority security interest or an unsecured senior position acceptable to the bank with regard to SBIC portfolio investments made with the proceeds of the Federal Home Loan Bank leverage. If the SBIC has SBA leverage outstanding or subsequently obtains SBA leverage, the SBIC's issuance of the Federal Home Loan Bank debt would be subject to the Small Business Investment Act's provisions dealing with third party debt of an SBIC. Section 303(c) of the Small Business Investment Act, as amended by this legislation, requires that SBA not permit an SBIC having outstanding SBA leverage to incur third party debt that would create or contribute to an unreasonable risk of default or loss to the Federal Government, and directs SBA to permit SBICs to incur such debt only on terms and subject to such conditions as may be established by SBA. In furtherance of the public policy objectives of encouraging the development of an additional source of reduced-cost leverage and to attract additional participation in the SBIC program that will increase the amount of venture capital available for small businesses, SBA should implement Section 303(c) in a manner that does not limit the ability of Federal Home Loan Banks to provide leverage to SBICs.

Because Section 303(c) applies only to an SBIC having outstanding SBA leverage, SBA need not review or approve, and should not establish any conditions with regard to, a Federal Home Loan Bank investment in an SBIC with no outstanding SBA leverage. For an SBIC with outstanding SBA leverage, SBA should allow the SBIC to obtain additional debt or equity leverage from a Federal Home Loan Bank as long as the Federal Home Loan Bank investment does not give the Federal Home Loan Bank a priority claim on any assets of the SBIC attributable to or acquired with the proceeds of SBA leverage. Similarly, the existence of any outstanding Federal Home Loan Bank leverage should not cause SBA to decline a subsequent SBIC application for SBA leverage, as long as the terms of the outstanding Federal Home Loan Bank leverage do not give the Federal Home Loan Bank a priority claim on SBIC assets attributable to or made with the proceeds of any SBA leverage.

#### THRIFT TAX PROVISION

Mr. ROTH. Mr. President, as chairman of the Committee on Finance, it is my responsibility to make sure that tax-related measures are reviewed and evaluated by the Committee on Finance. Like other committees, the Committee on Finance takes very seriously its jurisdictional responsibilities. The House Committee on Ways and Means similarly exercises its jurisdictional responsibilities on tax-related measures in the House of Representatives.

Historically, the Committees on Finance and Ways and Means have opposed the inclusion of tax-related measures in appropriation bills. However, because of the unusual circumstances surrounding this appropriations bill, Mr. BILL ARCHER, chairman of the House Committee on Ways and Means, requested that the Committee on Appropriations include a tax-related measure in the omnibus appropriations bill.

Mr. President, I concur with Mr. ARCHER's request. But my colleagues should be aware that this is a unique situation. The tax-related measure will expedite consideration of important banking legislation that is also contained in the bill. The tax-related measure does not change the Internal Revenue Code. It merely clarifies the current-law treatment of special assessments that many thrifts will pay in accordance with the banking legislation. The staffs of the Committees on Finance and Ways and Means worked together to develop the tax-related measure.

Since the tax-related measure was initiated by the Committees on Finance and Ways and Means, it should be understood that its inclusion in the appropriations bill does not establish a precedent for the Committee on Appropriations to initiate or include tax-related measures in future appropriations legislation. Mr. ARCHER made a similar statement in his letter to the House Committee on Appropriations.

Mr. President, I ask unanimous consent that Mr. ARCHER's letter to the House Committee on Appropriations be printed in the RECORD at this point.

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

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
*Washington, DC, September 27, 1996.*

Hon. BOB LIVINGSTON,  
*Chairman, Committee on Appropriations, U.S. House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I write regarding possible inclusion of the so-called "BIF-SAIF" provisions in the upcoming omnibus appropriations bill. Specifically, I understand that the BIF-SAIF package will include the imposition of a special assessment to capitalize the Savings Association Investment Fund (SAIF).

As you may know, the Committee on Banking has been in consultation with the Committee on Ways and Means and the Administration to determine whether this special assessment would be deductible for tax purposes. Representatives of the Treasury Department have informed us that they believe that the special assessment would be deductible under current law. We share that view.

Nonetheless, I have suggested a statutory clarification on this matter for the BIF-SAIF package. This language does not amend the Internal Revenue Code and merely reiterates the understanding shared by this Committee and the Administration on the appropriate tax treatment of the special assessment under current law.

Historically, the Committee on Ways and Means has opposed inclusion of tax-related measures in appropriation bills. We have

also been circumspect in sending to the Senate potential revenue bills which may become vehicles for extraneous legislation. I know that you share my views on these matters.

However, in order to expedite consideration of the BIF-SAIF package, I have agreed to the inclusion of this clarifying language in the omnibus appropriations bill. This is being done only with the understanding that the omnibus appropriations bill will be considered as a conference report which will not be subject to further amendment in the Senate, that no additional revenue-related matters will be included in the final conference report, and that the language to be included has been prepared by the staff of the Committee on Ways and Means, which is substantially similar to that included in H.R. 2494, reported by the Committee on Ways and Means earlier this Congress.

This is also being done with the understanding that this Committee will be treated without prejudice as to its jurisdictional prerogatives on such or similar provisions in the future, and it should not be considered as precedent for consideration of matters of jurisdictional interest to the Committee on Ways and Means in the future.

Finally, I would ask that a copy of this letter be placed in the Record during consideration of the bill on the Floor. Thank you for your cooperation regarding this matter. With warm personal regards,

Sincerely,

BILL ARCHER,  
Chairman.

CHILD PORNOGRAPHY PREVENTION ACT OF 1996

Mr. BIDEN. Mr. President, I rise with my friend Chairman HATCH to commend the inclusion of the Hatch-Biden child pornography bill in the omnibus continuing resolution. This bill will strengthen our ability to track down and crack down on child pornographers.

Those who produce and traffic in child pornography—who exploit the most vulnerable and innocent among us—are, by my lights, among the worst of the worst. They cause a harm that is unspeakable and a damage that is often irreparable.

Child pornography is not an art form and it is not a type of expression that we must tolerate even though we find it intolerable. To the contrary: We have an obligation—a moral obligation, in my mind—to protect our children from this type of abuse—which steals their innocence and shatters their dreams.

I consider myself an unapologetic champion of the first amendment. Yet I believe that child pornography deserves no, and I mean no, first amendment protection.

Over the years, the computer has become an increasingly powerful weapon of the child pornographer and today, technology is making it even easier for child pornographers to make and sell their wares.

What we're seeing now is this: Pornographers are taking pictures of children and morphing them, with the help of computer technology, to make it look as if the children are engaging in sexual conduct.

That means that it's not necessary, these days, to actually molest children in order to produce pornography that

exploits and degrades them. All that's necessary is an inexpensive computer, some software, and a photograph of the little boy or girl down the street.

We must move right here and now to put this new generation of child pornographers behind bars.

But we must also be mindful that we live under a constitution which includes a robust Commitment to free and open speech and which necessarily tolerates what is sometimes called the speech we love to hate.

As a threshold matter, any statute that we write must pass the first amendment's test. Otherwise, it will sit on our books, unconstitutional and unenforceable, doing not one child one bit of good.

I am concerned that a provision in this bill which criminalizes the depiction of something that appears to be a minor engaging in sexually explicit conduct will not pass constitutional muster.

This proposal would cover purely imaginary drawings, as well as depictions of adults who appear to be minors engaged in sexually explicit conduct, like a documentary that deals with child sexual abuse, featuring a 19-year actress who looks like a very young girl.

Don't get me wrong: like many Americans, I would like for a lot of the stuff that's out there today, even if it's just a figment of someone's warped imagination, involving no actual children at all, to be banished from the face of the Earth right now and forever.

But I am not king. And it is our Constitution that still reigns supreme and whose first amendment principles will not, in my opinion, countenance this sort of broad and open-ended prohibition.

The constitutional analysis begins with the famous 1982 case of *New York versus Ferber*, in which the Supreme Court first recognized the child pornography exception to the first amendment. In the case, the Court pointed to a number of compelling reasons to justify a total and outright ban of this sort of material:

It causes psychological and physical harm to children used as subjects;

It creates a permanent record of sexual abuse;

It fuels the child pornography trade; and

Its artistic and social value is limited, to say the least.

At the heart of the analysis, and why the Court justified such a categorical and complete restriction on speech, is a very straightforward idea: Children who are used in the production of child pornography are victims of abuse, plain and simple. And the pornographers, also plainly and simply, are child abusers.

In the cases following *Ferber*, strict restrictions on child pornography are predicated on the same rationale: The creation of the pornography hurts the children who are its subjects.

That's why I am concerned that the appears to be standard, which does not in any way involve an actual child in the creation of child pornography, will not survive the inevitable constitutional challenge to this legislation.

My view is shared, among others, by Harvard professor Frederick Schauer, who was the commissioner of the now famous Meese Commission on pornography.

In testimony before our committee, Professor Schauer expressed the opinion that the appears to be standard in the bill would most probably fail the *Ferber* test and would therefore become a failed weapon in our crusade against pornography.

That is why I introduced an amendment to Senator HATCH's proposal, which would make it a crime to create a visual depiction that makes it look like an identifiable minor is engaging in sexually explicit conduct, whether or not the child ever actually engaged in the conduct.

Here's what this would mean: If a pornographer uses an image, a face or other identifying feature of an actual child, and, via computer morphing or any other means, makes it look like the child is engaging in sex, that will be a crime.

Unlike images that are completely conjured up in someone's imagination, or which employ adults who look like children, these kinds of images do cause real harm to real children:

Although the child may not have actually engaged in the sexual conduct, the image creates an apparent record of such conduct. In my book, that's abuse and that's harm, period.

These kinds of morphed images can be used to blackmail a child into engaging in sexual activity, by intimidating him, or by threatening to show the pictures to others if he doesn't comply.

Also, as the experts tell us, child pornography has a very long life as it often passes among many, many hands, thus victimizing a child who's in the picture time and again.

The definition of identifiable minor in this bill makes it clear that proof of the minor's identity is not required for the prosecution to make its case, only that the child is capable of being identified as an actual person. It also does not matter whether the person depicted is a minor at the time the depiction is created, or whether the depiction is made from a childhood image of a person who is now an adult.

I believe that my proposal is consistent with the *Ferber* standard with its bottom line focus on the well-being of actual children.

Do not get me wrong: I am wholly sympathetic and supportive of Senator HATCH's view that even imaginary depictions that do not involve actual children can, indeed, cause harm. This kind of stuff can be used by pedophiles to entice other children into sexual activity.

But the point is this: The act of enticement, of course, is itself a separate

crime and I think we all agree that we should throw the book at anyone who would do such an unthinkable and despicable thing.

But the Supreme Court has drawn a line in the sand when it comes to the production of the pornography itself and the constitutional line stops with the involvement of real children. And again, it is only a constitutional law, one that will be upheld and enforced, that will serve to protect our children.

In order to more gracefully bring together my proposal and Senator HATCH's, this substitute merges our two approaches into one new section to be added to the criminal code. And though I have agreed to this stylish accommodation of our two ideas, let there be no mistake:

We clearly intend that if any portion of the bill's definition of child pornography, such as the "appears to be" standard, is struck down as unconstitutional, the remaining provision, the prohibition on material involving an identifiable minor, will stand on its own, completely severable.

Our intention here is made crystal clear in the substitute bill's new severability clause.

I'd like to say a brief word about another aspect of this bill. It includes a number of penalties, many of which are properly tough and severe. And though I believe that we should give child pornographers no quarter, I do not think the creation of new mandatory minimums is smart sentencing policy.

One of the main problems with mandatory minimums is that they treat different types of offenders the same, which means that the really bad guys get the same punishment as the less blame worthy. For example, under the proposal added to this bill by Senator GRASSLEY:

A person who puts out an ad seeking to buy soft core child pornography is going to get the same 10-year mandatory minimum sentence as the guy who actually employs or entices an 11 year old to make hard core, violent porn. By the same token, that person who advertises to buy child porn will get the same 10-year mandatory minimum as the parent who markets his child for child pornography.

Make no mistake about it: All these guys should get a tough sentence. But they shouldn't get the same sentence. The same sentence may be too tough for the less culpable, and not tough enough for the most culpable. That's not smart sentencing policy.

As Chief Justice Rehnquist has noted:

One of the best arguments against any more mandatory minimums, and perhaps against some of those that we already have, is that they frustrate the careful calibration of sentences, from one end of the spectrum to the other.

These reservations notwithstanding, I believe that we must get on with the very important business at hand which is to stem the tide of this new generation of child phonography. We have no

time to waste, and I am pleased that this bill will soon become law.

I thank my colleagues for their support.

OBJECTING TO THE SUMMARY EXCLUSION AND ASYLUM PROVISIONS

Mr. LEAHY. I find myself here again on the Senate floor faced with a conference report that contains provisions that the Senate and this Senator never had a fair opportunity to consider and that will do grave damage to the United States' place in the world as a refuge for the oppressed and as a champion of human rights.

I say "again" because I first came to the Senate on the issue of asylum and summary exclusion last April 17 to oppose similar provisions in another conference report. I offered a motion to recommit that conference report on S. 735 in order to strike those sections added to that bill in the dark of night modifying our asylum processes, establishing summary exclusion and precluding judicial review. I objected then to those sections of that bill that had not been previously considered by the Senate and that had nothing to do with preventing terrorism, but were snuck into that conference report to alter general immigration law. I failed in that attempt to recommit the antiterrorism conference report by a mere 7 votes.

I knew from the beginning that my motion to recommit has little chance of success because Members were intent on passing an antiterrorism bill in connection with the anniversary of the Oklahoma City bombing. Several Senators came up to me and said that they would have an easier time voting with me on the immigration bill and encouraged me to fix the problem when the immigration bill was considered in the Senate.

When we considered the Senate immigration bill in May, I continued my efforts. With Senators DEWINE, KERRY and HATFIELD I cosponsored an amendment to the asylum and summary exclusion provisions of that bill. With the support of a bipartisan group of Senators, including Senators KENNEDY, CHAFEE, SIMON, JEFFORS and HATCH, we prevailed. On May 1, 1996, the Senate approved our amendment 51 to 49 and it replaced the summary exclusion provisions that had been in the immigration bill.

The bill that the Senate passed last May did not undermine our asylum processes or require summary exclusion where it was not necessary or appropriate. In the only vote by either body on these issues the Senate stood with those fleeing oppression and upheld our tradition as a haven for the oppressed and for those seeking religious and political freedom.

We have now come full circle. We in the Senate again find ourselves confronted by a time deadline and an unamendable bill. I am aware of where we are on the legislative calendar and can see other Members looking at their watches as they struggle to conclude

this Congress and return home to campaign for reelection. I suspect that most Members have not even had a chance in the waning days of this Congress to examine the immigration bill conference report, let alone begin to explore what it will mean to those who will be denied refuge from oppression in other parts of the world under its provisions. There is no time, no real opportunity to educate ourselves or focus attention on this important matter. The majority simply rolls it out as part of "must-pass" legislation at the end of the session and it cannot be stopped.

I know that this legislation will pass and I expect that President Clinton will sign it—despite concern that these provisions may well violate our treaty obligations and undercut our world leadership on this issue. I recall that last February President Clinton wrote to Congressman BERMAN and noted his concern that "we not sacrifice our proud tradition of refugee protection and support for the principles of the Convention Relating to the Status of Refugees." The President wrote: "This critically important Treaty, which responded to the displacement that followed the Second World War, has enjoyed broad bipartisan support in the Congress. Moreover, our efforts to urge other governments to comply with its provisions has been a major element of our diplomacy on international humanitarian issues."

Specifically on the matter of summary exclusion, the President wrote that he favored "carefully structured stand-by authority for expedited exclusion." That is what I would provide, but the approach that the conference report rejects.

With regard to the overall proposals for summary exclusion that the House was pressing, the President wrote that they were "too broad and would also result in considerable diversion of INS resources." He noted that: "These provisions seem particularly unnecessary in view of the successful asylum reforms we have already initiated." I agree.

I look forward to working with President Clinton when we return next January to correct the excesses of this bill and to right the balance that is needed if we are to honor our commitment to our tradition and those in troubled areas of the world who look to America for refuge.

We did not have an opportunity to craft sensible summary exclusion and asylum provisions and this measure does not bear the Senate's stamp of approval. All Democratic conferees were barred from even offering motions or amendments. I was prepared to offer an amendment to correct the excesses of this conference report and to reaffirm the human rights of those who look to this great country for refuge, but there is no real opportunity today to urge those changes to this legislation. Just



as its provisions will result in the summary exclusion of some with valid asylum claims and its truncated procedures will certainly result in the United States returning refugees to countries where their lives and freedoms are in danger, so, too, the circumstances in which the Senate considers this matter have summarily excluded this Senator from participation in the House-Senate conference on this bill and precluded any opportunity for amendment or modification of these provisions.

Let me share with you the stories of some of those who have recently succeeded in gaining asylum in this country who would most likely have been denied our refuge had the bill and its procedures governed.

One of the best recent examples of someone who could have lost his life had the bill been the law of the land is now a constituent of mine in Vermont. His name is Moses Cirillo. Moses is from the Sudan and is a Christian. He had served as a translator for Christian missionaries, distributed Catholic literature and worked with aid groups in the southern part of Sudan. Those are the activities that placed him and his family in danger. He escaped to Ethiopia and then to the United States on a false passport. He lost his wife and son and brother before fleeing.

When he got to this country, this land of freedom and opportunity, Moses Cirillo could not get the INS or an immigration judge to believe him or understand the circumstances that brought him here. Fortunately for Moses, the Vermont Refugee Assistance came to his aid and pursued his cause. This summer, after 3 years in detention, Moses Cirillo was granted asylum. The INS agents at the border and an immigration judge had ruled against him. It was only when his case was reviewed by the Board of Immigration Appeals that he finally prevailed. Had we not had the procedural safeguards that will be eliminated by this conference report, there can be little question that Moses Cirillo would not be free and living in Vermont today.

Just a few days ago the Senate passed Senate Concurrent Resolution 71, a resolution condemning human rights abuses and denials of religious liberty to Christians around the world. In that resolution we recognized that religious minorities continue to be oppressed and persecuted around the world. We termed religious persecution "an affront to the international moral community and to all people of conscience." We commented on persecution of Christians in such countries as Sudan—like Moses Cirillo—in Cuba, Morocco, Saudi Arabia, China, Pakistan, North Korea, Egypt, Laos, Vietnam, and countries that were formerly part of the Soviet Union. We termed religious liberty a universal right.

We noted "the United States of America since its founding has been a harbor of refuge and freedom to worship for believers from John Winthrop to Roger Williams to William Penn,

and a haven for the oppressed." We referred to Pope John Paul II's call against regimes that "practice discrimination against Jews, Christians, and other religious groups." We proclaimed our "commitment to human rights around the world" and our international leadership on behalf of persecuted religious minorities."

We concluded less than 2 weeks ago, on September 17, that the Senate unequivocally condemns egregious human rights abuses and denials of religious liberty to Christians around the world and recognized Sunday, September 29, as a day of prayer recognizing the plight of persecuted Christians worldwide.

It makes little sense merely to condemn religious persecution if we turn around and enact procedures that will shut out the oppressed and summarily exclude refugees from religious persecution. It rings hollow to recall our history of freedom of religion and our station as a haven for the oppressed when we are poised and prepared to abandon that proud tradition.

While the Senate of the United States finds it easy to condemn religious persecution in Sudan, INS agents and an immigration judge initially denied Moses Cirillo asylum claim. It was only the extraordinary efforts of human rights advocates in Vermont and their persistent pursuit of justice through the procedural safeguards in our asylum process that allowed him to prevail. If this bill had been the law, those protections would not have been available. I will continue to work to ensure that before too long we will choose to act consistent with the recognition that religious persecution still plagues so much of the world.

Another recent case is that of Fauziya Kasinga. I first brought this young woman's case to the attention of the Senate back in April. Two days before, a reporter named Celia Dugger had told Ms. Kasinga's story on the front page of *The New York Times*. She had sought for 2 years to find sanctuary in the country only to be detained, tear-gassed, beaten, isolated and abused.

She, too, came to the United States with false documents. In her case she obtained a false British passport in order to escape mutilation in Togo and traveled from Germany to New York. On June 13, the Board of Immigration Appeals granted her application for asylum from female genital mutilation in Togo. After 2 years in detention, in a case that was initially opposed by INS and rejected by an immigration judge, she finally was freed and granted asylum.

Her case established new law. For when the INS was called upon to file a brief with the Board of Immigration Appeals it took the position for the first time that fear of female genital mutilation should present a sufficient cause to seek asylum in the United States. Hers was a precedent setting case. Does anyone doubt that she would

have been returned to Togo if the summary exclusion provision of the bill had been the law? Does anyone honestly think that the immigration agents with whom she came in contact at the border or the immigration judge who denied her claim would have established such a precedent as a case of first impression and rescued her?

It is ironic that in this immigration bill we require that aliens from certain countries be advised prior to or at entry into the United States of the severe harm caused by female genital mutilation and we create a criminal statute against female genital mutilation on children in the United States. Unfortunately, neither of those measures will help the young women who are being subjected to this practice in other parts of the world.

In addition, this bill would amend our statutory definition of refugee to include persons forced to abort a pregnancy or to undergo involuntary sterilization or who are persecuted for refusing such procedures. It will do no good to amend these definitions if we do not have fair procedures and a real opportunity for refugees to establish the circumstances from which they flee to America. Summary exclusion is wholly incompatible with these expansions of the grounds for asylum.

I am glad to see that the bill excludes Cuban refugees from the harsh provisions of the new exclusionary asylum procedures. I believe that this exception should be the rule. Indeed, this exception shows that the majority does not trust the procedures that they are imposing on refugees from all other countries in the world.

Let us examine briefly the Cuban exception and how it might or might not apply. First, we should notice that it only applies to those who are wealthy enough, lucky enough, or skilled enough to arrive by aircraft at a port of entry. Thus, not all who escape from Cuba would be covered by this narrowly drafted special exception.

Further, let us consider how the exception might or might not work in a real-life situation. Not so long ago Fidel Castro's own daughter came to the United States using a disguise and a phony Spanish passport to seek asylum. Under the provisions of the bill, she might well have been turned away at the border after a summary interview if the INS agent who confronted her did not believe that she was Cuban or Castro's daughter. Would that INS officer or the immigration judge reviewing the summary decision within 24 hours think that this disguised person with false documentation had established a "significant possibility" that she was Castro's daughter? Think about what would most likely have happened.

Next, I ask you to consider the case of Alan Baban. Mr. Baban is one of the many Kurds who was jailed and tortured in Iraq. He succeeded in bribing a

jailor and escaping. He went into hiding for 3 years and ultimately escaped to this country without documents.

In spite of the notorious persecution of Kurds by the Iraqis and the scarring Mr. Baban carries with him for life, the INS agents who confronted Mr. Baban at the airport did not believe him and determined that he did not have a credible claim of persecution. Having come to the United States for freedom from oppression, Mr. Baban was imprisoned, again—this time by U.S. authorities.

A year later he was denied political asylum when the interpreter he was assigned at a hearing did not speak or understand his Kurdish dialect. As a result, the immigration judge before whom he appeared did not believe that Mr. Baban was Kurdish.

It took 16 months in detention before Alan Baban was finally granted asylum on appeal. That appeal will be eliminated by the procedures mandated by the bill.

Consider the case of Ana X. whom I met last April when she came forward to share her story. Two-years ago she fled Peru. She had been horribly treated and threatened by rebel guerillas from the Shining Path there. She came to this country without proper documents and gained asylum only after a full and fair opportunity to convince an immigration judge at a hearing that she would suffer persecution if she was returned to Peru.

When she tried to share her history with us earlier this year, she could not finish her second sentence before she broke down in tears, overwhelmed by the memories of what she had suffered. I cannot imagine this victim of oppression being able to talk about her suffering to a strange authority figure immediately upon her arrival in the United States. Fortunately, she had a chance to obtain the help of volunteers and was able to present her case to an immigration judge at a hearing.

Finally, consider the case of Nikolai S. from a former Soviet republic and a social scientist. He had been beaten by government agents because he is Jewish. He came to the United States in 1994 to conduct research and he found it hard to bring himself even to apply for asylum. Once he felt that he was ready and had assembled supporting evidence of the dangerousness of anti-Semitism in his homeland, he applied. Had the arbitrary 1-year filing deadline of the bill been in place, his application would have been rejected as too late.

Human rights organizations like the Lawyers Committee have documented a number of cases of people who were ultimately granted political asylum by immigration judges after the INS denied their release from detention for not meeting a "credible fear" standard and numerous instances where it took an appeal to the Board of Immigration Appeals.

I note the efforts of the Representative of the United Nations High Commissioner for Refugees, who has been supportive of our efforts to have credi-

ble fear judged by the accepted international standard.

I have heard from many House Members, Republicans and Democrats, who feel very strongly about these provisions. Some have sent Dear Colleague letters urging that others join us "in protecting human rights around the world."

In particular, I have heard from Representatives CHRISTOPHER SMITH, TOM LANTOS, BEN GILMAN, RICK BOUCHER, ILEANA ROS-LEHTINEN, MATTHEW MARTINEZ, LINCOLN DIAZ-BALART, GEORGE MILLER, DAVID MCINTOSH, HENRY WAXMAN, STEVE CHABOT, ENI FALEOMAVAEGA, THOMAS DAVIS, ROBERT TORRICELLI, MARK SOUDER, ED PASTOR, JON FOX, CYNTHIA MCKINNEY, MATT SALMON, ELIOT ENGEL, ROBERT MENENDEZ, and our former colleague Ham Fish.

I also remain deeply concerned that the bill would deny the Federal courts their historic role in overseeing the implementation of our immigration laws and review of individual administrative decisions. This bill will not allow judicial review whether a person was actually excludable and will create unjustified exceptions to rulemaking procedural protections under the Administrative Procedure Act.

This bill signals a fundamental change in the roles of our coordinate branches of Government and a dangerous precedent. Judicial review has often been a source of accountability for the executive branch. The bill eliminates that oversight and weakens protection that serves to make sure that the Executive is following the law. Over 90 law professors had written to us on this point on July 29. Their wise counsel is being ignored at our peril.

The summary exclusion and asylum provisions of the bill remain among its most extreme and unnecessarily harsh provisions. At the eleventh hour, after the House approved the conference report, there have been attempts to meet to create a better bill, but those truncated talks have done nothing to improve the asylum and summary exclusion provisions on which the congressional Republicans remain insistent.

Let me briefly outline adjustments that could have been made to preserve our asylum system while continuing to reform our processes as needed. The bill takes several giant steps backward from the bipartisan Senate effort in May to preserve our asylum process. We were successful in the only vote taken on the matter of summary exclusion and asylum in either House. I feel strongly that the Leahy-DeWine approach is a much more fair and balanced approach than that taken in the bill. We are now being forced to consider a bill that would have the effect of summarily excluding refugees from around the world who seek to come to America for freedom from oppression.

Within the past 2 weeks the Washington Times, the New York Times and the Washington Post have each published strong editorials condemning

the asylum provisions of the Republican conference report. The Washington Times concluded: "As lawmakers weigh these issues, they ought to keep in mind the following question: How would I feel about these rules if it were I who was applying for asylum?"

In the interest of bipartisan compromise I was prepared to offer a motion and an amendment to preserve the essence of our asylum system while adding additional requirements for expedited consideration of claims for asylum. It is that motion and amendment that Chairman SMITH of the House and Chairman HATCH of the Senate ruled out of order at the meeting of House and Senate conferees on September 17.

The Leahy amendment would allow summary exclusion procedures if they are needed in an extraordinary migration situation, as designated by the Attorney General, rather than require their use at all times. This is what the administration requested, in contrast to the universal use of summary exclusion that the extremist measures in the bill will require. The Department of Justice has indicated that, except for a future migration emergency, they can handle asylum claims without resort to summary exclusion and the amendment, like the Senate immigration bill, would have provided such standby authority.

The Leahy amendment would incorporate an international recognized standard for screening asylum claims rather than forcing refugees back into the hands of their oppressors. It would require asylum seekers to show that their claims were not manifestly unfounded in order to receive a full hearing and examination of their circumstances. That is the standard that the United Nations High Commissioner on Refugees and the international community strongly favors and the standard consistent without treaty commitments.

The Leahy amendment would preserve limited and narrow habeas corpus review to provide an opportunity to correct erroneous administrative action, which may in many cases be a matter of life or death. The bill seeks to choke off judicial review at every turn. We do not need less accountable government action and unfettered discretion being exercised by overburdened immigration agents to the detriment of refugees fleeing oppression. The New York Times wrote that this is one of the principal reasons it believes this "a dangerous immigration bill." It observed that Republicans as well as Democrats ought to be alarmed by the prospect of unrestricted executive power without judicial review and accountability.

The Leahy amendment would treat refugees more fairly during the initial interview and tried to eliminate artificial barriers to screen out what may be valid asylum claims. By acting summarily before the refugee has a sense that it is okay to speak of the persecution and fear from which he or she is

seeking refuge, the bill will screen out the unwary, the unschooled, and the uncertain who will be reluctant to talk about the persecution that compelled them to seek refuge and freedom in America.

The Leahy amendment would only impose a limitations period on asylum claims that are raised for the first time defensively to ward off deportation rather than impose an arbitrary 1-year limit on all asylum claims. If the use of asylum claims defensively to ward off deportation is the problem, let us deal with that problem and not penalize refugees with valid asylum claims who were too traumatized or fearful to come forward until they had gotten settled in this new land.

We need not gut our asylum law by allowing low-level bureaucrats to make life-and-death decisions through summary exclusion at the border. Our country has a proud tradition of protecting victims of persecution and serving as a beacon of hope and freedom. We need not and should not forsake it. This compromise Leahy amendment would give real refugees a fair opportunity to present their circumstances and seek asylum.

We do not have to turn our backs on America's traditional role as a refuge from oppression and resort to summary exclusion processes that the Washington Times, the Washington Post and the New York Times agreed are unwise and unnecessary.

I was pleased last week to appear with Bishop Murry from the National Conference of Catholic Bishops and Martin Kraar of the Council of Jewish Federations. They along with the American Bar Association and many others appreciate what this rewrite of our asylum laws by the bill would mean.

I want to recognize all those who have come forward to work with us to try to preserve the asylum process. Support has come from a wide variety of sources: The Committee to Preserve Asylum, UNITE, the American Jewish Committee, the National Asian Pacific American Legal Consortium, the Lawyers' Committee for Human Rights, the U.S. Catholic Conference, the American Bar Association, the American Friends Service Committee, the American Immigration Lawyers Association, the Asian Law Caucus, the Hebrew Immigrant Aid Society, the Lutheran Immigration and Refugee Service, the Asian American Legal Defense and Education Fund, the Domestic and Foreign Missionary Society of the Protestant Episcopal Church, the Mexican American Legal Defense and Educational Fund, the United Church Board for World Ministries, the ACLU, the National Asian Pacific American Legal Consortium, Amnesty International USA and the Women's Commission for Refugee Women and Children. I look forward to continuing our efforts and ultimately prevailing on these fundamental issues.

The bill fails to take into account the unfortunate but all too real cir-

cumstances that exist in repressive regimes around the world. Refugees flee by all sorts of means, including using false documents and escaping through third countries en route to the United States. The bill would punish asylum seekers who are afraid to apply to their government for proper travel documents and identification papers.

Raoul Wallenberg received international recognition for rescuing tens of thousands from Nazi persecution by issuing Swedish identity papers and arranging transport to Sweden. Oskar Schindler saved many lives by securing false documents and identities. As many as 10,000 Jews fled the Holocaust through Asia with the noble assistance of Chiune Sugihara, a Japanese diplomat who disobeyed his government and issued them visas. Do we really mean to disadvantage the claims of those who, like the beneficiaries of the courageous work of Oskar Schindler, Raoul Wallenberg and Chiune Sugihara during World War II, needed false travel documents? I hope not.

I am confident that consideration of asylum claims can take false documents into account without making them a barrier to full review. The asylum provisions in the bill would place undue burdens on unsophisticated refugees who are truly in need of sanctuary but may not be able to explain their situation to an overworked asylum officer. Had similar provisions been in place during World War II, those saved by Raoul Wallenberg, Oskar Schindler and Chiune Sugihara could have been summarily excluded because they used false documents to escape the Holocaust.

Refugees seeking asylum in the United States come to us for protection. Let us not turn them back. Let us not abandon America's vital place in the world as a leader for human rights.

I ask unanimous consent that following my statement there be printed in the RECORD letters from the UNHRC Lawyers Committee for Human Rights and law professors.

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

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, BRANCH OFFICE FOR THE UNITED STATES OF AMERICA,

*Washington, DC, September 20, 1996.*

Re Asylum and summary exclusion provisions of the immigration bill (proposed conference report H2202).

Hon. ORRIN HATCH,  
*Chairman, Senate Judiciary Committee, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN HATCH: I am writing to you regarding the draft Conference Report referenced above. In our previous letter to you, we expressed our concerns regarding the summary exclusion provisions of the prior House bill. Although the Senate version included Senator Leahy's amendment revising the Senate summary exclusion provision to comport with international standards for adjudicating refugee claims, we note that the proposed Conference Report does not include these changes. Our Office continues to urge the adoption of the Senate version of sum-

mary exclusion and remains concerned that the proposed "expedited removal" provisions in the proposed Conference Report and several other provisions, if enacted, would almost certainly result in the US returning refugees to countries where their lives or freedom would be threatened.

The following provisions of the proposed Conference Report, outlined in greater detail below, are of particular concern to our Office:

1. Expedited Removal (Section 302); (a) Examination at Port of Entry; (b) "Credible Fear" Standard; (c) Detention; (d) Administrative Review; and (e) Access to Counsel.

2. Numerical Limitation on Asylum Grants (Section 601).

3. Exceptions to Ability to Apply for Asylum (Section 604): (a) Asylum Filing Deadlines; and (b) Safe Third Country.

4. Bars to Asylum and Withholding of Deportation for Persons Convicted of Aggravated Felonies (Section 241(b) and 604).

5. Asylum Filing and Employment Authorization Fees (Section 604).

6. No Automatic Stay of Deportation pending Judicial Review (Section 306).

1. *Expedited Removal* (Section 302)—This section allows the expedited removal, without further hearing or review, of certain "applicants for admission." An "applicant for admission" is defined as anyone in the US who entered illegally or a person seeking entry. Section 302(b) would permit an immigration officer to issue a final order of removal for such applicants, if s/he determines that such applicants have false documents or no documents, if: (1) They cannot prove they have been in the US for the prior two-year period of (2) they are arriving in the US and fail to indicate an intention to apply for asylum or a fear of persecution.

At a port of entry, those who indicate that they are asylum-seekers but who are unable to establish a "credible fear" of persecution to an asylum officer shall be similarly removed. "Credible fear" of persecution is defined to mean that "there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum." Review of the credible fear determination will be conducted by an immigration judge and is to be concluded if possible within 24 hours and no later than 7 days after the removal order. Prior to the credible fear interview, asylum-seekers may consult a person or persons of their choice, but any consultation must be at no expense to the Government and must not "unreasonably delay the proceedings."

UNHCR is concerned that this process fails to incorporate international standards for refugee status determination. We stress that the summary nature of the proceedings in the proposed Conference Report is reflected in the lack of appellate rights, and that, therefore, it is all the more important that the initial examination and interview process not be "summary." We note our concerns below:

a. *Examination at Port of Entry*—"Screening" of arrivals in the US must be conducted with procedural safeguards in place to ensure that refugees are not excluded. Section 302 fails to provide these safeguards. Special risks for refugees are inherent in the expedited process as proposed by this section, in which there is no review of an order to exclude. All persons seeking entry must be given guidance as to the procedure, orally and in writing, in a language they can understand, before an initial examination so that they are aware of the consequences of failing to come forward with their asylum claim at that time. Although this section provides

that information shall be given concerning an asylum interview, it fails to provide for guidance at this critical point. Given the dual role of the immigration officers conducting the initial examinations (border enforcement and selection of those who merit a credible fear determination), they should have a list of questions designed to identify asylum-seekers, as well as training in interviewing skills. There must be meaningful review of all "expedited removal" orders, given the consequences of a mistaken decision.

b. *"Credible Fear" Standard*—UNHCR urges you and members of the Committee to reject any provision that requires asylum-seekers, before they are allowed the opportunity to present their claims for asylum to an immigration judge, to establish a "credible fear" of persecution, as defined above. Such a requirement creates a new, heightened standard which increases the likelihood that a refugee will be returned to a country where his/her life or freedom would be threatened, especially given the fact that review is expedited, applicants are detained during this process, and there is limited access to legal representation. UNHCR recommends that asylum-seekers who establish that their claims are not "manifestly unfounded" be accorded the opportunity to present their asylum claims in a hearing before an immigration judge. This provision comports with the international standard for expeditious refugee status determinations as set forth in UNHCR Executive Committee Conclusion No. 30 (1983).<sup>1</sup>

Moreover, certain types of claimants, e.g., torture or trauma victims and those with gender-related claims, will have difficulty stating their claims, much less establishing "credible fear." Some at-risk groups, such as unaccompanied minors, should not be subjected to summary procedures at all. Others, with novel or complex claims, such as persons fleeing situations of international or internal armed conflict, or torture survivors who should be protected by the Convention against Torture, should be provided with a full exclusion hearing. These claimants are at great risk of being returned to persecution if they must meet the heightened standard created by the expedited removal provisions.

c. *Detention*—This provision also mandates that an applicant who has been determined to have a credible fear of persecution remain in detention for further consideration of the application for asylum. In the view of the hardship that it involves, as noted in UNHCR Executive Committee Conclusion No. 44, detention should normally be avoided, particularly when the elements on which the asylum claim is based have been determined. Asylum-seekers who have met this heightened standard should be released pending further consideration of their claims.

d. *Administrative Review*—In the proposed Conference Report, the provision for review of a negative "credible fear" determination and expedited removal order requires that the immigration judge conduct the review "as expeditiously as possible," and recommends it be concluded within 24 hours. Moreover, this review may be conducted telephonically or by video, inadequate methods when credibility is at issue. Minimum procedural guidelines for refugee status determinations, as set forth in UNHCR Executive Committee Conclusion No. 8 (1977) specify that an applicant should be given a reasonable time to appeal for a formal reconsideration of the decision. These procedures do not comport with the guidelines noted above.

e. *Access to Counsel*—The Proposed Conference Report permits an asylum-seeker to

consult with a person of his or her choosing, at no cost to the Government and as long as such consultation does not "unreasonably" delay the proceedings. These limitations to consultation in the context of an expedited removal process should be consistent with guidelines that asylum-seekers be given the necessary facilities for submitting their claims to the authorities, including meaningful access to counsel and to the services of a competent interpreter and the opportunity to contact a representative of UNHCR. These factors, set forth in UNHCR Executive Committee Conclusion No. 8 (1977), should be taken into consideration in assessing whether a delay is "unreasonable."

2. *Numerical Limitation on Asylum Grants* (Section 601)—This section, which expands the definition of refugee to include persons who have been subjected to or who have a well-founded fear of coercive population control methods, limits to 1000 per year the number of individuals who may be admitted to the US as refugees or *granted asylum* under this expanded definition. By placing a numerical limitation on this category of asylum-seekers, the Attorney General may return an individual to a country where his or her life or freedom would be threatened merely because the numerical limit has been reached. Such an action would place the US in violation of its obligations under the 1967 Protocol.

3. *Exceptions to Ability to Apply for Asylum* (Section 604)—This section creates certain bars to the application for asylum. Moreover, there is no judicial review of a decision to bar an application under the following provisions.

a. *Asylum Filing Deadlines*—A time limit for filing an application has been included, which, if not met, bars individuals from seeking asylum. Individuals may not apply unless they demonstrate by clear and convincing evidence that the application has been filed *within one year after the date of the person's arrival* in the US, *unless they demonstrate to the satisfaction of the Attorney General either (a) the existence of changed country conditions which materially affect the person's eligibility for asylum or (b) extraordinary circumstances* relating to the delay in filing within one year.

UNHCR recommends that these deadlines be deleted. Failure to submit an asylum request within a certain time limit should not lead to an asylum request being excluded from consideration, as outlined in UNHCR Executive Committee Conclusion No. 15 (1979). The United States is obliged to protect refugees from return to danger regardless of whether a filing deadline has been met. There are a number of legitimate reasons why asylum-seekers would not be aware of or able to comply with a deadline for submitting applications, such as lack of information about the asylum process, preoccupation with meeting basic survival needs, inability to communicate in English, and insufficient resources for obtaining counsel.

b. *Safe Third Country*—Individuals may not apply for asylum or may have their asylee status terminated if the Attorney General determines that they may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than their country of nationality (or last habitual residence if no nationality)) in which their lives or freedom would not be threatened on account of one of the five grounds and where they would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, *unless* the Attorney General finds that it is in the *public interest* for the person to receive asylum in the U.S. UNHCR recommends that these provisions be deleted or modified in light of international guidelines, the wider context of global re-

sponsibilities for refugee protection, and principles of international responsibility-sharing. Moreover, these provisions appear to authorize the denial of the right to apply for asylum to certain nationalities or groups. These provisions also authorize the sending of an asylum-seeker or asylee to a country in which she might suffer forms of persecution not rising to the level of a threat to life or freedom. While no universally accepted definition of "persecution" has been adopted by the international community, it is widely accepted that other serious violations of human rights, in addition to threats to life or freedom, constitute persecution when linked to race, religion, nationality, membership of a particular social group or political opinion. *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva 1988) (hereinafter *Handbook*) at para. 51.

4. *Asylum and Withholding of Deportation for Persons Convicted of Aggravated Felonies* (Sections 241(b), 604)—Section 241(b) bars the removal of refugees to countries where their lives or freedom would be threatened and codifies the exceptions to this bar, most of which are exceptions currently found in INS regulations. This section codifies the provision that refugees who have been convicted of an "aggravated felony (or felonies)" for which the sentence to imprisonment is at least five years shall be considered to have committed a particularly serious crime and will not be protected from removal.

Section 604 broadens the definition of "aggravated felony" to include a much greater number of crimes than previously were in this category. It would include, for example, certain crimes for which a term of imprisonment imposed is one year (previously this was five years). It also codifies current regulations that bar a grant of asylum to individuals who have been convicted of a particularly serious crime and provide that a conviction of an aggravated felony shall be considered to be a conviction of a particularly serious crime. This section also allows the Attorney General to designate by regulation offenses that will be considered to be particularly serious crimes or serious non-political crimes, permitting further expansion of the categories of crimes that would bar a grant of asylum.

These sections, therefore, bar individuals from the protection of non-refoulement<sup>2</sup> if they have been convicted of an "aggravated felony" for which the sentence imposed is at least five years, and bar individuals with a well-founded fear of persecution from the protection of asylum regardless of the sentence imposed. Article 33 of the 1951 Convention relating to the Status of Refugees, binding on the US through its incorporation into the 1967 Protocol, requires that before returning a person fearing a threat to life or freedom in his or her country of origin, the country concerned must make a case-by-case determination whether the person has been convicted of a particularly serious crime and constitutes a danger to the community.

Under current law, the recently enacted Antiterrorism and Effective Death Penalty Act (AEDPA), the Attorney General, in her discretion, may grant withholding of deportation to ensure compliance with the 1967 Protocol. It appears that this provision may no longer be in effect if the proposed Conference Report becomes law. It is our opinion that the waiver in AEDPA should still be available and that it permits the Attorney General to conduct case-by-case determinations in the cases of individuals who have been convicted of an "aggravated felony" to determine whether the crime is a particularly serious crime and whether the individual is The "particularly serious crime" exclusion ground should only be invoked in

<sup>1</sup>Footnotes to appear at end of letter.

"extreme cases" and only after a balancing test has been applied, weighing the degree of persecution feared against the seriousness of the offense committed. These principles are set forth in our *Handbook* at paras. 154 and 156. The need for a balancing test is even more urgent in light of the proposed provisions expanding the definition of "aggravated felony" to include many crimes for which the sentence imposed is one year, and giving the Attorney General the power to designate other offenses as "aggravated felonies."

5. *Asylum Filing and Employment Authorization Fees* (Section 604)—This section permits the Attorney General to impose a fee for applications for asylum and employment authorization. UNHCR is concerned that any fee imposed for filing an asylum application may have the unintended effect of discouraging refugees from realizing their fundamental right to seek and enjoy asylum. UNHCR's Executive Committee in Conclusion No. 5 (1977) "appealed to Governments to follow, or to continue to follow, liberal practices in granting permanent or at least temporary asylum to refugee. . . ." UNHCR is particularly concerned about the precedent that the imposition of a fee will set for the international community.

Likewise, UNHCR is concerned about the imposition of a fee for employment authorization. UNHCR Executive Committee Conclusion No. 22 (1981) states that asylum-seekers "should receive all necessary assistance and be provided with the basic necessities of life, including food, shelter, and basic sanitary and health facilities." Under current law, asylum-seekers are not eligible for employment authorization unless their claim has been pending for over 180 days. UNHCR urges that a fee not be imposed, especially in light of the fact that asylum-seekers are not eligible for benefits which satisfy the basic necessities of life.

6. *Stay of Deportation Pending Judicial Review* (Section 306)—This section eliminates the automatic stay of deportation to individuals, including asylum seekers, who have been issued an order of removal by an immigration judge and appeal this decision to a federal appeals court. UNHCR urges the US to preserve the automatic stay of deportation for asylum-seekers in order to ensure compliance with minimum procedural safeguards. UNHCR Executive Committee Conclusion No. 8(1977) provides that asylum applicants "should . . . be permitted to remain in the country while an appeal . . . to the courts is pending.

Your consideration of UNHCR's views is greatly appreciated. Please do not hesitate to contact me if I may provide additional information or assistance to you, your Committee members or other members of Congress.

Sincerely,

ANNE WILLEM BIJLEVELD,  
*Representative.*

#### FOOTNOTES

<sup>1</sup>The UNHCR Executive Committee is a group of representatives from 50 countries, including the United States, that provides policy and guidance to UNHCR in the exercise of its refugee protection mandate.

<sup>2</sup>The principle of non-refoulement, incorporated into U.S. law in the withholding of deportation statute, Section 243(h) of the Immigration and Nationality Act, is set forth in Article 33(1) of the Convention, as follows: "No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Article 33(1) of the Convention.

#### LAWYERS COMMITTEE FOR HUMAN RIGHTS,

Washington, DC, September 24, 1996.

DEAR SENATOR LEAHY: We write to urge you to vote against H.R. 2202, the pending immigration bill, which we understand will soon come before you for a vote. The bill is fundamentally flawed in that it seeks to restrict the rights of refugees in the context of efforts designed to control illegal immigration. H.R. 2202 contains extreme measures that will severely impair the internationally-recognized right of refugees to seek and enjoy asylum. If the bill is passed, it will transform U.S. law from a system designed to protect victims of persecution to a system designed to punish them.

H.R. 2202 contains numerous provisions that would threaten the lives of refugees. Some of these provisions were examined and rejected by the Senate; others were never even considered. In particular, H.R. 2202 would: 1) summarily exclude, without meaningful access to counsel or review, asylum-seekers who arrive in the United States without proper travel documents; and 2) apply a strict deadline on the filing of all asylum applications. In our extensive experience representing asylum-seekers, we have seen first hand the many barriers—language, fear for family members, post-traumatic stress disorder—a refugee must overcome in order to apply for and gain safe haven. Blanket summary exclusion and strict time deadlines for filing asylum applications are hurdles that many of the most deserving refugees simply will not be able to cross. Enacting H.R. 2202 will, without question, result in victims of torture, rape and other extreme forms of persecution being denied protection. This violates not only our international treaty obligations, but our commitment as a nation to protect the rights of the persecuted. We urge you to do all you can to prevent it.

Sincerely,

ELISA MASSIMINO,  
MICHAEL POSNER.

SEPTEMBER 17, 1996.

Hon. PATRICK LEAHY,  
*Russell Senate Office Building,*  
*Washington, DC.*

DEAR SENATOR LEAHY: I, like many Americans, am deeply concerned about the proposed restrictions on political asylum contained in the immigration bill now before Congress. Of particular concern to me are two provisions: a filing deadline on asylum applications and summary exclusion procedures.

As a member of the Board of Directors of the Lawyers Committee for Human Rights, I have had the unique opportunity to meet and speak with clients of the Committee's pro bono Asylum Representation Program. Asylum seekers are people who must flee from danger in their homelands to safer, more politically stable countries. They are men, women and children, doctors, journalists, students and others from all walks of life who are persecuted in their homelands for religious or political beliefs, ethnicity or race. Some flee to Europe, South America, or Asia; others to the United States. The right of a refugee to seek protection from persecution was incorporated into U.S. law in the Refugee Act of 1980 and is guaranteed under the U.N. Convention Relating to the Status of Refugees. Last year, the U.S. granted asylum to fewer than 8,000 individuals, representing less than one percent of asylum seekers worldwide.

In the following pages, you will hear the personal stories of six asylum seekers and you will see how the proposed restrictions would have irrevocably and tragically changed the course of their lives. These

asylees came to the Lawyers Committee, where they were represented before the INS by volunteer attorneys. The staff and volunteers of the Committee know the obstacles asylum seekers face—the trauma experienced by torture victims, the concern for the safety of family members back home, the disorientation of a new culture and a new language. The Committee also has analyzed hundreds of asylum cases to study the potential effects of the proposed restrictions. Both their findings and experience clearly show that, if enacted, a strict filing deadline and summary exclusion procedures will force genuine refugees back to their homelands to face persecution, torture and perhaps death.

The United States has long been a symbol of freedom, opportunity and hope for refugees fleeing Nazi Germany, war-torn Rwanda, and other ravaged states. Let us defend this legacy and preserve a refugee's right to seek protection and safety. The proposed restrictions would not only violate our international treaty obligations but would betray our nation's commitment to respect basic human rights.

Sincerely,

SIGOURNEY WEAVER.

JULY 29, 1996.

DEAR CONFERRER: We, the undersigned professors of law, are writing to express our concerns about provisions in the pending immigration legislation that would eliminate or severely curtail judicial review. Efficiency in the enforcement of our nation's laws is important, but this goal is not well served by enacting legislation that has potentially serious constitutional problems.

Proposals are now pending in Congress that would radically reduce and, in some cases, eliminate the most fundamental safeguard of judicial review in individual cases and judicial oversight over the deportation process as a whole. These proposals, like the recently enacted antiterrorism law, are exceptional in their scope and threaten basic principles upon which our legal system is founded.

The House-passed immigration bill, like the antiterrorism law which, unless repealed in the pending immigration legislation, bars judicial review of deportation orders based on certain nonterrorism grounds, establishes a summary exclusion provision where an immigration officer would have final unreviewable authority to exclude and deport international travelers and asylum seekers, and strips the federal courts of jurisdiction to review any individual claim or class action challenges arising from these procedures. Additionally, the House-passed bill provides that "no court shall have jurisdiction" to review certain waiver decisions of the Attorney General, and limits injunctive relief with regard to certain provisions "regardless of the nature (of the action or claim or of the identity of the parties bringing the action)." The Senate-passed immigration bill denies judicial review of Attorney General denials of discretionary relief and orders of deportation based on criminal convictions.

These proposals grant agency authority to take constitutionally questionable action and raise issues of constitutional dimensions wholly apart from the immigration context and the rights of immigrants. The most basic safeguards of due process are threatened, along with the elimination of a meaningful role for the judiciary to perform its historic function of reviewing the implementation and execution of law. The proposals also implicate the separation of powers structure of our government by undermining the judicial roles to protect due process and safeguard individual rights and to review the actions of

the Executive Branch. Congress cannot exercise its power in a way that deprives any person of life, liberty or property without due process of law.

Moreover, we believe that these legislative proposals are not premised on any study or empirical data demonstrating a need to eliminate a process that affords full and fair hearings with administrative and judicial review. The federal judiciary plays an essential role in this scheme, interpreting the laws and ensuring that the executive branch complies with them. The process of judicial review helps insure that administrative officers implement the laws in a manner consistent with the intent of Congress.

We believe the proposals in the legislation are of dubious constitutionality and imprudent as a matter of public policy. Congress should take this opportunity to correct the defects in the antiterrorism law and preserve our constitutional traditions

Sincerely,

(Institutional affiliations are shown for purposes of identification only)

Anna Williams Shavers, University of Nebraska College of Law; Bruce Ackerman, Sterling Professor of Law and Political Science, Yale Law School; Harry H. Wellington, Dean, New York Law School; Susan Sturm, University of Pennsylvania Law School; Stephen H. Legomsky, Washington University Law School; Howard Lesnick, University of Pennsylvania Law School; Charles H. Koch, Jr., College of William and Mary Law School; Richard A. Boswell, University of California, Hastings College of the Law; Philip G. Schrag, Georgetown University Law Center; Jeffrey Lubbers, American University, Washington College of Law; Gerald L. Neuman, Columbia University School of Law; Michael R. Asimow, University of California at Los Angeles School of Law; Peter L. Strauss, Columbia University School of Law; Hiroshi Motomura, University of Colorado School of Law; Andrew Silverman, University of Arizona College of Law; William J. Lockhart, University of Utah School of Law; Talbot D'Alemberte, President, Florida State University; Michael G. Heyman, John Marshall Law School; Jean Koh Peters, Yale Law School;

Deborah Anker, Harvard University Law School; John Allen Scanlan, Jr., Indiana University School of Law—Bloomington; Kevin R. Johnson, University of California-Davis School of Law; Neil Gotanda, Western State University College of Law; Pamela Goldberg, City University of New York School of Law at Queens College; Karen Musalo, Santa Clara University Center for Applied Ethics; Jeffrey D. Dillman, University of Michigan Law School; George A. Martinez, Southern Methodist University School of Law; F.J. Capriotti III, Lewis and Clark Northwestern School of Law; Mary Dudziak, University of Iowa College of Law; Yvette M. Barksdale, John Marshall Law School; Burns H. Weston, University of Iowa College of Law; Bessie Dutton Murray, University of Iowa College of Law; Daniel Kanstroom, Boston College Law School; Kenneth J. Kress, University of Iowa College of Law; Marcella David, University of Iowa College of Law; Kevin Ruser, University of Nebraska College of Law; Susan Musarrat Akram, Boston University School of Law; Lori Nessel, Seton Hall University School of Law; William C. Banks, Syracuse University College of Law; Gabriel J. Chin, Western New

England College School of Law; Linda S. Bosniak, Rutgers, The State University of New Jersey School of Law; Berta Esperanza Hernandez, St. John's University School of Law;

Margaret H. Taylor, Wake Forest University School of Law; Joyce A. Hughes, Northwestern University School of Law; Carolyn Patty Blum, University of California at Berkeley, Boalt Hall Law School; Stephen W. Yale-Loehr, Cornell Law School; Ted Ruthizer, Columbia University School of Law; Craig B. Mousin, De Paul University College of Law; Enid Francis Trucios-Haynes, University of Louisville School of Law; Frank H. Wu, Howard University School of Law; Daniel J. Steinbock, University of Toledo College of Law; Guadalupe Theresa Luna, Northern Illinois University College of Law; Katherine L. Vaughns, University of Maryland School of Law; Devon Carbado, University of Iowa College of Law; Marc R. Poirier, Seton Hall University School of Law; Lenni B. Benson, New York Law School; Isabelle R. Gunning, Southwestern University School of Law; Alicia Alvarez, De Paul University College of Law; Walter J. Kendall III, John Marshall Law School; Enrique R. Carrasco, University of Iowa College of Law; Howard F. Chang, University of Southern California Law Center; Julie A. Nice, University of Denver College of Law; Kathleen Sullivan, University of California, Hastings College of the Law; Cecelia M. Espenozo, University of Denver College of Law; Ann L. Iijima, William Mitchell College of Law; Maryellen Fullerton, Brooklyn Law School;

Jonathan Weinberg, Wayne State University Law School; Angela P. Harris, University of California at Berkeley, Boalt Hall School of Law; William G. Buss, University of Iowa College of Law; Kent H. Greenfield, Boston College Law School; Gilbert Paul Carrasco, Villanova University School of Law; Douglas Stump, Oklahoma City University School of Law; Eric L. Muller, University of Wyoming College of Law; Karen Engle, University of Utah College of Law; Daniel M. Kowalski, University of Colorado School of Law; Bruce Winick, University of Miami School of Law; Ileana Porras, University of Utah School of Law; Ted Finman, University of Wisconsin Law School; John Martinez, University of Utah School of Law; Alex Tallchief Skibine, University of Utah School of Law; Daniel J.H. Greenwood, University of Utah School of Law; Susan Poulter, University of Utah School of Law; Seth F. Kreimer, University of Pennsylvania Law School; Beverly Moran, University of Wisconsin Law School; Jane Schacter, University of Wisconsin Law School; R. Alta Charo, University of Wisconsin Law School; Martha E. Gaines, University of Wisconsin Law School; Mary Twitchell, University of Florida; Stephen E. Meili, University of Wisconsin Law School; Joseph R. Thome, University of Wisconsin Law School.

#### TELECOMMUNICATIONS REFORM—FCC FUNDING

Mr. KYL. Mr. President, it is with great reluctance that I take the time of the Senate today to discuss an issue involving the telecommunication industry. The Federal Communications Commission—the funding of which we are now discussing—has gone far be-

yond congressional intent in an important area that was dealt with in the telecommunications law.

The goal of telecommunications reform legislation, in my view, was to promote competition within and among the various telecommunications-related industries, for example, local and long distance telephone providers, cable television, wireless and satellite companies. It is not possible to achieve that reform if federal and state governments restrict competition by creating excessive regulation.

While I agree that the State and Federal governments should retain some authority to protect consumers and the public interest, it is imperative that we remove as much other governmental regulation of the telecommunication industry as possible. Too much regulation will only hinder industry growth, and deny consumers and businesses the new services and products that telecommunication reform will provide. I believe less government regulation was the intent of Congress. In his testimony before the Senate Judiciary Committee, former Attorney General William P. Barr said "the real danger to competition is that excessive, onerous regulation will prevent incumbent local exchange carriers from competing on a level playing field with new entrants. The Federal Communications Commission's recent rules purporting to implement the Telecommunications Act of 1996 highlight this danger."

Mr. President, I have been informed of several problems with the FCC's new rulings. I wish to highlight a few. For example, to encourage new entrants into the local phone markets while the companies build their own networks, I believe that Congress wanted incumbent telephone companies to resell its services at wholesale rates to any new companies wishing to buy the services. Even though I had concerns at the time, I believed that Congress' intent was to encourage more competition within the local markets without penalizing those companies who have already spent large amounts of capital building a network. Instead, the FCC, an entity whose members are not elected by the public, has taken the liberty of dictating what happens in the local telephone markets. The FCC's new rules will allow resellers to bypass the wholesale rate defined by Congress and pay significantly lower prices for network parts that are already in place.

If the FCC's new regulations are implemented, new entrants will be able to resell existing network components as a consumer service in the local market. The problem with that is that the new competitors will have little or no incentive to build their own networks. Existing companies will have no incentive to invest in network enhancements if their research and development can be used—without proper compensation—by any new entrant. As Mr. Barr said during the hearing on mergers and competition in the telecommunications industry, "under the

FCC's system, it makes no sense for any competitor to develop its own network. Instead of real competition that spurs investment, creates jobs, and improves services, the end result of the FCC's rules will be a scheme of contrived 'Potemkin competition' in which so-called competitors merely rebrand services purchased below-cost from a severely handicapped incumbent LEC and create the false appearance of competition."

Another example of the FCC's overreach is the manner in which it has determined prices for certain telecommunication services. Congress recognized that a one-size-fits-all price system is not conducive to all States. The environment in North Dakota is drastically different from New York. Therefore, Congress assigned State public utility commissions the task of determining reasonable rates for interconnection and unbundled elements. The law requires that the rates be cost-based and nondiscriminatory. It also allowed for the rates to include a reasonable profit. Instead, the FCC has mandated a cost system for States to follow when setting unbundled network element prices. The Commission also set default prices for certain network elements. I have been informed that, in many instances, these prices are far below cost and could place existing telephone companies at a disadvantage. Additionally, the rules will place less value on networks that have been built while eliminating any incentive for existing companies to expand existing networks.

Clearly, as the 668 pages and 3,276 footnotes of the FCC's First Report and Order demonstrates, the Commission has gone far beyond the intent of Congress. I would ask that the chairman and ranking member of the Appropriations Committee to make note of the FCC's failure to abide by Congress' plan for telecommunications reform. I thank them for the opportunity to express my concerns.

#### DEFENSE APPROPRIATIONS

Mr. THURMOND. Mr. President, I will support the Defense appropriations bill included in the omnibus appropriations bill that is before us today. I am pleased that our colleagues negotiating these issues with the administration, stood their ground on providing additional funding for defense.

While this bill and other appropriations bills provide approximately \$10.8 billion above the President's budget request for defense, this is actually \$8 billion less for defense, in real terms, than last year's level of funding. Does any Senator believe that we will use our military forces less in fiscal year 1997 than we did this year? I think not.

As most of my colleagues know, the administration began negotiations on the final spending levels, insisting on a substantial transfer of funds of \$4 to \$5 billion, from defense to nondefense discretionary accounts.

It is clear that this administration relies a great deal on our military serv-

ices. It appears more likely every day that our commitments in Bosnia will not end in December as we were told. We already know that the cost of our commitment there has greatly exceeded the administration's original estimate of \$2 billion and now exceeds \$3.3 billion. We do not know what additional commitments might be laid on our military forces in the Persian Gulf—or as a result of the latest crisis between Israel and the Palestinians. We also do not know when or where our forces might be committed next, but I am confident that the uptempo for our servicemen and women will not decrease.

Mr. President, I want to commend the majority leader and other Members of the Senate and the House of Representatives who negotiated these agreements. Like all negotiated outcomes and compromises, no one gets everything they want. I do believe however that the additional funds provided by the Congress for defense, included in this bill, are necessary.

Mr. President, this bill will allow us to provide our servicemen and women with more modern equipment, alleviating the administration's negative funding trend for modernization; to improve quality of life for our servicemen and women, who frequently find themselves deployed away from their families for extended periods; and to increase funding for the readiness of our forces that has become increasingly strained to cover the higher uptempo and increasing costs of ongoing operations. This bill recognizes that we must maintain a strong force capable of deploying anywhere in the world at any time.

Mr. President, this bill will provide funding for much needed pay raises for our uniformed personnel. It provides funding for anti-terrorism measures to facilitate the protection of our service personnel. It funds shortfalls in the defense health care program as well as many other important programs.

I am pleased that President Clinton is no longer trying to reduce defense spending and recognizes the need for additional defense funding over his initial request. I commend my colleagues who negotiated this Defense appropriations bill. I support this bill and urge my colleagues to vote for this important piece of legislation.

Thank you, Mr. President. I yield the floor.

#### NTIA-TIIAP PROGRAM

Mr. KERREY. Mr. President, I am pleased that the omnibus appropriations bill includes \$21.5 million to fund the Telecommunications and Information Infrastructure Assistance Program [TIIAP] under the National Telecommunications and Information Administration [NTIA]. TIIAP is an important part of the ongoing effort to ensure that every American has access to advanced telecommunications services.

Unfortunately, many communities do not have access to advanced tele-

communications services. This lack of access is pronounced in rural and innercity areas. House appropriators made the wise decision to fund TIIAP at \$21.5 million. However, for the second year in a row, the Senate chose to cut TIIAP funding. The chairman's mark included zero funding for this important program. It was only after my insistence, and the cooperation of Senator STEVENS at full committee, that \$4 million was included for TIIAP. At that time, I made it clear to the full Appropriations Committee that I would offer an amendment on the Senate floor, as I did for fiscal year 1996, to fully fund TIIAP. After negotiating with Senate appropriators and sending a letter of support for TIIAP, along with 13 other Senators to Senator LOTT, TIIAP funding was restored to \$21.5 million in the omnibus appropriations package.

Access to the information superhighway is crucial for economic development and delivery of education, health care, and social services. We can ensure that every citizen has this access, whether they live in rural areas like many residents of my home State of Nebraska or metropolitan centers like New York or Washington DC, by supporting programs like TIIAP. Competing in the world job market no longer simply means working harder than our competitors abroad. Our students and workers must have access to and a strong working knowledge of the advanced telecommunications services that increasingly drive the world economy. Similarly, if we want to continue to provide the best health care in the world, Americans must have access to telemedicine facilities that allow them to work with health care specialists across the country. The importance of TIIAP to developing a strong information infrastructure should not be underestimated. I believe the Senate took a great step forward today in the battle to ensure that every American has access to advanced telecommunications services.

Mr. HARKIN. Mr. President, while I support H.R. 4278, the omnibus appropriations bill, I am strongly opposed to the inclusion in this bill of the fiscal year 1997 Department of Defense Appropriations Conference Report. I am opposed to the Defense appropriations conference agreement because it provides some \$9.5 billion more to the Pentagon than it asked for or needs. At a time when we are trying to balance the Government's budget and when the cold war is over, we simply cannot justify this excessive spending to the American taxpayer.

As a former Navy pilot, I know all too well the need for a strong national defense and the need to make sure our service personnel are properly trained, equipped, and compensated. But like the fiscal year 1996 DOD appropriations bill which provided the Pentagon \$7 billion more than it asked for or needed, the fiscal year 1997 conference agreement contains excessive

and wasteful spending. It asks American taxpayers to spend five times more on the military than the military budgets of all our likely adversaries combined. The \$9.5 billion add on alone is three times the defense budgets of North Korea, Iraq, Iran, or Syria.

To look at it in terms of my State of Iowa, this add on of \$9.5 billion is more than twice the budget for the entire State of Iowa. Iowans could fund their K-12 education system, some 500,000 pupils in about 380 school districts, for over 3 years.

It's time for some fairness. It's time for some common sense. And fairness tells us that the Pentagon shouldn't be exempt from our efforts to balance the budget. Commonsense dictates that we can't afford \$9.5 billion in add ons over what the Pentagon and the Joint Chiefs of Staff say we need to maintain a strong national defense. I opposed the fiscal year 1997 DOD appropriations bill when it was considered by the Senate and I did not sign the conference agreement. I feel strongly that it should not be approved as a part of this omnibus bill.

I will vote for this bill despite my strong opposition to the inclusion of the DOD measure because it contains significant improvements in support for education and other critical needs of our Nation. This House and Senate had proposed significant cuts to education and training. And when I tried to offer an amendment on the floor to restore these cuts, the majority objected. So I was very pleased to work again in conference on a bipartisan basis with Senator SPECTER and others to provide the support necessary to make college more affordable for middle class Americans through increases in Pell Grants, Perkins loans, direct lending and college work study. We were also able to increase the number of children who will be able to participate in Head Start and get special assistance with reading and math skills through chapter 1. And we were able to restore unwise cuts to the President's requests for critical job training initiatives.

We must have a well-educated and well-trained work force if we are going to increase the incomes and quality of life for our working families. So these changes, while hard fought, are a real victory for working families and our future.

I am also very pleased, Mr. President, that this bill contains strong measures to combat the growing problem of illegal immigration in my State of Iowa and around the Nation. This bill contains a provision I offered in the Senate that will guarantee Iowa and other States a minimum of 10 INS agents to enforce immigration laws. This will go a long way to cracking down on this growing problem.

#### ELECTRONIC COMBAT TESTING

Mr. MACK. Mr. President, for some time now I have been following the Department of Defense's plans relative to electronic combat testing. Last year, I

engaged in a colloquy with the good Senator from Alaska, Senator STEVENS, to clarify the Defense Appropriations Subcommittee's intention in their request that DOD provide Congress with an electronic combat master plan. At that time, I believe we made it perfectly clear that the master plan should provide optimum asset utilization.

Given this background, I am sure you can understand my surprise and dismay earlier this year when a report came back to the Congress which did not contain so much as one dollar sign. Again, I say there was absolutely no reference to any cost analysis supporting the Department's recommendations in their master plan.

Since DOD was apparently unwilling or unable to provide any justification for their recommendations, I asked the GAO to review DOD's electronic combat testing and their master plan.

After learning of the preliminary results of a now nearly complete GAO investigation, I understand why DOD failed to include in their master plan any justification for their recommendations.

Simply put, there does not appear to be any mission or cost justification to support DOD's recommendations. Indeed, preliminary reports from the GAO investigation indicate that the master plan would result in substantially increased costs, while providing diminished capabilities.

Given this background, I am sure you can understand my concern over one of the recommendations in this master plan to move test and evaluation activities from Eglin, AFC, located in northwest Florida. This feeling is exacerbated by the fact that nearly 2 years before the issuance of this master plan, the Base Closure and Realignment Commission [BRAC] recognized previous DOD findings which ranked Eglin, AFB as highest military value of all the DOD electronic combat [EC] ranges. Accordingly, the BRAC provided that selected EC capabilities at Eglin, AFB be sustained "to support Air Force Special Operations Command (AFSOC), the USAF Air Warfare Center, and Air Force Material Command Armaments/Weapons Test and Evaluation activities. . ."

Unfortunately, it appears DOD's electronic combat master plan demonstrates that the Air Force, with the tacit endorsement of the Office of the Secretary of Defense, fully intends to dismiss the direction of the BRAC.

To address concerns about DOD's actions on this matter, the Congress has provided funding in the fiscal year 1997 Defense appropriations bill to insure that Eglin, AFB range capabilities are adequate to comply with the BRAC intent to sustain selected EC capabilities to meet present and future requirements of AFSOC testing and training, AWC electronic combat testing, and AFMC testing and evaluation.

I ask the chairman of the Defense Appropriations Subcommittee, Senator

STEVENS, his intentions with respect to the funding provided.

Mr. STEVENS. As my good friend from Florida has already stated, we have been following this issue for some time now. I share his disappointment over the failure of DOD to provide a useful report by which the Congress can evaluate their recommendations.

I look forward to reviewing the GAO's findings on this matter. I am confident that these issues will be discussed during future Defense subcommittee hearings with DOD officials.

In the interim, the Defense Appropriations Subcommittee has provided funding to insure the Eglin range can maintain and improve its EC capability, including instrumentation, consistent with the BRAC recommendations.

Mr. MACK. Mr. President, I thank my good friend from Alaska for his interest in this matter.

I would like to elaborate further on what I have been informed is the minimum capability required to meet the needs of the users identified by the BRAC. It is my understanding that this should include fully instrumented, fully capable threat systems/simulators for the SADS-IIR, SADS-III, SADS-IVR, SADS-V, SADS-VIR, SADS-VIIIR, SADS-XI, SADS-XII, WEST-XR, WEST-XI, and flycatcher threats. Additional technique generators, target signature generators, environment generators, on-site data processing, and site support facilities are required at Eglin range sites in order to optimize the development of mission data required to support current and future worldwide operations of U.S. forces.

Moreover, I am told that much of the instrumentation and support facilities identified herein exist today and are designed to provide the flexibility needed for characterizing future threat systems as they are identified and become available. I have been informed that upgrades to these capabilities are the most cost-efficient approach to addressing future requirements and consistent with the BRAC decision.

The funding provided by the Congress allows for the maintenance and improvement of those systems most critical for electronic combat training. I appreciate the support of the chairman of the Defense Appropriations Subcommittee in providing this funding and look forward to continuing to work with him on this matter in the coming year.

Mr. LEAHY. Mr. President, the continuing resolution is a massive piece of legislation. I want to comment on some of the provisions in this bill that may not be big-ticket items but are of particular significance in addressing the crime problems facing our Nation and ensuring that our citizens are able to obtain FBI records to which they are entitled under our public access laws.



FBI PROCESSING OF FOIA AND PRIVACY ACT  
REQUESTS

The legislation appropriates \$3,327,000 to the FBI to address backlogs in the processing of requests for agency records under the Freedom of Information Act [FOIA] and Privacy Act. By letter, dated July 8, 1996, to the Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, Senator SPECTER and I urged this amount be appropriated. While the FOIA requires that agencies respond to requests for agency records within 10 business days, most agencies do not meet this legal requirement, resulting in huge backlogs of FOIA requests. The FBI's backlog is among the largest. On May 31, 1996, the FBI had a backlog of 15,259 requests, with some requests dating back to 1992. Long delays in access—particularly delays of almost 4 years—really means no access at all for many requesters.

A cornerstone of our democracy is the people's right to know about the actions of their Government. The FOIA represents Congress' implementation of this basic principle. The FOIA sets out the procedures by which people may request information from the Federal Government. Federal agencies must provide the information in a timely manner, unless it falls within enumerated exemptions from the FOIA.

The funds earmarked for FOIA and Privacy Act request processing represents an important effort to address this huge backlog. In addition, the electronic FOIA amendments, which I sponsored with Senators BROWN and KERRY, provides a number of steps to make the process of requesting agency records easier and faster. These Electronic FOIA amendments unanimously passed the Congress on September 18. Even as the size of the Federal Government shrinks, we must keep it responsive to the people.

FBI COMPUTER INVESTIGATIONS THREAT  
ASSESSMENT CENTER

This legislation appropriates to the FBI \$5,013,000 and 17 agents to establish a Computer Investigations Threat Assessment Center [CITAC] at FBI headquarters to identify, investigate, and counter illegal intrusion into Government computer networks. This is an important development.

As our Federal agencies increasingly depend on computers to perform their mission, the risk of computer crime has become a more significant threat to our public safety and national security. For example, the Department of Defense relies on computers to deploy, feed, supply, and communicate with troops. Yet, the GAO recently reported that 250,000 computer attacks were occurring each year at DOD. We know that in 1994, a computer hacker based in the United Kingdom was able to break into the Rome Laboratory at Griffiss Air Force base in New York. Just last week, computer hackers forced the CIA to take down an agency Web site because obscenities and unau-

thorized text and photograph changes had been made to the site and unauthorized links had been established between the CIA Web site and other sites.

Undoubtedly, the increased reliance by Government agencies on computer systems and networks presents special vulnerabilities to computer hackers and spies. I have long been concerned about this vulnerability. That is why I worked with the Department of Justice, and my colleagues, Senators KYL and GRASSLEY, on the National Information Infrastructure Protection Act, which passed the Senate unanimously, as S. 982, on September 18 and also passed the House of Representatives, as part of H.R. 3723, on September 18. This bill will increase protection for computers, both Government and private, and the information on those computers, from the growing threat of computer crime.

This establishment of CITAC will bring vital focus and attention on how to prevent computer crime and, when it does occur, how to find the perpetrators. The work of the FBI at CITAC, though focused on Government computer networks, will also have important applications for the private sector.

CALEA FUNDING

The conference agreement provides \$60,000,000 to be deposited into a newly established telecommunications carrier compliance fund to fund the Communications Assistance for Law Enforcement Act [CALEA]. I was the author of CALEA, sometimes called the digital telephony law, in the Senate and applauded its passage as a necessary step to protect our public safety and national security. This law is also intended to bring much-needed sunshine and public scrutiny to the process of how wiretaps are conducted.

CALEA authorized \$500,000,000 to pay for any necessary retrofitting of existing systems to come into compliance with law enforcement capability and capacity requirements to maintain its ability to implement court-ordered wiretaps. I am glad that funds are finally being appropriated for this new law.

I had serious concerns with the House proposed implementation plan, which was set out as a condition for funding in both the House passed CJS appropriations bill, and House terrorism legislation. The modified implementation plan in the Omnibus Consolidated Appropriations Act for 1997 makes sense to ensure accountability on the part of the FBI.

For example, CALEA already requires that the Attorney General publish certain information in the Federal Register for public comment, including information about law enforcement's capacity needs and cost control regulations. The conditions in the omnibus appropriations legislation would require that this information be provided on a country-by-county basis.

We should fund the digital telephone law. At the same time, the con-

ditions in the modified plan for use of the appropriated funds will help ensure that the FBI complies fully with the letter and spirit of disclosure that is a hallmark of that legislation.

LAW ENFORCEMENT SUPPORT CENTER

I am delighted that Congress recognizes the contribution that is being made to immigration law enforcement by the Law Enforcement Support Center [LESC] in South Burlington, VT. This is among the most significant capacities being developed to assist Federal, State, and local law enforcement deal more effectively with criminal aliens. Improving the identification and expediting the deportation of criminal aliens responsible for violent crimes are goals on which there is universal agreement.

The Violent Crime Control and Law Enforcement Act of 1994 authorized the Law Enforcement Support Center. Last year, I had a colloquy on the Senate floor with the Senate Appropriations Subcommittee chairman clarifying that the Senate-passed appropriations bill allowed the LESC to continue to receive its authorized funding.

This is only online national database available to identify criminal aliens. It is a valuable and essential asset for improving our national immigration enforcement effort. The LESC provides local, State, and Federal law enforcement agencies with 24-hour access to data on criminal aliens. By assisting in the identification of these aliens, the LESC allows law enforcement agencies to expedite deportation proceedings against them.

In its first year of operation, the LESC identified over 10,000 criminal aliens as aggravated felons. After starting up with a link to law enforcement agencies in one county in Arizona, the LESC expanded its coverage to that entire State. The LESC is expected to be online with California, Florida, Illinois, Iowa, Massachusetts, New Jersey, Texas and Washington, as well as Arizona this year.

The Law Enforcement Support Center deserves our full support. The Omnibus Consolidated Appropriations Act for 1997 increases the support by adopting the increased authorization that Senator HUTCHISON and I offered to the Senate immigration bill when it was considered last May. By increasing to \$5 million a year the authorization of the LESC we demonstrate our commitment to effective assistance to State and local law enforcement.

CARRYOVER FUNDS FOR COPS MORE PROGRAM

The conference agreement includes \$1,400,000,000 for the Community Oriented Policing Services [COPS] and \$20,000,000 for the Police Corps Program. This funding is to be used to maintain the commitment to hire 100,000 new police officers. This is a commitment the Congress and the President made in the 1994 Violent Crime Control Act, and I am pleased that we are keeping our promise. Importantly, funds available for prior year carryover may be used for innovative community policing programs, so

long as reprogramming requirements are satisfied. This ensures that our State and local law enforcement have the flexibility they need to spend this money they are granted when and how they need to, within the broad parameters set by Congress.

Mr. BYRD. Mr. President, in the Interior section of this bill, there is a provision dealing with Alaska subsistence. In the official papers, the word "prepare" is left in the language, contrary to the agreement reached with the administration early Saturday. I would like to clarify with the subcommittee chairman that this technical error is not intended to be a precedent for future years.

Mr. GORTON. I agree.

LABOR, HEALTH AND HUMAN SERVICES, AND  
EDUCATION PROGRAMS

Mr. SPECTER. Mr. President, the bill that is before the Senate today provides \$71.087 billion in discretionary budget authority for the Departments of Labor, Health and Human Services, and Education, and related agencies for fiscal year 1997. Mandatory spending totals \$219.5 billion, an increase of \$19 billion over the fiscal 1996 levels.

The conference agreement provides substantial increases in education programs—\$3.5 billion over last year. Medical research is increased by more than \$820 million, and workplace safety programs by almost \$79 million over the 1996 appropriated levels.

While I support the funding levels for programs within my subcommittee's jurisdiction, as I stated on Saturday, I am concerned with the process which produced this omnibus appropriations bill. I am concerned because the procedure undercut the traditional appropriations process. The Labor, Health and Human Services, and Education bill never even came to the Senate floor because it was anticipated that it would be very contentious and that many diverse amendments would be offered. Last year's bill was not finished until April 25, but on that bill Senate HARKIN and I came forward with a bipartisan amendment to add \$2.7 billion so that we could have adequate funding for Labor, Health and Human Services, and Education. We demonstrated that the subcommittee chairman and ranking member can work together in a harmonious manner and really get the job done. But this year on the Senate floor, we have seen biding wars to gain political advantage by adding funding and legislation to appropriations bills. This led us to a position where we have had to go to this single omnibus bill, and where we had to negotiate with the White House to produce a bill the President would agree to before the end of the fiscal year today.

As I have said, I am proud of the work, the bipartisan, work done on the Labor, Health and Human Services portion of this bill. I want to thank the distinguished Senator from Iowa, Senator HARKIN, for his hard work and help in bringing this bill through the committee and through the negotia-

tions with the House and the administration.

The important programs funded within this subcommittee's jurisdiction provide resources to improve the public health and strengthen biomedical research, assure a quality education for America's children, and job training activities to keep this Nation's work force competitive with world markets. I'd like to take the time and mention several important accomplishments of this bill.

BIOMEDICAL RESEARCH

For the National Institutes of Health, the bill before us contains nearly \$12.747 billion, an increase of \$820 million, or 6.9 percent, above the fiscal year 1996 level. These funds will be critical in catalyzing scientific discoveries that will lead to new treatments and cures, that in turn will reduce materially the cost of health care. Few activities of Government provide greater promise for improving the quality, and reducing the costs, of health care for all Americans than our investment in medical research.

SUBSTANCE ABUSE EDUCATION AND PREVENTION

Substance abuse prevention and treatment programs are increased by \$207 million over 1996. The bill includes \$1.310 billion for the substance abuse block grant which provides funds to States for substance abuse prevention, treatment and rehabilitation. Recognizing that drug prevention education needs to start when children are young, to teach children the skills they need to resist drug use, the bill also provides a \$90 million increase for the Safe and Drug Free Schools and Communities Program.

AIDS

This bill contains over \$3 billion for research, education, prevention, and services to confront the AIDS epidemic, including a nearly \$239 million increase for Ryan White. The bill provides \$217 million for AIDS drug assistance programs to assist states in providing the new generation of protease inhibitor drugs to persons with HIV.

HEALTHY START

Low birth weight is the leading cause of infant mortality. Infants who have been exposed to drugs, alcohol or tobacco in the mother's womb are at-risk for prematurity and low birth weight. I became directly involved in Healthy Start after visiting hospitals in Pittsburgh and Philadelphia and seeing one-pound babies, whose chances for survival were very slim. For Healthy Start, the bill provides \$96 million, \$20 million more than the President requested, to continue the campaign to cut infant mortality rates in half and to give low birth weight babies a better chance at survival.

WOMEN'S HEALTH

The committee continues to place a very high priority on women's health. The bill before the Senate contains an increase of \$15 million for breast and cervical cancer screening, these increases will: expand research on the

breast cancer gene, accelerate the development of new diagnostic tests, and speed research on new, more effective methods of prevention, detection, and treatment. Funding for the Office of Women's Health has also been raised to \$12.5 million to continue the National Action Plan on Breast Cancer and to provide health care professionals with a broad range of women's health related information.

VIOLENCE AGAINST WOMEN

The bill contains \$123 million for programs authorized under the Violent Crime Reduction Act. The bill before the Senate contains the full amount authorized for these programs, including \$60 million for battered women's shelters, \$35 million for rape prevention programs, \$8 million for runaway youth and \$12.8 million for community schools.

Domestic violence, especially violence against women, has become a problem of epidemic proportions. The Department of Justice reports that each year women are the victims of more than 4.5 million violent crimes, including an estimated 500,000 rapes or other sexual assaults.

But crime statistics do not tell the whole story.

I have visited women's shelters in Harrisburg and Pittsburgh, where I saw, first hand, the kind of physical and emotional suffering so many women are enduring.

HEAD START

Head Start receives an increase of \$412 million for a total of almost \$4 billion.

EDUCATION

The future promise of any nation is dependent on the capabilities of its youth and increased funding for education is an investment in the future. This bill provides an increase of \$3.513 billion over fiscal year 1996 education program levels. This is the highest level of support in our Nation's history. The bill funds title I at \$7.7 billion, \$470 million over last year and increases by \$141 million funding for the Goals 2000 Program. Education for the handicapped is increased by \$791 million over last year and vocational and adult education is increased by \$146 million. The maximum Pell grant is increased by \$230 to \$2,700 per student. The bill increases the TRIO Program by \$37 million and Education, Research, Statistics and Improvement programs are increased by \$248 million.

JOB TRAINING

In this Nation, Mr. President, we know all too well that high unemployment wastes valuable human talent and potential, and ultimately weakens our economy. The bill before us today provides \$4.7 billion for job training programs, including a \$60 million increase for Job Corps. These funds will help improve job skills and readjustment services for disadvantaged youth and adults.

## SCHOOL TO WORK

The committee recommends \$400 million for school to work programs within the Department of Labor and Education. These important programs will help ease the transition from school to work for those students who do not plan to attend 4-year institutions.

## WORKPLACE SAFETY

The bill increases workplace safety programs by \$79 million over the 1996 levels. While progress has been made in this area, there is still far too many work-related injuries and illnesses. The funds provided will continue the programs that inspect business and industry, weed out occupational hazards and protect workers pensions.

## NUTRITION PROGRAMS FOR THE ELDERLY

For the congregate and home delivered meals program, the bill provides \$469 million, or nearly \$19 million above the request. In some areas of the country, there are long waiting lists for home-delivered meals. The resources provided by this bill will go a long way to ensure that the most vulnerable segment of the elderly population receive proper nutrition.

## LIHEAP

The bill provides \$1 billion for Low Income Heating Assistance for this winter and \$1 billion in advance for next winter. This is a key program for low income families in Pennsylvania and other cold weather States in the Northwest. Funding supports grants to States to deliver critical assistance to low income households to help meet higher energy costs.

## CLOSING

There are many other notable accomplishments, but for the sake of time, I mentioned just some of the highlights, so that the Nation may grasp the scope and importance of this bill.

I have voted against the omnibus appropriations bill as a protest to the procedures which I discussed at some length in floor statements today and last Saturday, September 28, 1996.

In closing, Mr. President, I again want to thank Senator HARKIN and his staff and the other Senators on the subcommittee for their cooperation in a very tough budget year.

## FUNDING FOR THE INSTITUTE FOR INTERNATIONAL SPORT

Mr. SPECTER. Mr. President, as we approve the omnibus spending bill which includes appropriations for the Department of Education, it is important to mention that the Appropriations Subcommittee for the Departments of Labor, Health and Human Services, and Education intends \$800,000 from the fund for the improvement of education intends \$800,000 from the fund for the Improvement of Education to be used for scholar athlete games. The committee report to accompany the appropriations bill says "Within the funds provided, the committee has included \$800,000 to award grants to nonprofit organizations for the cost of conducting scholar-athlete games." This small sum is to support

the scholar-athlete games held by such groups as the Institute for International Sport at the University of Rhode Island.

Mr. PELL. That is correct. In 1994, Senator CHAFEE and I were able to include a similarly modest sum in the fund for the improvement of education for the Rhode Island Scholar Athlete Games. These games—which brought together young people in our State of varied backgrounds to participate in educational and cultural competitions and demonstrations, as well as in athletic competitions—were an enormous success. This year, the funds will be used for the second World-Scholar Athlete Games which will bring together young people from around the world.

Mr. CHAFEE. I would just like to emphasize that this is the second World Scholar Athlete Games that have been held by the Institute of International Sport at URI. The first games were held in 1993, the Institute for International Sport at the University of Rhode Island conducted the World Scholar Athlete Games with 1,600 students from 108 countries and all 50 States participating. Through these games friendships were formed and understanding was developed between boys and girls who would otherwise never have crossed paths. I believe, and I am certain that Senator PELL agrees, that through this form of interaction bridges between diverse populations are built.

Mr. PELL. I would say to my colleague, yes, that is exactly correct. This sort of enterprise, which has been developed by Dan Doyle at URI, is a way to build bridges between nations, just as the Rhode Island Games were meant to build bridges between neighborhoods and towns.

Mr. CHAFEE. The second World Scholar Athlete Games will be held during the summer of 1997. Through a partnership between the "Sister Cities International" and the Institute for International Sport along with others, 2,200 students from 125 countries are expected to participate.

## PARENTS AS TEACHERS PROGRAM

Mr. BOND. Mr. President, I would like to take this opportunity to thank Chairman SPECTER for increasing funds for the Parents as Teachers [PAT] Program in the Labor, Health and Human Services, and Education, and related agencies appropriations bill. The key to success for our children's education is to begin early in life through well-rounded early childhood education programs that benefit not only the child, but the parent as well. I firmly believe that we must give parents the tools they need to fulfill their responsibility to develop their children's character, personality and ability to learn as well as to provide for their material needs if we are ever to see our social ills diminish.

Title IV of the Goals 2000: Educate America Act requires at least 50 percent of funds awarded to each grantee to be used to establish, expand, or oper-

ate Parents as Teachers Program or Home Instruction Programs for Preschool Youngsters [HIPPPY]. This will enhance three of the four purposes of the legislation as stated in section 401(a):

The purpose of this title is—

First, to increase parents' knowledge of and confidence in child-rearing activities, such as teaching and nurturing their young children;

Second, to strengthen partnerships between parents and professionals in meeting the educational needs of children aged birth through five and the working relationship between home and school;

Third, to enhance the developmental progress of children assisted under this title; and

Fourth, to fund at least one parental information and resource center in each State before September 30, 1998.

The purposes clearly focus on parents of young children, and this appropriation will carry these purposes forward by awarding funds to States who commit to spend at least half of their grant on Parents as Teachers or HIPPPY, early childhood parent education programs which have been proven effective.

Mr. SPECTER. Mr. President, I thank the Senator from Missouri for raising the importance of the Parents as Teachers Program. The purpose of the Parents as Teachers Program is to improve parenting skills and strengthen the partnership between parents and professionals in meeting the education needs of their school-age children, including those aged birth through five. It is my understanding that Federal education funds are authorized for grantees who make a commitment to spend at least 50 percent of their funds on implementing the Parents as Teachers Program or Home Instruction Programs for Preschool Youngsters. These are effective parent education programs that promote learning and child development.

Mr. BOND. I thank my colleague from Pennsylvania and appreciate all of his good work on this bill. As members of the Senate Labor, Health and Human Services, and Education, and Related Agencies Appropriations Subcommittee, we want to ensure, from the start, that children are ready to learn, physically and emotionally. Parents as Teachers has a proven track record of increasing a child's intellectual and social skills that are essential when a child enters school, and involving parents in creating a healthy and safe environment for their children. This program strengthens the foundation for children's educational success and healthy development, and I urge my colleagues to continue to support the Parents as Teachers Program.

## EFFORTS TO COMBAT HEMOCHROMATOSIS

Mr. HOLLINGS. Mr. President, I wish to engage the chairman of the Appropriations Subcommittee on Labor, Health, and Human Services, Senator SPECTER, in a colloquy regarding hemochromatosis.

Hemochromatosis, or Iron Overload Disease, is an illness in which too much iron is stored in the blood. It leads to massive organ failure if it is not caught early, but this tragic outcome may be averted by regularly giving blood. Already, the Centers for Disease Control has been working to establish guidelines for physicians on diagnosing this disease and on its simple treatment, but the effort has just begun. In light of the seriousness of the disease and the promise of advancements in its treatment, I hope the Centers for Disease Control will use some of the increased funds in this bill to expand its clinical screening effort and to provide physician education.

Mr. SPECTER. I appreciate the efforts of the Senator from South Carolina to spread the word on this serious matter. We have been careful to provide an appropriate increase for the Center for Chronic and Environmental Disease Prevention, and this is an appropriate use of these funds.

Mr. HOLLINGS. I thank the Senator from Pennsylvania.

SECTION 2601 WITHIN TITLE III, THE ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT

Mr. MACK. Because my good friend from Utah is our resident expert on stored value products, and in fact is responsible for the much needed study on these products, as well as a 9 month delay in Federal Reserve Board rule-making on these products in this bill, I wanted to ask him a question about his intent with respect to these two provisions. Was it ever your intent to interfere with the Federal Reserve Board's proposed revisions to Regulation E with respect to electronic communication of Regulation E required disclosures, and the Fed's revised rules regarding error resolution for new accounts?

Mr. BENNETT. I thank my friend from Florida for the useful question. The electric stored value products study should in no way delay or otherwise affect the Federal Reserve Board's further consideration of these other proposed Regulation E revision, or any other revisions to Regulation E not involving electronic stored value products.

Mr. THOMPSON. May I engage the chairman in a colloquy regarding the committee's funding of the Juvenile Justice and Delinquency Prevention Act? As the chairman knows, the authorization for that status expires September 30, 1996. And the current statutory language has been the subject of considerable criticism.

Mr. GREGG. I am aware of these difficulties.

Mr. THOMPSON. Senator BIDEN and I introduced S. 1952 in this Congress, a bipartisan bill to reauthorize JJDPA. This bill would make the most sweeping changes in the JJDPA since its original enactment in 1974. The Judiciary Committee reported the bill favorably to the full Senate in August, but the full Senate was not able to take up

the bill before adjournment. What is the chairman's view of this legislation?

Mr. GREGG. I commend the Senator from Tennessee and the Senator from Delaware for introducing thoughtful legislation to update Federal Government's law regarding juvenile crime. Much of the current statute funds programs that may or may not be effective. And it imposes severe burdens on States and localities, especially under the regulations that have been promulgated.

Mr. THOMPSON. I thank the chairman. I would also point out that the nature of juvenile crime has changed so much since the original enactment of JJDPA in 1974.

Mr. BIDEN. The legislation that Senator THOMPSON and I introduced and passed through the Judiciary Committee includes some important reforms which have bipartisan support. We have worked together on the Judiciary Committee's Subcommittee on Youth Violence to update the statute. I am disappointed that we were not able to pass reauthorization legislation this year. I look forward to trying again next year. I would ask the chairman of the Commerce, Justice, State Appropriations Subcommittee if he is concerned that if reauthorization legislation is not passed next year, whether that will make it more difficult for the subcommittee to fund the Office of Juvenile Justice and Delinquency Prevention?

Mr. GREGG. I would say to the Senator that the committee will obviously make appropriations in a way that reflects any changes in the authorizing legislation. But given the bipartisan view that the JJDPA must be extensively changed, and the likelihood that the Congress will change the authorizing language next year, it is unlikely that the program will be funded in its current form for fiscal year 1998.

Mr. BIDEN. I thank the chairman.

Mr. THOMPSON. I thank the chairman.

SECTION 115 OF THE INTERIOR APPROPRIATIONS

Mr. MURRAY. Mr. President, would the senior Senator from Washington yield for a question on the bill language amending the Elwha Act included in the Interior section of the omnibus appropriations bill.

Mr. GORTON. I would be happy to yield.

Mr. MURRAY. Is it a correct interpretation of the language in section 114, that none of the requirements of the Elwha Act are changed if the State of Washington elects not to purchase the projects?

Mr. GORTON. The Senator is correct.

RECREATION USER FEES

Mr. ABRAHAM. Mr. President, I rise to express a concern about the recreation fee demonstration program for America's national parks and wilderness areas. These fees were authorized in last year's continuing resolution, and I see that there are additional provisions included in the 1997 Senate Interior appropriations bill. Do I under-

stand correctly that the subcommittee chairman supports expanding this program to more of this Nation's parks and refuges?

Mr. GORTON. Mr. President, the Senator from Michigan is correct.

Mr. ABRAHAM. Mr. President, I wish to assure the chairman that I am not opposed to the concept of user fees for national parks and wilderness areas. In this period of increased fiscal awareness, such an approach may help the Forest Service and Park Service maintain these important national treasures. I think it is important, however, that we clarify who will have to pay these recreation fees.

As a case in point, the Sylvania Wilderness in Michigan's Upper Peninsula has been chosen as one of the recreation fee demonstration sites, and the Forest Service is presently taking comments on this proposed action. Located on the edge of the Sylvania Wilderness is a beautiful body of water known as Crooked Lake.

When you look at a map of the area, you will note that approximately three-fourths of Crooked Lake's shoreline is within the Sylvania Wilderness. The remaining one-fourth, however, is privately held by about a dozen riparian owners, some of whom have lived on the lake for over 50 years. These owners have been good stewards of the land. As it stands now, if the Sylvania does institute a recreation fee, there is no guarantee that these people will be exempted from having to pay for their day-to-day activities.

It seems to me that, if these owners and their day-use guests wish to use the lake for recreational activities such as swimming or fishing or boating, they should be exempted from paying the user fee. After all, these people lived on the lake and did all these things before the Sylvania was even designated a wilderness area. How can we justify suddenly imposing a tax on their use of the lake? If one of these families hosts a family reunion, for example, should they have to pay a recreation fee for each of the children who might wish to swim or wade or boat in the lake? And how can a small, family owned resort that has operated on this lake for decades justify having to charge each of its customers and additional \$5 or \$10 per person per visit? We need to assure these residents, their guests and day-use guests that they will not have to purchase a permit to continue their way of life.

Mr. GORTON. Mr. President, will the Senator from Michigan yield for a question?

Mr. ABRAHAM. Mr. President, I would be happy to yield to the distinguished Senator from Washington.

Mr. GORTON. Mr. President, does the Senator from Michigan believe these resident should pay a user fee when participating in other activities within the Sylvania Wilderness such as hiking and camping?

Mr. ABRAHAM. Mr. President, I would inform the subcommittee chairman that, if the residents wish to use

the Sylvania for activities such as camping, hiking, or picnicking, paying the same fee as all other visitors sounds reasonable. That is clearly a different circumstance, and it seems logical that visiting other areas of the Sylvania would require purchasing the same permit as all other visitors.

Now in fairness Mr. President, I do not know if the Forest Service had any intention of charging the Crooked Lake residents if the recreation fee were instituted. In fact, in conversations about this matter, Sylvania's Forest Service personnel indicated to me that exempting riparian owners, guests, and day-use guests from fees for using the lake seemed sensible and fair. I believe that there must be a commitment from the Forest Service and National Park Service to work to accommodate the distinctive interests of people living in and around this Nation's parks and refuge areas. I would ask the distinguished subcommittee chairman and ranking member if they believe that cases such as Crooked Lake's riparian owners merit such consideration.

Mr. GORTON. Mr. President, the Senator from Michigan raises a good point. There may be unique circumstances that should be taken into consideration as these recreation fee demonstration projects are proposed and established. It is my expectation that, in instances such as this, the administrative agency work with the congressional delegation to resolve disputes to the benefit and understanding of all parties.

Mr. BYRD. Mr. President, I would agree with the distinguished chairman.

Mr. ABRAHAM. Mr. President, I wish to thank the distinguished subcommittee chairman and the ranking member for their consideration and all their hard work in support of this Nation's parks, national forests, and wildlife refuges. Mr. President, I yield the floor.

MAINE ACADIAN CULTURE PRESERVATION  
COMMISSION

Ms. SNOWE. Mr. President, I would like to engage the chairman of the Interior Appropriations Subcommittee, Senator GORTON, in a colloquy.

Mr. GORTON. I would be pleased to join the Senator from Maine in a colloquy.

Ms. SNOWE. Mr. President, during the 101st Congress, the Congress and the President enacted Public Law 101-543, the Maine Acadian Culture Preservation Act. The purposes of the act were to recognize the important contributions made to American history and culture by the Acadians in Maine, to assist State and local governments, as well as private and public entities, in the identification, preservation, and interpretation of Acadian culture and history, and to assist in the identification and preservation of sites and objects associated with Acadian culture.

Although the Acadians in Maine represent one of America's oldest and most interesting cultural groups, the

mission of the act has still not been fulfilled, and more work has to be done. I understand that, in the current fiscal year, the National Park Service has provided \$72,000 from the Operation of the National Park System account to fund activities related to the act, including technical assistance to the Maine Acadian Culture Preservation Commission created by the act. I further understand that the administration's budget request \$72,000 for activities related to Maine Acadian cultural preservation in fiscal year 1997. Is it the chairman's understanding that the National Park Service intends to use funds from the Operation of the National Park System account in this bill for these purposes in the next fiscal year?

Mr. GORTON. Yes, the National Park Service's budget does request funding in fiscal year 1997, under the Operation of the National Park System account, to preserve and interpret Maine Acadian culture, consistent with the authority provided by Congress in the Maine Acadian Culture Preservation Act. The omnibus appropriations bill includes \$66.8 million above the fiscal year 1996 appropriations level for the operation of the National Park System account.

Ms. SNOWE. I thank the chairman for that clarification.

U.S. GEOLOGICAL SURVEY

Mr. BENNETT. I would like to raise an issue with the chairman of significance to taxpayers in Utah and across the Nation: the extent to which the Federal Government is performing functions that, in a free-market economy such as ours, are better left to the private sector. Specifically, it has been brought to my attention that the U.S. Geological Survey [USGS] is competing with private sector companies when it offers water resources-related engineering, scientific and technical services—services that are readily available in the private sector—to non-Federal entities at far below market rates. Not surprisingly, the non-Federal entities involved often agree to contract with the USGS, to the great detriment of private sector firms in this field. This practice, some have termed it "predatory competition," also appears to involve the USGS in activities far beyond its stated mission.

Mr. President, according to its informative home page on the World Wide Web, the mission of the USGS is "to provide geologic, topographic and hydrologic information that contributes to the wise management of the Nation's natural resources and promotes the health, safety, and well-being of the people."

May I ask the chairman if he would agree to investigate this issue in the hearing process next year to determine if this is a problem that should be addressed?

Mr. GORTON. The Senator from Utah raises a valid point. Our efforts in this area to downsize the Federal Government, including the USGS, are in-

tended to reduce the burden on taxpayers by retaining only essential research capabilities that for sound policy reasons should not, or cannot, be performed by the private sector.

I would be happy to explore this issue further as we undertake budget hearings in the next fiscal year.

Mr. BENNETT. I thank the chairman for his views and look forward to working with him in this important matter.

Mr. STEVENS. Mr. President, may I engage the distinguished chairman of the Interior Appropriations Subcommittee in a colloquy? A few years ago, I sponsored an amendment to the Interior appropriations bill regarding the eligibility for Alaska Native villages for the BIA road funding program. This amendment was necessitated by an internal ruling eliminating Alaska Native villages which populations had fallen below 50 percent Alaska Native.

The Alaska Native villages are unique in the country because of the special nature of the land settlement under the Alaska Native Claims Settlement Act. Unlike lower 48 Indian reservations, these villages received title to their land in fee simple; the Federal Government does not own the land in trust as with reservations in all other States. However, since the land is privately owned, Congress protected it from taxation and levy by Federal, State and local government while it is undeveloped. This has protected this land from being involuntarily conveyed out of Alaska Native corporation ownership because of inability to pay taxes, but it has also dramatically reduced the tax base in villages which also have municipal governments providing municipal services.

Because of this situation, normal property tax and other municipal levies on land in the villages are not permitted unless the land is specifically developed. The vast majority of this land is not developed and is protected from municipal taxation. That is why I sponsored an amendment to change the BIA road funding rule in Alaska requiring 50 percent Alaska Native population for village eligibility. This amendment was passed twice in the subcommittee, and once by the Senate. Ultimately, an agreement was worked out with BIA to change this qualification standard administratively.

Mr. President, I am relating this history because I have been recently contacted by the same village municipality which brought the BIA funding issue to my attention. This time a similar rule has been adopted and is being enforced for village sanitation, water, sewer, wastewater, and solid waste grants by the Indian Health Service. This is the same issue again.

The exact same arguments and fact patterns apply. The IHS is the principal grant agency for village water, sewer, wastewater and solid waste for Alaska Native villages. Now it is either changing the rule or beginning to enforce a rule which until now has not

been enforced. Either way, this is unfair for Craig, which is completely surrounded by Native village corporation land from two villages, Shaan Seet Corp. and Haida Corp. In many ways, Craig is more heavily impacted than most municipalities because these two villages are so close together that their land selections are adjacent to each other.

What I ask here, Mr. President, is that the same policy adopted by the Interior Appropriations Subcommittee for BIA roads apply for IHS village sanitation funding. The issues are the same; the result should be the same. Can I get the assurance of the chairman of the subcommittee that he agrees with this position? It is a direct match up with the BIA issue with which this subcommittee has already dealt.

Mr. GORTON. I agree that there are certain circumstances in which it is appropriate for the Indian Health Service to provide sanitation facilities funding for Indian homes in non-Indian communities and for Alaska Native villages. I understand that the Indian Health Service will soon issue an internal guidance document that addresses this issue, and this policy will be consistent with the terms of the conference report on the fiscal year 1995 Interior and Related Agencies Appropriations Act. (House Report 103-740). I strongly urge the IHS to issue this guidance document, and to be sensitive to the unique needs of Alaska Native villages, which differ from lower 48 non-Indian communities because of the land settlement under ANCSA.

Mr. STEVENS. I thank the distinguished chairman of the subcommittee for his support.

#### LAME DEER HEALTH FACILITY

Mr. BURNS. I would like to commend the committee for funding the replacement facility at Lame Deer, MT. The Lame Deer health care facility was totally destroyed by fire last May. In these times of fiscal constraint, we were fortunate to be able to fund this much needed replacement facility.

Mr. President, I would like to clarify how the \$13,500,000 cost was calculated. In order to hold down costs, the Indian Health Service was able to use an existing design that can be used as the basis for construction of the replacement facility. Without this design and without the IHS undertaking the construction of this project, more than \$2 million in additional funds would have been required.

Mr. GORTON. The Senator is correct. The cost for the replacement was based upon the IHS using the existing design and doing the construction themselves. Because of the urgent nature of this request and because the tribe has no other health care resources within close proximity, the committee responded to the dire need for a health facility at Lame Deer. We expect the IHS to move as expeditiously as possible to complete this much needed health facility. I strongly urge the

tribe and the IHS to work within the funding limitations for this project.

Mr. BURNS. Will the chairman of the Interior and Related Agencies Appropriations Subcommittee yield for question?

Mr. GORTON. I will be delighted to yield to the Senator from Montana, Senator BURNS.

Mr. BURNS. As the Chairman knows, I have been pursuing for a number of years funding for the Indians Into Psychology program. This program helps train Native Americans in the field of clinical psychology and has a service requirement that those who receive this training must work on the reservations. As the chairman knows, mental illness problems among native Americans are pervasive and devastating, and there is great need for native Americans trained in the field of psychology to work on the reservations.

The chairman included \$500,000 for this program, or a \$300,000 increase over last year's levels in the Senate bill as reported by the committee. This is a modest increase for a very important program and would permit a second program site to be established. I understand that the full \$300,000 increase has been eliminated by the conference action. Is that correct?

Mr. GORTON. Yes, the Senator is correct. We were forced to eliminate this funding without prejudice because of a very constrained spending ceiling for the subcommittee.

Mr. BURNS. I understand that the chairman concurs with me that this is an important program. Would the chairman join me and urge the Department and the Indian Health Service in identifying a reprogramming of funds to provide some level of increase for this program in order to permit the initiation of a second program site to be awarded competitively?

Mr. GORTON. The Senator is correct. It is my hope that the Department and the Indian Health Service will identify a source of funds to provide an increase for this program early in the new fiscal year, fiscal year 1997 so that a second program site can be awarded competitively.

#### ENERGY SAVING PERFORMANCE CONTRACTING IN FEDERAL AGENCIES

Mr. BINGAMAN. Mr. President, I would like to engage the Senator from Alabama, the distinguished chairman of the Treasury, Postal Service, and General Government Subcommittee in a colloquy relating to saving energy in Federal facilities.

In light of falling appropriations for undertaking energy efficiency projects at Federal facilities, is it the opinion of the committee that Federal agencies should be utilizing private sector financing mechanisms such as energy saving performance contracting [ESPC] utility sponsored energy conservation measures [ECM] to achieve their legislatively mandated targets for energy reduction?

Mr. SHELBY. Yes, the committee supports the increased use of ESPC and

ECM to reduce energy use by Federal agencies to save taxpayer dollars and reduce environmental pollution.

Mr. BINGAMAN. It has been nearly 4 years since Federal agencies were authorized to undertake ESPC and ECM at Federal facilities. In the meantime, very few of these agreements have come to pass. I believe that this is due to both institutional resistance and inertia. Mr. Chairman, I have worked very hard during this year and last to provide some legislatively directed incentive for agencies to more aggressively undertake these energy-saving methods, and have met with significant resistance.

Mr. President, I believe it's time we stop looking on idly, hoping that one day agencies will rise to this challenge. I would like to ask that the six agencies which use the most energy enter into a specific number of ESPC or ECM contracts during fiscal year 1997. The numbers themselves represent a reasonable expectation for response, but ones which will result in a significant step forward for the use of ESPC and ECM inside the Federal Government. They are: Department of Defense, 10 contracts; General Services Administration, U.S. Postal Service, and Department of Energy, 8 contracts each; Department of Transportation and the Veterans Administration, 5 contracts each.

If we are to move this forward we should also ask that the agencies issue a short report to us within 90 days of enactment, as well as quarterly through the year to detail their progress in meeting these targets.

Mr. SHELBY. The committee shares your sentiment that Federal agencies should get moving toward greater use of ESPC and ECM. And they will now be on notice that this is a desire of the committee and that we will be monitoring their progress.

Mr. BINGAMAN. I thank the chairman. By taking these short steps, we will gain some success in demonstrating the effectiveness of these outside financing mechanisms, while identifying legitimate institutional barriers with the intention of addressing those in the future and expanding use of ESPC and ECM to other Federal agencies.

#### EMERGENCY REHABILITATION OF THE BOSQUE DEL APACHE NATIONAL WILDLIFE REFUGE

Mr. DOMENICI. I would like to engage the distinguished chairman of the Interior Appropriations Subcommittee in a brief discussion of the use of the emergency firefighting funding that is being provided to the Department of the Interior agencies.

Mr. GORTON. I would be happy to discuss this emergency funding with the senior Senator from New Mexico.

Mr. DOMENICI. Mr. President, the administration has submitted a proposal to the Congress for additional funding of \$50 million for the Bureau of Land Management within the Department of the Interior to respond to the severe fire season we've had this year.

Subsequent to that request, the administration identified an additional \$26.7 million in damages incurred by several Department of the Interior agencies, including the Fish and Wildlife Service. This request includes \$600,000 for the Bosque del Apache National Wildlife Refuge in New Mexico.

This past June, a wildfire consumed 4,100 acres of the Bosque del Apache National Wildlife Refuge in New Mexico. It was the worst fire in the 57-year history of the refuge.

The upland desert habitat in the burned area will recover naturally, but 2,176 acres of native cottonwood/willow riparian forest habitat along the Rio Grande River will not recover without management action. The Fish and Wildlife Service needs the requested \$600,000 in fiscal year 1997 to make significant progress on these rehabilitation needs. These funds are to be used for cottonwood forest rehabilitation.

This is a critical time because this riparian area harbors the highest density and diversity of wildlife in the refuge. Without immediate action, this area will revert to exotic salt cedar vegetation, which thrives in disturbed habitats and is fire tolerant. Since 1987, refuge personnel have been actively engaged in riparian restoration efforts, successfully controlling over 1,000 acres of exotic salt cedar vegetation and re-establishing over 650 acres of native cottonwood and willow habitat.

I would ask the distinguished chairman of the subcommittee if the \$600,000 requested for cottonwood forest rehabilitation at the Bosque del Apache National Wildlife Refuge is included in the final omnibus bill?

Mr. GORTON. Yes, the omnibus bill includes the \$600,000 requested for the cottonwood forest rehabilitation work at the Bosque del Apache National Wildlife Refuge.

Mr. DOMENICI. I thank the distinguished chairman for his assistance in this matter. I will urge the Department to carry through with this initiative which is so critical to saving the native habitat at the Bosque del Apache National Wildlife Refuge in New Mexico.

#### MONTEZUMA CREEK HEALTH CLINIC

Mr. BENNETT. I wish to bring to the attention of the Senate a matter that, while it may appear small, is of great importance to the Utah Navajo population of San Juan County in the southeastern part of Utah. The matter involves the Montezuma Creek Health Clinic in Montezuma Creek, UT.

Over the past several years, my colleague Senator HATCH and I have worked with the Indian Health Service [IHS], the State of Utah, the local Utah Chapter of the Navajo Nation, the county of San Juan, and the Navajo Nation in an effort to improve the delivery of health care services in San Juan County.

In this region, which includes the Navajo Reservation in northern Arizona and New Mexico, there are six IHS hospitals and 18 outpatient facilities. Unfortunately, none of these facilities

are located in Utah. In fact, the only IHS facility in the entire State of Utah is an outpatient facility located at Fort Duchesne nearly 350 miles from Montezuma Creek.

The need for the Montezuma Creek Clinic is clearly justifiable. It is the population center for the eastern portion of the Utah Navajos. Approximately 6,000 Navajos live in this area; and, unfortunately, their health care needs are greatly underserved.

Although the building housing the Montezuma Creek Clinic is currently functional, it is, nevertheless, in poor condition. The facility has undergone repairs and currently is in the process of having its roof replaced. Within the near future, the facility will eventually have to be replaced in order to continue to provide care to an average of 65 patients per day.

The patchwork of repairs will no longer be a viable option.

Accordingly, it is our desire that, at the very least, \$35,000 be provided for a preliminary land study, and engineering and architectural design for a new facility to replace the existing old structure.

Mr. HATCH. If the Senator would yield, I want to thank my colleague from Utah, Senator BENNETT, for his remarks.

The clinic at Montezuma Creek, UT is absolutely essential in overall context of health care in this remote part of Utah and in this region of the country.

In fact, with the recent closing last month of Monument Valley Hospital in San Juan County, the clinic is in even greater need by the community especially now that there are fewer health providers in this large area.

Over the past several years, I have worked with the Indian Health Service in efforts to improve health care services in this part of Utah. And, I must say that, compared to other States, the availability of IHS facilities and services for Utah Navajos in southeastern Utah is extremely deficient.

Senator BENNETT and I want to correct this disparity.

That is why we need to act now.

I recognize that the IHS budget is limited. In that regard, I want to continue to work with my colleagues on the Appropriations Committee as well as on the Indian Affairs and Finance Committees in efforts to improve the delivery of health care for Native Americans throughout the country.

One should go to some of these communities to see, first hand, the poverty and poor health conditions many native Americans tolerate. Native Americans suffer the highest rates of diabetes, tuberculosis, and fetal alcohol syndrome of any segment of the U.S. population in large part because they do not have access to adequate medical treatment.

The \$35,000 we are seeking is not a large amount of money. But, this amount would be a significant commitment to the Navajo people of southern

Utah and northern Arizona. It is a commitment I strongly believe we should fulfill.

Mr. GORTON. If Senator BENNETT will yield further, I am aware of Senator HATCH's and Senator BENNETT's interest and concern over the clinic at Montezuma Creek and their efforts ultimately to replace that facility. I want to assure the Senators from Utah that I will work with them to ensure that the health care needs of Utah's Navajos are met.

Should the Indian Health Service submit a request to reprogram a small amount of funds for a preliminary planning study of a satellite facility at Montezuma Creek, I would consider carefully such a request. I emphasize, however, that such a request must be consistent with the Health Care Facilities Priority System. Current funding constraints simply do not allow for activities beyond the scope of the priority list.

Mr. HATCH. I thank the Senator for his consideration. It is my hope and strong desire that we can begin a more comprehensive effort by the IHS, the Navajo Nation and the State of Utah to improve the delivery of health care in this part of Utah.

I would also like to say that I believe the IHS is making a good faith effort at improving the health care of native Americans in Utah. I appreciate the work and spirit of cooperation I have sensed over the past year from the IHS. I look forward to working with the IHS as well as with all parties at improving the health care for Utah Navajos.

Mr. BENNETT. I also want to thank the Senator from Washington for his consideration. I would urge the IHS to work closely with the local Navajo Chapter as well as with San Juan County, the State of Utah, the Utah Navajo Trust Fund, and the Navajo Nation in this endeavor. Senator Hatch and I strongly encourage all parties to work together, and to maximize any federal dollars made available through this request with matching funds.

Again, I thank the chairman for his assistance on this matter.

#### DOE/FOSSIL ENERGY COOPERATIVE R&D PROGRAM

Mr. DORGAN. Mr. President, Senator CONRAD and I wish to engage the chairman and ranking member of the Interior Appropriations Subcommittee in a colloquy regarding the Cooperative Research and Development Program funded in the Department of Energy's fossil energy appropriation account.

In its action on the fiscal year 1997 Interior bill, H.R. 3662, the Senate Appropriations Committee recommended \$6.2 million for the Cooperative Research and Development Program. These funds are shared by the University of North Dakota Energy and Environmental Research Center [UNDEERC] and the Western Research Institute [WRI] in Wyoming. The UNDEERC program is a leader in low-rank coal research in the United States, and has cooperated on efforts

to use abundant low-rank coal through advanced clean coal technologies. As the ranking member of the subcommittee is aware, UNDEERC has worked closely with the expertise found at the Morgantown Energy Technology Center [METC].

Mr. BYRD. The Senator is correct; UNDEERC and METC have worked closely together in support of strategic fossil energy research objectives. The partnership at UNDEERC, which involves cooperators from the Federal Government, industry, and academia, serves as a model for jointly sponsored research programs. The non-Federal partners in this effort contribute significant cost-sharing to conduct the programs at UNDEERC.

Mr. CONRAD. Mr. President, let me add to what the Senator from West Virginia said. Of UNDEERC's funding for the jointly sponsored research program, 61 percent came from private sources in 1995. When individual businesses are willing to contribute real dollars to this effort, that demonstrates strong private sector support for the work of the center and its significantly enhances the Federal investment. Since UNDEERC was defederalized in 1983, the center has developed more than 400 private and public sector clients, some of whom have 20 or more individual contracts. In 1995 alone, UNDEERC developed 175 contracts with clients in 34 States and 8 foreign countries.

Mr. DORGAN. Mr. President, I would like to inquire of the chairman and ranking member of the subcommittee about the funding level for this program as recommended in the omnibus continuing resolution.

Mr. GORTON. I would respond to the Senator from North Dakota that the recommendations for the fossil energy appropriation account contained in this legislation assume a funding level of \$5.1 million for the Cooperative Research and Development Program. While this is a decrease of \$1.1 million from the funding level recommended in the Senate version of the fiscal year 1997 Interior bill, it is an increase of \$1.1 million above the amount recommended for this program in the House-passed fiscal year 1997 Interior bill. While the Senate sought to protect the full amount recommended by the Appropriations Committee for this program, it was not possible to retain the total increase included in the Senate bill because of the change in the subcommittee's allocation for purposes of reaching closure on the fiscal year 1997 Interior bill.

Mr. BYRD. Mr. President, the chairman is absolutely correct. The net result of the Interior bill portion included in this continuing resolution is that the subcommittee's allocation was essentially cut in half from the amount of resources available when the bill was marked up in the Senate. Thus, a number of programs which were increased in the Senate bill were not able to sustain the full amount of the proposed in-

crease in the final resolution. The chairman sought to protect as many of these increases as possible.

Mr. DORGAN. Senator CONRAD and I would ask of the chairman and ranking member if it would be possible to consider a reprogramming or supplemental request from the Department of Energy that would restore the final recommendation for the Cooperative Research and Development Program to the fiscal year 1996 level, which is the same amount as was included in the Senate bill?

Mr. GORTON. Mr. President, if the Department of Energy were to submit a reprogramming or supplemental request, the committee would give it every consideration as expeditiously as possible. Under the committee's reprogramming guidelines, the Department has the flexibility to move up to \$500,000, or 10 percent, without prior approval of the Committee.

Mr. BYRD. I say to my good friends, the senators from North Dakota, that I will do everything I can to ensure that any effort to increase the funding for the fossil energy cooperative research and development program is considered promptly by the subcommittee. The chairman and I have an excellent relationship in reviewing matters under the jurisdiction of the subcommittee, and I am sure that he would seek to be helpful if at all possible. I would inquire of the chairman if he would agree that the Department of Energy should, at a minimum, review its unobligated balances now that fiscal year 1996 has drawn to a close, and see if there are any funds that could possibly be considered for a reprogramming without affecting adversely the conduct of other ongoing activities in the fossil energy appropriation account.

Mr. GORTON. Mr. President, the Senator from West Virginia makes an excellent suggestion. While I appreciate the desire of the Senators from North Dakota to see additional funding provided for this program, I am also sensitive to the many other competing demands within the Fossil Energy Program. Overall, this appropriations account is funded \$52.3 million below last year's level, and some programs are being terminated or slowed down to comply with the subcommittee's constrained allocation.

Mr. DORGAN. Mr. President, I thank the chairman and ranking member. I look forward to working with them to see what actions might be possible to keep this exceptional Cooperative Research and Development Program at UNDEERC functioning without major disruptions.

Mr. CONRAD. I would also like to express my appreciation to the chairman and ranking member for working with us to see what can be done to secure full funding for this outstanding cooperative research program.

#### FLOWERING TREE

Mr. PRESSLER. Mr. President, as the Senate prepares to debate fiscal

year 1997 funding levels for the Department of Health and Human Services [HHS], I would like to take a moment to discuss my concerns regarding a pending decision of the Department of Health and Human Services that would affect an important program in South Dakota. This decision deserves the Senate's attention.

The program affected is called Flowering Tree. It is a nationally recognized alcoholism treatment program that has been operating on the Pine Ridge Indian Reservation in my home State of South Dakota. This alcohol treatment program was backed by a 5-year Federal grant. It is only one of four substance abuse treatment programs nationally that allows Native American women to continue caring for their children while they receive treatment. The Flowering Tree program at Pine Ridge serves the second largest Indian reservation in the United States. On a reservation with 87 percent unemployment, widespread poverty and substance abuse, Flowering Tree has been a vital component of the Pine Ridge community.

In spite of Flowering Tree's success in combating generational alcohol abuse, it was brought to my attention that HHS intends to pull federal funding from Flowering Tree, which would force the program to close its doors. The program is funded through the Substance Abuse and Mental Health Services Administration [SAMHSA]. The loss of Federal support for the Flowering Tree program would be very harmful to those participating in it. Flowering Tree keeps families together and helps to build a better future for both mothers and their children by treating alcohol abuse. The program is working. If Flowering Tree is forced to close, many of the children assisted by the facility could lose their families and be referred for adoption, foster care or group homes. To say this would be unfortunate is a gross understatement. The breakup of families, combined with the loss of a program that offers a real way out of substance addiction, would be a devastating double-punch for the mothers currently participating or waiting to participate in the program.

I am troubled by the Department of Health and Human Services plan to terminate assistance to Flowering Tree. The pending decision apparently is based on anticipated fiscal year 1997 funding levels. The Senate soon will consider a bill that would significantly increase funding for substance abuse treatment programs. Flowering Tree's funding request for fiscal year 1997 is only \$688,913. I have written a letter to the Secretary of Health and Human Services, Donna Shalala, urging her to reverse the Department's decision. Last week, I received an initial response from David Mactas, Director of the Center for Substance Abuse Treatment. Mr. Mactas explained the rationale for the Department's decision to terminate funding for Flowering Tree.