be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997

The Senate continued with the consideration of the bill.

Mr. LOTT. Mr. President, I had hoped we would have more Senators still on the floor so I can talk about this. While a great effort is being made by the managers of the bill on both sides, we still have a good way to go on this bill, and we do not have a lot of time to get our work done this year.

I urge Senators on both sides of the aisle, if you have an amendment, please come to the floor and offer it this afternoon. We have an agreement. We are going to go, I believe, to the Pryor amendment next. When that is completed, we would like to go to other amendments.

I am hearing Senators say, they are not ready, they would like to do it next week. We also intend to be in tomorrow. We would like to, after Senators talk in morning business, continue on the DOD authorization bill and get some amendments done.

Senator DASCHLE and I have been talking about exactly how tomorrow will be handled, and we are continuing to work on an agreement with regard to the small business tax package and minimum wage. We are very, very, very close, I think, to having an agreement, although it has been very difficult to get that.

But my point is this: If Senators will not come and offer their amendments during the day on Thursday, will not offer their amendments during the day on Friday, we are going to be in session next Tuesday night and Wednesday night and people are going to be whining about why we are here.

Senator DASCHLE and I are trying to show we want to be different, to be reasonable, get out before too late at night and go home and eat some supper with our families, but if we do not get cooperation during the daytime, it leaves us no option.

So I hope if Senators on both sides of the aisle have an amendment, I cannot imagine you are not ready now but you will be on Tuesday. Again, I urge Senators to do that so we can complete this bill early next week, because we still have the other bills we want to consider, including the possibility of one or two appropriations bills.

I yield the floor, Mr. President.

The PRESIDING OFFICER. Senator PRYOR is recognized.

Mr. PRYOR. I think under the unanimous-consent agreement reached last night, I was to be recognized at this point. Mr. President, if there is no objection, I would like to yield 3 or 4 minutes to the Senator from Nebraska who wants to make a statement, and then also to the Senator from Idaho and the Senator from New Mexico who have an amendment that I understand will be presented and accepted perhaps by a voice vote. Then, if there is no objection, I hope to be recognized. I ask unanimous consent to do so.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Nebraska is recognized.

Mr. EXON. I inquire of the Chair, what is the pending business before the Senate?

The PRESIDING OFFICER. Under the previous order, the amendments are to be laid aside so that the business of the Senator from Arkansas can be considered.

Mr. EXON. And the underlying amendment is a Kyl amendment?

The PRESIDING OFFICER. We have one amendment, No. 4052 of the Senator from Arizona.

Mr. EXON. I thank the Chair. I thank my friend from Arkansas.

VOTE ON THE NOMINATION OF ALICE RIVLIN

Mr. EXON. Mr. President, before I make a comment with regard to the Kyl amendment, which I have talked about previously and will be talking about again at some length, if necessary, I would just like to make a comment that I was rather disappointed in the votes we just had. We just had two controversial nominations: One, Mr. Greenspan and one, Ms. Rivlin.

I was very pleased to see, although the Greenspan nomination was controversial, it had a strong bipartisan flavor of support on a vote of 91 to 7. Frankly, I was quite disappointed at the lack of similar consideration for the other nomination that some people thought was controversial with regard to Ms. Rivlin.

We all know Alice Rivlin and have known her for a very, very long time. Frankly, I was discouraged that the bipartisan spirit that has to be part of the Federal Reserve Board was not accepted nearly as handily as was the Greenspan nomination.

Ms. Rivlin was confirmed by a vote of 57 for and 41 against. I thank those few Members on the Republican side of the aisle who at least, in this instance, showed the same bipartisan support that those of us on this side of the aisle showed for Mr. Greenspan. Frankly, I was quite disappointed and, I think, this is a point in the Senate that should be raised.

There must be sometime when we can lay partisanship aside and recognize and realize that we have a two-party system that still is designed to function here.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997

The Senate continued with the consideration of the bill.

AMENDMENT NO. 4049

Mr. EXON. Mr. President, on the matter at hand with regard to the amendment offered by the Senator from Arizona on the Comprehensive Test Ban Treaty, I indicated in my remarks of yesterday that the administration, and others, who have a firsthand say, had a firsthand look at the Comprehensive Test Ban Treaty are all opposed to the Kyl amendment. I would like to read briefly at this time the letters that I have received from some of the agencies.

First, a letter I received from the United States Arms Control and Disarmament Agency, from Mr. John D. Holum.

Dear Senator EXON: Special Assistant to the President for Legislative Affairs, William C. Danvers, has provided you the Administration's reason for opposing the Kyl-Reid amendment to the FY 1997 Defense Authorization Bill.

As I represent the lead agency in the Comprehensive Test Ban Treaty negotiations in Geneva, I want to emphasize our belief that this amendment could undermine our efforts to negotiate a Treaty that would end nuclear testing for all time by suggesting a possible U.S. interest in resuming testing before the CTBT enters into force, that does not, in fact, exist.

Since the end of President Eisenhower's tenure, the United States has pursued a CTBT as the long-term goal. Now, when such a treaty is in hand, we urge the members of the Senate to oppose this amendment and to reaffirm our country's longstanding bipartisan efforts to achieve a CTBT.

A second memorandum from the Secretary of Energy:

The nuclear weapons testing moratorium instituted by the Hatfield-Exon-Mitchell amendment has made a significant contribution to the U.S. nuclear non-proliferation efforts. During the duration of the moratorium, the U.S. stockpile of nuclear weapons has remained safe and reliable. There is no requirement to resuming testing or even to plan to resume testing for safety or reliability or any other purpose, at this time. The Department of Energy, with the full support of the Department of Defense, has embarked on an ambitious stockpile stewardship program to ensure that the safety and reliability of the stockpile is maintained into the foreseeable future, without nuclear testing. One of the elements of stockpile stewardship is maintaining the readiness of the Nevada Test Site to resume testing if it is in the supreme national interest of the United States to do so. DOE is committed to maintaining this readiness, consistent with Presidential direction. DOE has confidence in the stockpile stewardship program and does not need the authority that this amendment would provide.

President Clinton has already outlined his commitment to maintain the safety and reliability of the nuclear stockpile under the existing moratorium and under a comprehensive test ban treaty. It is premature to make any statutory changes to the existing moratorium legislation. Any changes should be made only in the context of a negotiated and signed comprehensive test ban treaty. Any changes in the current statutory prohibition on underground nuclear weapons testing at

this time certainly does not help the negotiation process, and could very well set it back. Achieving a comprehensive test ban treaty is a key to reducing the global nuclear danger including proliferation of nuclear weapons and the spread of nuclear terrorism.

Last, Mr. President, a letter from the National Security Council.

These are of the same date.

DEAR SENATOR EXON: You have requested the Administration's views on the amendment offered by Senators Kyl and Reid concerning nuclear testing and the Comprehensive Test Ban Treaty (CTBT). The Administration is strongly opposed to this amendment.

We believe that the amendment could not come at a worse time. The states that are negotiating in the CTBT negotiations in the Conference on Disarmament (CD) in Geneva have set a deadline of June 28—next Friday—to complete this historic treaty. The amendment could be interpreted by some CD states as signaling a possible U.S. intent to conduct a round of nuclear testing after the CTBT is completed but before it enters into force. The Administration has no such plans or intentions, nor has it requested funding for any such tests. Moreover, the amendment would relax the existing legislative moratorium on U.S. testing just at the time the only remaining state still conducting nuclear tests, China, has announced that it will joint the global moratorium in September.

As you know, we are confident that our Science-Based Stockpile Stewardship will ensure that we can meet the challenge of maintaining the reliability and safety of our nuclear inventory absent nuclear testing. Nonetheless, because he considers this to be a supreme national interest of the United States, the President has pledged that after the CTBT enters into force, he would be prepared to withdraw from the Treaty in the event, however unlikely, that he was informed by the Secretaries of Defense and Energy that a high level of confidence in the safety or reliability of a nuclear weapon type critical to our nuclear deterrent could no longer be certified. There is concern on the part of the amendment's co-sponsors that if such a problem arose after September 30 but before the CTBT entered into force, current law would prohibit remedial testing.

If that were to occur, it is important to recognize that one or more years would be required to prepare for any resumption of nuclear testing at the Nevada Test Site. During this time, we would be able to obtain the necessary funding and legislative relief to carry out the necessary tests.

In short, the Administration believes that the Kyl-Reid Amendment is not only not necessary, but it also entails a genuine risk of delaying or derailing the CTBT negotiations just as we may well be poised to achieve a global ban on nuclear testing.

Signed by the Special Assistant to the President on Legislative Affairs.

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

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

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY,
Washington, DC, June 19, 1996.

Hon. J. JAMES EXON,
U.S. Senate, Washington, DC.

DEAR SENATOR EXON: Special Assistant to the President for Legislative Affairs, William C. Danvers, has provided you the Administration's reasons for opposing the Kyl/Reid amendment to the FY 1997 Defense Authorization Bill.

As I represent the lead agency in the Comprehensive Test Ban Treaty (CTBT) negotiations in Geneva, I want to emphasize our belief that this amendment could undermine our efforts to negotiate a Treaty that would end nuclear testing for all time by suggesting a possible U.S. interest in resuming testing before a CTBT enters into force, that does not, in fact, exist.

Since the end of President Eisenhower's tenure, the United States has pursued a CTBT as a long-term goal. Now, when such a treaty is in hand, we urge the members of the Senate to oppose this amendment and to reaffirm our country's longstanding bipartisan efforts to achieve a CTBT.

Sincerely,

JOHN D. HOLUM.

STATEMENT OF SECRETARY OF ENERGY HAZEL O'LEARY

The nuclear weapons testing moratorium instituted by the Hatfield-Exon-Mitchell amendment has made a significant contribution to U.S. nuclear non-proliferation efforts. During the duration of the moratorium, the US stockpile of nuclear weapons has remained safe and reliable. There is no requirement to resuming testing or even to plan to resume testing for safety or reliability or any other purpose, at this time. The Department of Energy, with the full support of the Department of Defense, has embarked on an ambitious stockpile stewardship program to ensure that the safety and reliability of the stockpile is maintained into the foreseeable future, without nuclear testing. One of the elements of stockpile stewardship is maintaining the readiness of the Nevada Test Site to resume testing if it is in the supreme national interest of the United States to do so. DOE is committed to maintaining this readiness, consistent with Presidential direction. DOE has confidence in the stockpile stewardship program and does not need the authority that this amendment would provide.

President Clinton has already outlined his commitment to maintain the safety and reliability of the nuclear stockpile under the existing moratorium and under a comprehensive test ban treaty. It is premature to make any statutory changes to the existing moratorium legislation. Any changes should be made only in the context of a negotiated and signed comprehensive test ban treaty. Any changes in the current statutory prohibition on underground nuclear weapons testing at this time certainly does not help the negotiation process, and could very well set it back. Achieving a comprehensive test ban treaty is a key to reducing the global nuclear danger including proliferation of nuclear weapons and the spread of nuclear terrorism.

NATIONAL SECURITY COUNCIL,
Washington, DC, June 19, 1996.

Hon. J. JAMES EXON,
U.S. Senate, Washington, DC.

DEAR SENATOR EXON: You have requested the Administration's views on the amendment offered by Senators Kyl and Reid concerning nuclear testing and the Comprehensive Test Ban Treaty (CTBT). The Administration is strongly opposed to this amendment.

We believe that the amendment could not come at a worse time. The states that are negotiating in the CTBT negotiations in the Conference on Disarmament (CD) in Geneva have set a deadline of June 28—next Friday—to complete this historic treaty. The amendment could be interpreted by some CD states as signaling a possible U.S. intent to conduct a round of nuclear testing after the CTBT is completed but before it enters into force. The Administration has no such plans or intentions, nor has it requested funding for any such tests. Moreover, the amendment would relax the existing legislative moratorium on U.S. testing just at the time the only remaining state still conducting nuclear tests, China, has announced that it will join the global moratorium in September.

As you know, we are confident that our Science-Based Stockpile Stewardship will ensure that we can meet the challenge of maintaining the reliability and safety of our nuclear inventory absent nuclear testing. Nonetheless, because he considers this to be a supreme national interest of the United States, the President has pledged that after the CTBT enters into force, he would be prepared to withdraw from the Treaty in the event, however unlikely, that he was informed by the Secretaries of Defense and Energy that a high level of confidence in the safety or reliability of a nuclear weapon type critical to our nuclear deterrent could no longer be certified. There is concern on the part of the amendment's co-sponsors that if such a problem arose after September 30 but before the CTBT entered into force, current law would prohibit remedial testing.

If that were to occur, it is important to recognize that one or more years would be required to prepare for any resumption of nuclear testing at the Nevada Test Site. During this time, we would be able to obtain the necessary funding and legislative relief to carry out the necessary tests.

In short, the Administration believes that the Kyl-Reid Amendment is not only not necessary, but it also entails a genuine risk of delaying or derailing the CTBT negotiations just as we may well be poised to achieve a global ban on nuclear testing.

Sincerely,

WILLIAM C. DANVERS,
Special Assistant to the President for Legislative Affairs.

Mr. EXON. I thank my colleague from Arkansas.

The PRESIDING OFFICER. Under the unanimous consent agreement, the Senator from Idaho is now recognized.

Mr. CRAIG. Mr. President, let me thank the Senator from Arkansas for yielding me this valuable time.

AMENDMENT NO. 4085

(Purpose: To amend the Waste Isolation Pilot Plant Land Withdrawal Act)

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Idaho [Mr. CRAIG], for himself, Mr. KEMPTHORNE, Mr. DOMENICI, Mr. BINGAMAN, Mr. MURKOWSKI, and Mr. JOHNSTON, proposes an amendment numbered 4085.

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

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

The amendment is as follows:

On page 446, after line 12, insert the following subtitle:

Subtitle E.—Waste Isolation Pilot Plant Land Withdrawal Act Amendments.

SECTION 1. SHORT TITLE AND REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the ''Waste Isolation Pilot Plant Land Withdrawal Amendment Act''.

(b) REFERENCE.—Except as otherwise expressly provided, whenever in this Act an

amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Waste Isolation Pilot Plant Land Withdrawal Act (Public Law 102–579).

SEC. 2. DEFINITIONS.

Paragraphs (18) and (19) of section 2 are repealed.

SEC. 3. TEST PHASE AND RETRIEVAL PLANS.

Section 5 and the item relating to such section in the table of contents are repealed.

SEC. 4. MANAGEMENT PLAN.

Section 4(b)(5)(B) is amended by striking ''or with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)''.

SEC. 5. TEST PHASE ACTIVITIES.

Section 6 is amended—

(1) by repealing subsections (a) and (b),

(2) by repealing paragraph (1) of subsection (c).

(3) by redesignating subsection (c) as subsection (a) and in that subsection—

(A) by repealing subparagraph (A) of paragraph (2),

(B) by striking the subsection heading and the matter immediately following the subsection heading and inserting ''STUDY.—The following study shall be conducted:'',

(C) by striking ''(2) REMOTE-HANDLED WASTE.—'',

(D) by striking ''(B) STUDY.—'',

(E) by redesignating clauses (i), (ii), and (iii) as paragraphs (1), (2), and (3), respectively, and

(F) by realigning the margins of such clauses to be margins of paragraphs,

(5) in subsection (d), by striking '', during the test phase, a biennial'' and inserting ''a'' and by striking '', consisting of a documented analysis of'' and inserting ''as necessary to demonstrate'', and

(6) by redesignating subsection (d) as subsection (b).

SEC. 6. DISPOSAL OPERATIONS.

Section 7(b) is amended to read as follows:

''(b) REQUIREMENTS FOR COMMENCEMENT OF DISPOSAL OPERATIONS.—The Secretary may commence emplacement of transuranic waste underground for disposal at WIPP only upon completion of—

''(1) the Administrator's certification under section 8(d)(1) that the WIPP facility will comply with the final disposal regulations;

''(2) the acquisition by the Secretary (whether by purchase, condemnation, or otherwise) of Federal Oil and Gas Leases No. NMNM 02953 and No. NMNM 02953C, unless the Administrator determines, under section 4(b)(5), that such acquisition is not required; and,

''(3) the expiration of the 30-day period beginning on the date on which the Secretary notifies Congress that the requirements of section 9(a)(1) have been met.''.

SEC. 7. ENVIRONMENTAL PROTECTION AGENCY DISPOSAL REGULATIONS.

(a) SECTION 8(d)(1).—Section 8(d)(1) is amended—

(1) by amended subparagraph (A) to read as follows:

''(A) APPLICATION FOR COMPLIANCE.—Within 30 days after the date of the enactment of the Waste Isolation Pilot Plant Land Withdrawal Amendment Act, the Secretary shall provide to Congress a schedule for the incremental submission of chapters of the application to the Administrator beginning no later than 30 days after such date. The Administrator shall review the submitted chapters and provide requests for additional information from the Secretary as needed for completeness within 45 days of the receipt of each chapter. The Administrator shall notify Congress of such requests. The schedule shall call for the Secretary to submit all chapters to the Administrator no later than October 31, 1996. The Administrator may at any time request additional information from the Secretary as needed to certify, pursuant to subparagraph (B), whether the WIPP facility will comply with the final disposal regulations.''; and

(2) in subparagraph (D), by striking ''after the application is'' and inserting ''after the full application has been''.

(b) SECTION 8(d)(2), (3).—Section 8(d) is amended by striking paragraphs (2) and (3), by striking ''(1) COMPLIANCE WITH DISPOSAL REGULATIONS.—'', and by redesignating subparagraphs (A), (B), (C), and (D) of paragraph (1) as paragraph (1), (2), (3), and (4), respectively.

(c) SECTION 8(g).—Section 8(g) is amended to read as follows:

''(G) ENGINEERED AND NATURAL BARRIERS, ETC.—The Secretary shall use both engineered and natural barriers and any other measures (including waste form modifications) to the extent necessary at WIPP to comply with the final disposal regulations.''.

SEC. 8. COMPLIANCE WITH ENVIRONMENTAL LAWS AND REGULATIONS.

(a) SECTION 9(a)(1).—Section 9(a)(1) is amended by adding after and below subparagraph (H) the following: ''With respect to transuranic mixed waste designated by the Secretary for disposal at WIPP, such waste is exempt from treatment standards promulgated pursuant to section 3004(m) of the Solid Waste Disposal Act (42 U.S.C. Sec. 6924(m)) and shall not be subject to the land disposal prohibitions in section 3004(d), (e), (f), and (g) of the Solid Waste Disposal Act.''.

(b) SECTION 9(b).—Subsection (b) of section 9 is repealed.

(c) SECTION 9(c)(2).—Subsection (c)(2) of section 9 is repealed.

(d) SECTION 14.—Section 14 is amended—

(1) in subsection (a), by striking ''No provision'' and inserting ''Except for the exemption from the land disposal restrictions described in section 9(a)(1), no provision''; and

(2) in subsection (b)(2), by striking ''including all terms and conditions of the No-Migration Determination'' and inserting ''except that the transuranic mixed waste designated by the Secretary for disposal at WIPP is exempt from the land disposal restrictions described in section 9(a)(1)''.

SEC. 9. RETRIEVABILITY.

(a) SECTION 10.—Section 10 is amended to read as follows:

''SEC. 10. TRANSURANIC WASTE.

''It is the intent of Congress that the Secretary will complete all actions required under section 7(b) to commence emplacement of transuranic waste underground for disposal at WIPP no later than November 30, 1997.''.

(b) CONFORMING AMENDMENT.—the item relating to section 10 in the table of contents is amended to read as follows:

''Sec. 10. Transuranic waste.''.

SEC. 10. DECOMMISSIONING OF WIPP

Section 13 is amended—

(1) by repealing subsection (a), and

(2) in subsection (b), by striking ''(b) MANAGEMENT PLAN FOR THE WITHDRAWAL AFTER DECOMMISSIONING.—Within 5 years after the date of the enactment of this Act, the'' and inserting ''The''.

SEC. 11. ECONOMIC ASSISTANCE AND MISCELLANEOUS PAYMENTS.

(a) Section 15(a) is amended by adding at the end the following: ''An appropriation to the State shall be in addition to any appropriation for WIPP.''.

(b) $20,000,000 is authorized to be appropriated in fiscal year 1997 to the Secretary for payment to the State of New Mexico for road improvements in connection with the WIPP.

Mr. CRAIG. Mr. President, this is an amendment that has been offered by myself, Senator KEMPTHORNE, Senator DOMENICI, Senator BINGAMAN, Senator MURKOWSKI, and Senator JOHNSTON. It deals with a very important part of our nuclear waste management in this country, specifically the waste isolation pilot plant in Carlsbad, NM.

In working with all of our colleagues, our effort has been to remove the unnecessary delays and bureaucratic requirements to achieve the major environmental objectives that are so critical to the State of New Mexico, and to save taxpayers' money, while at the same time showing our country that we can move and act responsibly in the area of transuranic waste.

The amendment that we have before us, that will become a part of this pending legislation, will amend the Waste Isolation Pilot Plant Land Withdrawal Act of 1992 in several ways. It deletes obsolete language of the 1992 act. Particularly important is the reference and requirements for ''test phase'' activities.

Since the enactment of the 1992 act, the Department of Energy has abandoned the test phase that called for underground testing in favor of above ground laboratory test programs.

This amendment, Mr. President, is agreed to by the Department of Energy and by the Environmental Protection Agency. It allows the kind of phase necessary to test to completion to assure all of our citizens, and especially the citizens of New Mexico, that this is a safe and sound facility.

Most important, along with all of this, in streamlining the process, it would remove duplicative regulation and save the taxpayers' dollars. We hope that it will have that effect.

Mr. President, my amendment will clear up several unnecessary and delaying bureaucratic requirements that currently exist in the Waste Isolation Pilot Land Withdrawal Act, Public Law 102–579, so the WIPP facility can be opened. It also meets a major environmental objective while saving the taxpayer money.

The purpose of the WIPP is to provide for the safe disposal of transuranic [TRU] radioactive and mixed wastes resulting from defense activities and programs of the United States. These materials are currently stored at temporary facilities, and until WIPP is opened, little can be done to clean up and close these temporary storage sites.

Idaho currently stores the largest amount of TRU waste of any State in the Union, but Idaho is not alone. Washington, Colorado, South Carolina, and New Mexico also temporarily store TRU waste.

The agreement recently negotiated between the State of Idaho, the DOE and the U.S. Navy states that the TRU currently located in Idaho will begin to be shipped to WIPP by April 30, 1999.

This legislation will assure this commitment is fulfilled by clearly stating that it is the intent of Congress that the Secretary of Energy will complete all actions needed to commence emplacement of TRU waste at WIPP no later than November 30, 1997.

We cannot solve the environmental problems at sites such as the Idaho National Engineering Laboratory, Rocky Flats Weapons Facility, Savannah River and others without WIPP. The reason is obvious. Without a place to dispose of the waste, cleanup is impossible, and without cleanup, further decommissioning can not occur.

The goal of this bill is simple: To deliver on Congress' longstanding commitment to open WIPP by 1998.

This bill amends the Waste Isolation Land Pilot Plant Land Withdrawal Act of 1992 in several very significant ways.

It deletes obsolete language in the 1992 act. Of particular importance is the reference and requirements for test phase activities. Since the enactment of the 1992 act, the Department of Energy [DOE] has abandoned the best phase that called for underground testing in favor of above ground laboratory test programs. Thus the test phase no longer exists as defined in the 1992 law and needs to be removed so it does not complicate the ongoing WIPP process.

Most important, this amendment will streamline the process, remove duplicative regulations, save taxpayers dollars—currently the costs to simply watch over WIPP exceed $20 million per month.

This bill does not remove EPA as the DOE regulator of the WIPP. DOE has stated numerous times that it does not want to self regulate. The Department believes that having EPA as the regulator will instill additional public confidence in the certification process and the facility itself, once it opens.

I am skeptical regarding EPA. EPA has a poor record of meeting deadlines. The WIPP, as a facility, is ready to operate now and is basically waiting on EPA's final approval. The schedule DOE has established to meet the opening dates is an aggressive but not entirely workable timetable. It is aggressive only if EPA can accomplish its tasks on time. Because of EPA's demonstrated inability to meet schedules and to avoid imposing unnecessary large financial burdens on the taxpayer, there is a strong sentiment in the Congress to remove EPA from the WIPP regulatory role. Based on assurance made to me by the EPA, my amendment does not follow this course. However, if EPA again falters, I will have to reconsider this position in future legislation.

Idaho and the Nation need to have the WIPP opened sooner rather than later. Each day of delay is costly, nearly $1 million per day in taxpayers dollars, and the potential dangers to the environment and human health resulting from the temporary storage of this waste continue.

It is time to act. We must, if we are to clean up sites such as Idaho's. We must act to dispose of this task permanently and safely for future generations. This amendment clears the way for action.

Mr. MURKOWSKI. Mr. President, I would like to ask permission to engage in a colloquy with Senator CRAIG, regarding his amendment to the Waste Isolation Pilot Plant Land Withdrawal Act. The WIPP Land Withdrawal Act withdrew land near Carlsbad, NM, for construction of a disposal facility for transuranic waste produced by the Department of Energy. That act was reported out of the Committee on Energy and Natural Resources and enacted in 1992. In addition to providing for the withdrawal of the land, the WIPP Land Withdrawal Act imposed many substantive and procedural licensing requirements on the WIPP facility. Many of these requirements are redundant or have become moot as a result of changes in the program, and should be eliminated. S. 1402, a bill introduced by Senators CRAIG and JOHNSTON to amend the WIPP Land Withdrawal Act, has been referred to the Energy and Natural Resources Committee. Does Senator CRAIG acknowledge that this amendment addresses matters within the jurisdiction of the Committee on Energy and Natural Resources?

Mr. CRAIG. Yes, this amendment would alter the language of the WIPP Land Withdrawal Act, which is within the jurisdiction of the Committee on Energy and Natural Resources.

Mr. MURKOWSKI. Although this amendment is within the jurisdiction of the Committee on Energy and Natural Resources, I support the substantive changes made by the amendment and understand that it is important to make these changes in a timely manner. Therefore, I will not object to its inclusion in the Defense authorization legislation.

Mr. CRAIG. Mr. President, I now yield to Senator BINGAMAN from New Mexico.

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

Mr. BINGAMAN. Mr. President, I do support this amendment. Let me say that when this bill was first introduced in the House, and in the Senate as well, I felt it was fatally flawed in several respects. It did, in its first form, propose to eliminate the regulatory role of the Environmental Protection Agency. It proposed to allow nondefense transuranic waste to go to WIPP, as well as defense-related transuranic waste. It needed the periodic recertification requirement by the Environmental Protection Agency. It deleted authority by EPA to issue criteria.

All of those problems have been solved in the amendment that is now about to be voted on here in the Senate. I am very pleased to see the improvements that have been made. I have been in touch with the Under Secretary of Energy, Thomas Grumbly, to get his comments on this proposed amendment which we are now getting ready to vote on. He indicates that he and his staff have reviewed it in detail and support the amendment.

I have been also in touch with Mary Nichols, the Assistant Administrator for Air and Radiation in the Environmental Protection Agency. She indicates that she is satisfied with this proposed amendment and believes it is something that we should enact.

Mr. President, the foremost concern that I have had, and that I believe most Members have had, in this facility from the beginning has been whether or not we were adequately protecting the health and safety of our citizens as we went forward to design and develop this facility. I am persuaded we are still adequately protecting that health and safety, even under this language. For that reason, I will support it.

I will make the point which needs to be crystal clear that transuranic waste can only be disposed of underground at this facility upon completion, by the Administrator of EPA, of a certification that final disposal regulations have been complied with. That essential safeguard is foremost in this amendment. I think that is very important for the people of New Mexico. I urge my colleagues to support the amendment.

Mr. CRAIG. Mr. President, I yield to Senator DOMENICI from New Mexico.

Mr. DOMENICI. Mr. President, I thank Senator CRAIG. Senator BINGAMAN, it is a pleasure to be with you here on the floor on this issue.

Let me start by reiterating the last comments that Senator BINGAMAN made. What is most important to us, and what is most important to the people of New Mexico, is that as this underground facility proceeds to the point where it may be opened and finally be a repository, that it be subject to the Environmental Protection Agency's most strict requirements with reference to health and safety. As a matter of fact, they must certify it before it can be opened.

I will read for the RECORD an excerpt from a letter dated May 15, 1996, from the EPA, Mary D. Nichols, assistant administrator for Air and Radiation. I ask unanimous consent that the entire communication be printed in the RECORD.

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

U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF AIR AND RADIATION,

Washington, DC, May 15, 1996.

Hon. TOM UDALL,
Attorney General of New Mexico,
Santa Fe, NM.

DEAR MR. UDALL: The purpose of this letter is to follow-up on our telephone conversation of April 1, 1996, and respond to your letter of April 4, 1996, regarding the Environmental Protection Agency's (EPA) role in the regulation of the Waste Isolation Pilot Plant (WIPP).

The Administration is presently formulating its position on H.R. 1663, the ''Skeen-Schaefer Bill'' amending the WIPP Land

Withdrawal Act (Pub. L. 102–579). I appreciated hearing your views about the legislation and am pleased we had the opportunity to discuss these important issues. The Agency believes that the amended H.R. 1663 is a sound bill and makes critical improvements over its antecedent. As you are aware, the Skeen Bill, as originally proposed, severely limited EPA's regulatory oversight of WIPP and, we believe, did not provide adequate protection of human health and the environment. Mr. Schaefer's amendments retain EPA as the independent regulator of the WIPP, eliminates extraneous requirements, and leaves intact the provisions of the 1992 WIPP Land Withdrawal Act (LWA) that require EPA to certify whether the WIPP facility will comply with the disposal regulations in accordance with public rule-making procedures.

You specifically expressed concern about the impact of the proposed legislation on the WIPP certification process. In particular, that review of individual chapters of the Department of Energy's (DOE) compliance application by EPA would require the Agency to commit to a position on the sufficiency of each chapter without public input. While it is true that EPA will review individual chapters prior to receipt of the full application, the Agency will make no determination on the adequacy of any part of the application until: 1) EPA has received the full application from the department; and 2) public comments have been considered. In fact, the Agency has received the first of these chapters and placed it in the certification docket (No. A–93–02) on May 1, 1996. We will be providing written comments to DOE on these chapters. The written comments will also be placed in the public dockets.

You also raised concerns about the effect of the proposed legislation on the public's opportunity to provide comment on DOE's application. As in the past, EPA will continue to foster an open public process. As you will note in the final compliance criteria (40 CFR Part 194), EPA will hold two 120-day public comment periods after it receives DOE's full compliance application. The proposed legislation will not affect the process established in the compliance criteria. Furthermore, EPA never planned for or created any process for formal public comment on the completeness of the application. Therefore, since DOE is providing the Agency with individual chapters prior to submission of the full application, the public will have an additional opportunity to comment on, and additional time to review, the individual chapters, via EPA's public docket.

Additionally, you were concerned that the proposed H.R. 1663 removes the ability of the Administrator to enforce compliance of the WIPP with any law, regulation or permit requirement described in §9(a)(1) of the LWA. We feel that EPA's ability to ensure compliance with these environmental laws is not compromised by removal of this provision since: 1) the environmental laws described in the LWA contain their own enforcement provisions; and 2) 40 CFR Part 194 imposes requirements that DOE perform remedial actions if the Administrator determines WIPP to be in non-compliance with the transuranic waste disposal standards.

Further, with regard to H.R. 1663, you expressed concern about the WIPP being used as a repository for transuranic wastes that did not result from a defense activity. The proposed legislation does not alter the definition of exposure or capacity limits of either remote- or contract-handled wastes set forth in the LWA. If EPA were to certify the WIPP, this provision would allow for disposal of a relatively small amount of waste from a site in West Valley, NY. If WIPP were capable of accepting this waste within the capacity limits of the LWA, it would be imprudent to needlessly spend taxpayer money for a site similar to WIPP for such a small amount of transuranic waste simply because the process which generated the waste was not defense related.

Lastly, I am disappointed that you have elected to bring a legal challenge against EPA's WIPP compliance criteria published on February 9, 1996. The EPA considered the views of all interested parties, including the comments and suggestions made by your office, in deciding the contents of the final criteria. As you know, EPA held two public comment periods totaling 135 days, and conducted a series of public hearings in New Mexico. Ultimately, the Administrator of EPA, exercising her independent judgment, determined the contents of the final criteria. We believe EPA's criteria are sound and will effectively protect public health and the environment.

I want to assure you that EPA will keep communication lines open as it undertakes the public rulemaking proceeding to certify whether the WIPP facility will comply with the final disposal regulations. We recognize the importance of this matter to you and all of the residents of New Mexico.

If you have questions regarding this letter or any other concerns, please contact Frank Marcinowski of my staff at (202) 233–9310.

Sincerely,

MARY D. NICHOLS,
Assistant Administrator
for Air and Radiation.

Mr. DOMENICI. This letter is written to the attorney general of New Mexico in response to inquiries. ''The Agency believes that the amended H.R. 1663''—I will state here, for all intents and purposes, is the Craig amendment—''is a sound bill and makes critical improvements over its antecedent. As you are aware, the Skeen bill, as originally proposed, severely limited EPA's regulatory oversight of WIPP and, we believe, did not provide adequate protection of human health and the environment. Mr. Schaefer's amendments retain EPA as the independent regulator of the WIPP, eliminates extraneous requirements, and leaves intact the provisions of the 1992 WIPP Land Withdrawal Act (LWA) that require EPA to certify whether the WIPP facility will comply with the disposal regulations in accordance with public rule-making procedures.''

I do not think it can be any clearer that the EPA wholeheartedly supports this amendment.

In summary, the amendment is almost identical to language agreed to by DOE and EPA. That agreed-upon language was reported by the House Commerce Committee on April 25 and was recently reported by the House National Security Committee.

The legislation would:

Delete the authorization included in the WIPP Land Withdrawal Act to conduct tests underground at WIPP using transuranic waste.

The DOE decided in 1992 not to conduct such tests.

Require the Secretary of Energy to acquire the oil and gas leases on the WIPP site unless the EPA determines the acquisition is not necessary.

Create an incremental licensing process under which DOE will submit chapters of the license application one at a time, and EPA would comment one at a time. The EPA would make a final, encompassing decision. The EPA could request additional information from the DOE at any time.

At the suggestion of the EPA and DOE, provides that the final disposal regulations for WIPP will be the radiation protection standards at 40 C.F.R. 191, and not the Solid Waste Disposal Act.

The WIPP Land Withdrawal Act required that DOE certify compliance with both, a step DOE and EPA agreed would be redundant.

The legislation allows the DOE to use engineered barriers, natural barriers, or any other measures—this last provision being a new provision—to ensure WIPP complies with the final disposal regulations.

This allows DOE to use waste treatment, such as vitrification, to ensure WIPP's compliance.

Deletes the section of the WIPP Land Withdrawal Act dealing with retrieval of the waste emplaced during the test phase since no waste will be emplaced during a test phase.

States that it is the intent of Congress that the Secretary of Energy make a final decision with respect to the disposal of transuranic waste at WIPP by November 30, 1997.

Provides $20 million per year to New Mexico for impact assistance beginning upon enactment of this legislation.

The waste isolation pilot plant is a permanent disposal facility in a salt bed 2,000 feet below New Mexico for transuranic waste generated in DOE's nuclear weapons complex.

Transuranic waste means waste that includes both radioactive material and solvents, metals, and other refuse from manufacturing.

The WIPP Land Withdrawal Act enacted on October 30, 1992, authorized a 5- to 8-year test phase at WIPP during which transuranic waste could be placed in WIPP and monitored.

Because of the nature of the waste intended for WIPP, the act also made WIPP subject to two sets of regulations: radiation protection standards and the Solid Waste Disposal Act.

In 1993, DOE decided it was not necessary to conduct underground tests at WIPP using transuranic waste.

At the suggestion of DOE and EPA, this amendment makes the WIPP Land Withdrawal Act consistent with the current test phase at WIPP and removes the redundancy of two sets of regulatory standards.

First, the amendment deletes those sections of the WIPP Land Withdrawal Act dealing with tests using transuranic waste.

Second, the amendment, at the suggestion of the EPA, subjects WIPP to the radiation protection standards and removes the application of the Solid Waste Disposal Act. This is necessary to remove the confusion that occurs by imposing two different sets of regulations.

Frankly, it is clear that WIPP can meet with Solid Waste Disposal Act, its 10,000-year radiation protection standards are going to be the real challenge and the relevant regulations.

There are two centers of controversy in that law. First, what hurdles did DOE have to overcome to use transuranic waste for tests in WIPP. And second, what information had to be revealed by those tests for a final disposal decision to be made.

DOE subsequently decided that tests with transuranic waste were not needed.

These changes primarily deal with taking out those provisions of the law dealing with tests using transuranic waste.

The law also required WIPP to meet two different standards for the disposal of waste at WIPP: radiation release standards and solid waste standards.

DOE and EPA now agree that demonstrating compliance with both standards is redundant—they agree compliance is best proven by meeting the radiation release standards.

The original law also provided New Mexico $20 million per year beginning in the first year transuranic waste was shipped to WIPP. The money was to be used for roads and other improvements.

Because no transuranic waste has been brought to WIPP for the tests, New Mexico has lost out on $160 million that would have otherwise been provided. This law starts the flow of that money immediately so New Mexico can make the necessary road upgrades.

I indicate to the Senate that it is clear this waste isolation pilot project, one of a kind, the first ever, can meet the requirements of the Solid Waste Disposal Act. It is not that act that is cumbersome and difficult to achieve, but rather the 10,000-year radiation protection standards. Let me repeat: 10,000-year radiation protection standards. These are the standards that are going to be in effect after this amendment is adopted and becomes law. They are in effect now.

All we are suggesting is the EPA and the Department of Energy thinks this is the only set of standards that we need follow and that those that are found under the Solid Waste Disposal Act are redundant and not needed in this case.

I thank all who have cooperated in getting us this far. It is time to get this done. This amendment has been reported out on April 25 from a House committee and was reported recently by the National Security Committee in the House. It has had hearings and been looked at over and over by the regulatory agencies. I believe it is time to adopt it.

I yield the floor.

Mr. THURMOND. Mr. President, I rise in favor of this amendment. It is very similar to WIPP legislation introduced last year in the House. That legislation was agreed to by the Department of Energy and Environmental Protection Agency and goes a long way toward breaking down the regulatory log jams that are holding up this much needed facility.

The story of WIPP is a story of false starts and needless delays. The delays in opening WIPP have created a massive backlog of materials that are currently being stored at DOE sites throughout the country—often in drums and boxes—at a very high cost to the taxpayers. These wastes need to be stabilized and prepared for shipment to a permanent and safe repository. The WIPP facility provides a safe and permanent disposal option and we should move forward as rapidly as possible with its opening.

Mr. President, we need this facility. We need it now. This amendment will help move this facility forward and I wholeheartedly support its passage.

Mr. KEMPTHORNE. Mr. President, I am pleased to introduce and support the Craig-Kempthorne-Domenici-Bingaman amendment relating to the WIPP land withdrawal. The proposed amendment will simplify the land withdrawal process in a number of important ways. For example, the amendment will reduce the waiting period between the final certification and opening of WIPP from 180 days to 30 days, improve interaction between the Department of Energy and the Environmental Protection Agency, remove duplicative regulatory requirements, save the taxpayers money, expedite the opening of WIPP, and protect the environment, health, and safety of the citizens of New Mexico. In addition, the amendment is similar to a legislation in the other body which is supported by the Department of Energy and the Environmental Protection Agency. This is a good bipartisan amendment, supported by the administration, and I am pleased to be a cosponsor of this important piece of legislation.

The WIPP facility plays an important role in our Nation's effort to show its citizens that we can deal responsibly with the nuclear waste left over from our victory in the cold war. The WIPP facility will serve as a permanent repository for transuranic waste. The waste will be entombed in a salt cavern that slowly seals itself over time. I have visited the WIPP facility and I met with numerous local and State officials from New Mexico who strongly support this project.

THe WIPP facility will also allow the Federal Government to meet its court-enforceable commitment to the State of Idaho to ship transuranic waste from Idaho by 1999. The proposed amendment will help ensure the opening of this important facility in time to meet this commitment. WIPP will serve as a symbol of our ability to dispose of nuclear material in a safe and rational way.

I want to thank the two able Senators from New Mexico, Senator DOMENICI and Senator BINGAMAN, for their help in drafting this bipartisan amendment. I also want to thank Senators MURKOWSKI and JOHNSTON, chairman and ranking member of the Energy Committee, for their support for this important amendment.

Mr. CRAIG. Mr. President, let me close by thanking all of my colleagues for the cooperation and their participation in getting this amendment to the floor. Without the help of Senator DOMENICI and Senator BINGAMAN, this amendment would not be here today. They are the host States, but they have also been extremely diligent in assuring the citizens of their State that once this is in place, it is environmentally sound and certainly protects, in all ways, their citizens.

In my State of Idaho, the Governors' agreement is now negotiated and completed by a Federal court order. It could not go forward without this amendment. Now we have this amendment in place, protecting all of the environmental concerns involved, solving many of the environmental problems we have in our State.

Let me thank my colleagues for their participation. I ask that the amendment be adopted.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to amendment No. 4085, offered by the Senators from Idaho and New Mexico.

The amendment (No. 4085) was agreed to.

Mr. CRAIG. I move to reconsider the vote.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous agreement, the Senator from Arkansas is now recognized.

CONFORMING AMENDMENT TO GATT LEGISLATION

Mr. PRYOR. Mr. President, I will take a very few moments this afternoon to refresh my colleagues' memories as to why we are here again to act on the GATT issue.

When the Congress passed the GATT legislation, we made two changes to U.S. patent law. First, all patents were extended from 17 to 20 years in length. That is the law today for all patents in every industry in this country.

Second, we adopted a grandfather provision which permitted generic competitors in all industries to go to the market on the original 17-year date if they had made a substantial investment and if they paid a royalty to the patent holder.

But according to the U.S. Trade Representative, the Food and Drug Administration, the Department of Health and Human Services, and the Patent and Trademark Office, the Congress accidentally—and I underline ''accidentally''—omitted a conforming amendment in the GATT legislation. The CONGRESSIONAL RECORD also documents our very clear intent to apply the GATT treaty universally without any special exceptions.

Mr. President, as a result of our error and this missing amendment, a single

industry has now been exempted from the GATT grandfather provision. Every single product, every company, and every industry in this country abide by this law today, except for one particular industry. That is the prescription drug industry.

The omission of this single industry has created a loophole that benefits just a few drug companies, especially Glaxo Wellcome. The loophole, Mr. President, in the GATT legislation has given them a $2.5 billion windfall. That's $5 million a day. As long as we wait and talk and do nothing, these few drug companies are receiving millions every day which are subsidized by the elderly, by the veterans and by the consumers of America. Today, we have an opportunity to put this to an end. We could bring equity at long last to this issue.

Glaxo Wellcome is the largest drug firm in the world. It is today receiving a lion's share of this multibillion dollar windfall through the world's best-selling drug, Zantac.

Today, generic competitors to Zantac who have already made a substantial investment and readied their products for the market have been unintentionally denied access to the marketplace. Today, they have idled their factories and their workers wait for us to act. Today, the consumers of America are being denied cheaper prices for their drugs which they should have received months ago.

The amendment that I offer today, Mr. President, on behalf of Senator BROWN, Senator CHAFEE, and Senator BRYAN, is simply the conforming amendment which should have been a part of the GATT legislation. This is our opportunity to fix a glaring legislative mistake. In the process, we will save American consumers literally billions of dollars, and we will bring our country into full compliance with our treaty obligations.

Let me remind my colleagues how our friend and colleague, Senator PAUL SIMON of Illinois, recently summed up this issue. He said: ''This is as classic a case of public interest versus special interest as you could find.''

Last December, we brought this amendment to the floor and unsuccessfully sought an up-or-down vote on it. There was an effort to kill the amendment with a sense-of-the-Senate resolution that called for a hearing in the Judiciary Committee. When we withdrew the amendment from consideration, we promised, like General MacArthur, to return.

But there have been many delays and postponements in the last several months and procedural obstacles thrown up by our opponents. For some mysterious reason, the hearing that was promised took more than 2 whole months to schedule. A markup was promised for March. It was postponed three different times for over a month.

Mr. President, here is the price for our opponents' delay. Here is the price that American consumers are paying and putting into the pockets of a few drug companies. As a result of our delay, a few companies have collected $990 million as a windfall. We are just 2 days short of permitting this to grow into a round $1 billion windfall, a windfall which continues because of a congressional mistake we have still not corrected.

We have waited and waited and waited, while the Judiciary Committee held a hearing and markup. The result of all this delay is that now the record simply verifies that a costly mistake has been made which needs correction. Ambassador Mickey Kantor, then our Trade Representative, testified at the hearing that our amendment ''would do nothing more than fulfill our obligation to be faithful to what we had negotiated in the GATT treaty.'' He confirmed that it ''would carry out the intent, not only of the negotiations and what the administration intended, but also what the Congress intended.''

When the Judiciary Committee marked up the GATT amendment, it regrettably ordered and reported out a fatally flawed substitute version. According to a letter from the Department of Health and Human Services which has been distributed to each Member of the Senate, the FDA and the Department concluded that the Judiciary or Hatch substitute does not close the loophole. In fact, it would be virtually impossible for a manufacturer to obtain FDA approval under the substitute.

To add insult to injury, Mr. President, the substitute version includes a veritable treasure trove of patent extensions and special breaks for other drug companies that are completely unrelated to the GATT loophole. So we have all waited endlessly, enriched a few companies and ended up with a substitute which is worse than the status quo.

I would add, Mr. President, that the committee marked up on May 2. The committee has yet to file a report on the substitute version. In fact, the committee also has guaranteed we delay for months the consideration of our amendment. Moreover, I understand the distinguished committee chairman, Senator HATCH, will offer the substitute version as a second-degree amendment to our own and further delay consideration.

Mr. President, the only compromise in the committee's work is a compromise of the interests of consumers and our Nation's vital health care programs—Medicaid, Defense Department and CHAMPUS, VA, Public Health and Indian Health Service clinics, private health insurers, and the like.

We have a very clear choice before us this afternoon. We can do the right thing. We can do the right thing by voting for this amendment. We can do the right thing by defeating the substitute version offered as a second-degree amendment by the distinguished chairman of the committee, the Senator from Utah.

Many have asked me, Mr. President, why we are offering this amendment on the Department of Defense authorization bill. There is a very simple answer. First, this amendment would save the Department of Defense over $30 million. The Department of Defense has estimated that it spends $900 million a year on prescription drugs for our servicemen, servicewomen, and their families. According to estimates consistent with earlier CBO estimates for Medicaid savings, our GATT amendment would cut those expenditures by over $30 million.

Mr. President, for this reason alone, we think this is a proper place to bring this amendment to the attention of our colleagues with the intention of receiving their consideration and, hopefully, a positive vote.

I also want to summarize, if I might, Mr. President, what I think may become a second-degree amendment to the Pryor-Chafee-Brown-Bryan bill. First, the Department of Health and Human Services, as I have mentioned, has analyzed the substitute. They concluded that ''it does not close the GATT loophole'' and includes legal requirements that are ''nearly impossible to meet'' and ''present nearly insurmountable obstacles'' to fair competition.

Second, the substitute was originally drafted by the brand name drug industry association, PHRMA. We have a copy of the PHRMA draft. As PHRMA wrote, the substitute ''protects the interests of PHRMA members''—not consumers, and certainly not taxpayers.

As a result, Mr. President, the Hatch amendment that we may be considering—which looks like a Rube Goldberg design as far as judicial procedure is concerned—may be described better as a Christmas tree. It is a Christmas tree of special interest favors, new multimillion dollar patent extensions and provisions intended to overturn Federal court decisions. This Christmas tree preserves the GATT loophole. It blocks generic competition. It protects the Glaxo windfall. It overturns the Federal courts. It guarantees endless litigation. It rewards companies like Merck, Zeneca, and Wyeth with millions in special protections without giving my colleagues and I a single credible legal or policy justification.

Finally, Mr. President, Professor Leo Levin, professor emeritus of law at the University of Pennsylvania, is one of the world's leading experts on the problems of cost and delay in civil litigation. I thought it would be interesting if we mentioned the opinions of Professor Levin, the former director of the Federal Judicial Center. Here is what Professor Levin thinks of the HATCH substitute:

> My conclusion is that, conservatively, I would expect several years to elapse from the commencement of litigation under the Hatch substitute until final disposition on appeal.

In other words, this is an ironclad guarantee to Glaxo and its compatriots that they can collect their entire $2.5 billion windfall. It is an ironclad guarantee that competition will be

locked out and that windfall profits flow to the wrong parties.

There is also a sense-of-the-Senate provision in the Hatch substitute which purports to urge parties to litigate quickly. I am sure my colleague from Utah will say this is a godsend; that it will somehow compel the parties to go to court and resolve their differences quickly so that we can have free and orderly competition.

Here is what Professor Levin concluded about that particular sense-of-the-Senate resolution embodied in the Hatch substitute:

> This is a laudable sentiment but without legal impact. In short, it evidences recognition of the problem but not an effective solution to the problem.

Mr. President, I could talk on and on about this issue. I do not think we need to talk a lot longer about it. I would like to say that I would enjoy proceeding, if we could. I would be more than happy to enter into an agreement on time. I have not actually sent the amendment to the desk. I will do so at the appropriate time. But I see my colleague from Utah standing. I wonder if he has any comment.

Mr. HATCH addressed the Chair.

Mr. THURMOND addressed the Chair.

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

Mr. THURMOND. Mr. President, do we have a time agreement?

Mr. PRYOR. We do not have a time agreement. I am more than willing to enter into a time agreement for a vote on our amendment to take place.

Mr. THURMOND. What does the Senator suggest as a time agreement?

Mr. PRYOR. Mr. President, I suggest that we have no more than an hour, or perhaps even a 45-minute time agreement. I would like to inquire of my friend from Utah whether this is agreeable.

Mr. HATCH. We are agreeable to 45 minutes.

Mr. THURMOND. Equally divided?

Mr. PRYOR. I am just proposing that.

Mr. HATCH. It is my understanding that Senator PRYOR has an amendment. I believe the Senator from South Carolina will second degree the amendment. I will agree to a 45-minute time limit divided equally on both amendments in order to accommodate my colleague, even though I think I need almost a half-hour to speak on it. But I will agree to 45 minutes.

Mr. SPECTER. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. There has been no unanimous consent offered.

Mr. HATCH. Is the time limit we discussed agreeable to my colleague?

Mr. PRYOR. I would like to make two requests. One, before I agree to such a proposal, I would like to see the amendment in the second degree. I think it would be only fair because the Senator from Utah has had our amendment for many, many months. Second, I would like to ask, should we agree to a time agreement, that I may be immediately recognized should my amendment be tabled or should the second-degree amendment prevail.

Mr. HATCH. I did not hear your whole sentence. Your amendment to be what?

Mr. PRYOR. Should the Hatch amendment be agreed to. I should phrase it that way.

Mr. HATCH. Would the Parliamentarian please state what the offer was?

Mr. THURMOND. Mr. President, could we pause long enough to let him send the amendment to the desk?

The PRESIDING OFFICER. Would the Senator from Arkansas wish to restate the last point that he made?

Mr. PRYOR. Mr. President, I would like to put in a unanimous consent request, that should the Hatch second-degree amendment prevail—and I not get the vote on my amendment—that I might be immediately recognized for an up-or-down vote on my amendment.

Mr. HATCH. If we prevail?

Mr. PRYOR. I would simply reoffer my amendment, and I would like to be recognized for that purpose. And I ask unanimous consent.

Mr. HATCH. If we win, we win; if we lose, we lose. But we prefer to do it in the routine parliamentary fashion.

Mr. PRYOR. Mr. President, that is precisely what I seek. If I may, I think we can resolve this together if I may respectfully suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative check proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I ask my dear friend from Arkansas to correct me if I misstate this. It is my understanding that Senator PRYOR will neither offer his amendment today, nor does he believe anybody else will offer a similar amendment today. We will save the vote for another day, but we will each make a few comments today.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, under the circumstances—and the circumstances are these—I have been waiting since January to offer this amendment. I think, as a Member of this body, I am entitled to have a vote on this amendment. Maybe it is a tabling motion. I am not objecting to that. But I think on this particular amendment and on this language, this Senator is entitled to this body deciding, yes, we do want this amendment or, no, we do not.

That is all I have asked for all year. It is all I am asking for now. It is apparent I am not going to get that, so I am not going to send up an amendment at this time, and I will wait until next week or I might wait until next July or I might wait until next September, whenever. But I am going to offer this amendment, and I hope to get a vote on it. I hope my colleagues will allow me to get a vote on it. I have never second degreed an amendment here in 18 years—never. In fact, I have never even been tempted to. And I am not going to second degree my own amendment. I am not going to get cute, parliamentarily speaking. I hope my colleague from Utah will understand and the managers will understand, but I just do not think it is protecting of my rights now to offer an amendment.

If I may, I would like to ask unanimous consent to add a few cosponsors: Senator BYRD, Senator DORGAN, and Senator LEAHY, all to be original cosponsors.

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

Mr. PRYOR. Mr. President, I thank the Chair.

Mr. HATCH. Mr. President, I am prepared to put this to a vote today. As I understand it, if the Senator had called up his amendment, then the distinguished Senator from South Carolina would have called up his second-degree amendment, which is certainly both legitimate under the rules and a common practice in the Senate whenever we have some of these very sensitive, difficult matters to consider.

Let me say this, Mr. President. I admire my colleague from Arkansas. We have been friends for years. He feels very deeply about this.

But there are many of us who feel very deeply about our side of the issue.

When the time comes, I will ask my colleagues to vote against the Pryor amendment and to vote for the compromise legislation on the GATT/Pharmaceutical patent issue that was recently adopted by a bipartisan vote of the Senate Judiciary Committee.

I know many here are asking themselves how many times are we going to have to debate this issue? And, for that matter, they are asking why we are considering it on an underlying bill that is, at best, only tangentially related to the subject matter of our amendment.

We considered the Pryor amendment in the Finance Committee last fall as part of the budget reconciliation bill, and the committee rejected it.

We considered the amendment on December 7 as an amendment to the partial-birth abortion ban bill, and the amendment was not adopted.

My colleagues attempted to offer the bill as an amendment to the Kassebaum-Kennedy health insurance bill, and it was withdrawn.

In counterpoint to the efforts of Senator PRYOR, the Judiciary Committee held a February 27 hearing, as I promised.

On May 2, we held a markup, as I promised.

We wanted to hold the markup before then, but consideration of the immigration bill took longer than anyone anticipated.

The point is that we held the markup, and we did it in as expedited a fashion as possible.

I am pleased to say that, with the support of Senators SPECTER and HEFLIN, we were able to forge a bipartisan compromise that was adopted on a 10-to-7 vote.

We are working hard to file a report on this bill. We do not yet have the CBO on-budget estimates, nor do we have their newly required off-budget, unfunded mandates analysis.

In short, to bring the Pryor-Brown-Chafee amendment up at this time would be to attempt to short-circuit the process that is well underway in the Judiciary Committee.

Senator PRYOR's amendment is nothing more than an effort to engender support for an approach that the Judiciary Committee has already considered and rejected.

And while my preference would be to consider the Judiciary Committee compromise as a freestanding measure, it is clear such will probably not be the case.

I have been around this body long enough to know that you cannot always pick the time and place for a debate. If today is the day, so be it.

I thank my colleague for accommodating me in bringing it up at this time and giving me notice. I hope that in the future we can notify each other on this and, as always, treat each other fairly.

I also hope that a great majority of my colleagues will agree with me that the Pryor amendment is unwarranted and that the Judiciary Committee compromise that Senator THURMOND will offer should be adopted by the Senate.

Before I describe why I think the Judiciary Committee compromise is preferable to the Pryor amendment, I just want to recognize the fact that many in this body have spent a considerable amount of time on this somewhat arcane but very important subject.

Although I firmly disagree with Senators BROWN, PRYOR, and CHAFEE on this matter, I respect each of them. They are good Senators. Frankly, I would prefer working together with them rather than in opposition.

In fact, despite our sharp differences on this particular issue, Senators PRYOR, CHAFEE, and I are working closely together on the Finance Committee to ensure adequate funding of community health centers and rural health clinics.

I will miss debating DAVID PRYOR on these tough and complex pharmaceutical issues when he retires from the Senate later this year. The same is true for HANK BROWN, our good friend.

I will also miss Senator HEFLIN, a great friend who has been on the Judiciary Committee almost as long as I have. He studied this issue carefully as well. I fully agree with the observation he made at one of our recent Judiciary Committee hearings that the generic and innovator segments of the industry have much more in common than they have in contention. I was particularly pleased that Senator HEFLIN voted for the Judiciary Committee compromise, although he voted with Senator PRYOR last December.

I also wish to commend especially my colleague from Pennsylvania, Senator SPECTER, with helping to develop the Judiciary Committee compromise proposal. He played a critical role in this effort. I want everyone to understand how much the other members of the Judiciary Committee and I value his leadership in this area.

The issue we are debating today centers on the complex interrelationship between the GATT treaty, the Federal Food, Drug, and Cosmetic Act, and the Patent Code. In particular, the question is how certain transition rules contained in the Uruguay Round Agreements Act apply to pioneer pharmaceutical patents which have been extended by the URAA.

This is a tough, contentious issue. That is because there is an inherent tension involved in setting and adjusting the incentives that will result in both the next generation of breakthrough therapies and in making low-cost generic equivalents available. The American people need both breakthrough innovator products and lower cost generics.

But as former Surgeon General Dr. C. Everett Koop has wisely observed:

". . . we must resist the temptations of short-term thinking and look at the big picture. The only way to make a real difference in health care costs—and a real difference in people's lives—is to find cures for AIDS, cancer, Alzheimer's and . . . other diseases. The way to do that is to encourage support for medical innovation.

And make no mistake that retaining incentives for biomedical research is exactly what the Judiciary Committee compromise does.

I am extremely pleased to tell my colleagues that Dr. Koop spoke to my staff this morning and said that he is supportive of the Judiciary Committee compromise that I am offering today.

Let me outline the key elements of the Judiciary Committee compromise proposal that I developed, working, as I have said, in close consultation with Senator SPECTER who has a very deep interest in this issue.

This is important, to lay this out, so people realize it is not quite as simple as the distinguished Senator from Arkansas articulates here on the floor today.

The compromise allows generic drug applications which were submitted to the FDA by June 8, 1995, and were found to be sufficiently complete so as to permit substantive review to be approved for marketing during the GATT transition period.

As with other industries under the URAA, a court must first determine that the generic drug manufacturer met the substantial investment requirement.

This investment could not solely consist of expenditures related to the development and submission of an abbreviated new drug application, or ANDA.

Under the Judiciary Committee compromise, the court would take into account activities that were specifically related to the research, development, manufacture, sale, and marketing, and other activities undertaken in connection with the specific generic drug application.

The Judiciary compromise also includes a provision advocated by Senator BIDEN, to treat patents in force on June 8, 1995, as a result of a Hatch-Waxman restoration extension in the same manner as other patents with respect to URAA patent term modifications.

This is fair and warranted given the fact that Hatch-Waxman restoration extensions are granted in partial compensation for time lost due to FDA regulatory review and should be considered wholly independent from any URAA extension.

Finally, at the request of Senator SPECTER, the Judiciary Committee contains a 2-year marketing exclusivity extension for Lodine, a nonsteroidal antiinflammatory product. This product was under FDA NDA review for over 8 years, and presents a factual case in many respects similar to Daypro, which was recently afforded equitable relief in the continuing resolution that was passed in April.

In addition, the proposal contains sense-of-the-Senate language to urge that litigation be concluded as expeditiously as possible. In this regard, let me just add that Senator SPECTER will work with me to add an amendment that will help us to get there.

As a matter of fact, under the Judiciary Committee compromise, the interest of ensuring prompt litigation is promoted by granting the courts the authority to award equitable compensation from the patentee to the generic drug applicant in consideration for marketing time lost due to litigation.

The message here is simple and clear: Equity is a two-way street.

Pioneer drug firms unjustifiably drawing out litigation will be placed in substantial financial risk if it is determined by the court that equity so requires compensation be paid to the generic manufacturer.

These provisions would not apply to products whose patents would have expired, including any restoration periods under the Hatch–Waxman Act, after June 8, 1998. The purpose of this provision is to prohibit obvious gaming of the system by those who may have submitted generic drug applications far in advance than would have been the case in any normal commercial transaction.

It will be interesting to see once CBO completes its analysis of the FDA data whether some generic firms may have submitted applications for products whose patents expire sometime early in the next century. This hardly strikes me as the type of good-faith activity that seems to be contemplated by the URAA transition rules.

The Judiciary Committee compromise is fair and balanced. I urge all of my colleagues to support it.

I would next like to take just a few moments to explain why I believe that this approach is preferable to the Pryor amendment.

As I have stated on a number of occasions, I have several threshold concerns about the Pryor legislation.

First, it undermines the incentives for biomedical research. Dr. Koop and other leading public health experts recognize that it is only through research that great life-saving and cost-saving medical advances flow. Plain and simple, more research will be conducted under the Judiciary Committee compromise than under the Pryor amendment.

Second, it sets a poor, first example on GATT and will act to encourage our trading partners to drag their feet in implementing the intellectual property provisions of the GATT Treaty. I know the U.S. Trade Representative under the Clinton administration takes a different view but I think former Trade Representative Bill Brock got it exactly right, and I ask unanimous consent that his remarks be printed in the RECORD.

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

It will be difficult, if not impossible, for the United States to force other nations to adhere to the TRIPS agreement if we set this unfortunate precedent. In sum, in exchange for the hope of short term savings, the Pryor proposal could cost all U.S. firms and workers the enormous long term gains we worked so hard to achieve in the Uruguay Round. That is penny wise and pound foolish.

Mr. HATCH. Third, it may subject the Federal Treasury to substantial financial liability under the takings clause of the fifth amendment. On this last point, let me just say that the takings issue was discussed at our February hearing. I was very interested to learn that analysts at CBO have independently raised this issue, so I think it is a very real concern. We should attempt to ensure that it is the generic drug manufacturers and pioneer pharmaceutical firms, respectively, who are financially responsible for paying any court-ordered equitable remuneration and equitable compensation.

In addition to these three major policy concerns that I have just outlined, I also take strong exception to the manner in which Senator PRYOR has attempted to characterize this debate. There are two basic arguments that are repeatedly advanced as justification for the Pryor amendment.

The first is the uneven playing field argument. You have heard it many times in this debate. Somehow only the generic drug industry has not been able to take advantage of the GATT transition rules.

But the truth of the matter is that there are no reported cases of any generic product manufacturer, from any other industry reaching, or for that matter even seeking to reach, the marketplace through the transition rules. If adopted, the Pryor amendment would tilt the playing field by creating a virtually industry-wide advantage being granted to only one industry—the generic drug industry. This can hardly be called leveling the playing field.

The other major argument advanced by the proponents of the Pryor amendment is the alleged unintentional mistake argument. It is said over and over again by my opponents in this debate that adopting the Pryor amendment merely amounts to making a technical correction to achieve an effect that Congress intended all long.

I must say that on the surface this argument has a certain amount of appeal and is easy to understand. The trouble is that it is simply not the borne out by the facts.

It is important for everyone in this body to understand what the Court of Appeals for the Federal circuit found on intent issue last November in the Royce case. Frankly, what they found was that, with my apologies to Gertrude Stein, ''there is no there, there.'' The court said:

The parties have not pointed to, and we have not discovered, any legislative history on the intent of Congress, at the time of passage of the URAA, regarding the interplay between the URAA and the Hatch-Waxman Act.

There have been many attempts to create after-the-fact legislative history—and additional attempts will no doubt be fabricated in the course of our debate today. But, as with the judges on the Federal Circuit, I am aware of no evidence at the time of passage of the URAA that dispositively resolves, or even hints at resolving, the intent issue in the manner now so frequently, so cavalierly, and—it must be stated—so misleadingly, claimed by my opponents. I know where the bald assertions are but where is the beef? What is this evidence?

Frankly, the intent argument is somewhat galling. How many times has this body debated a supposed technical correction measure, like we did for three hours last December, only to refer the matter back to Committee for further study by a razor thin 49 to 48 vote. Technical correction, my eye.

I am also greatly concerned that the Pryor approach contemplates market entry prior to an opportunity for court resolution of the key determinations surrounding substantial investment and equitable remuneration.

A key principle of the Hatch-Waxman Act, and of section 154(c) of the URAA, is to first determine the rights of the patent holder before a generic competitor may enter the market.

This principle should not be casually set aside.

In contrast to the Pryor amendment, the Judiciary Committee substitute—consistent with the longstanding paragraph 4 certification process under the Hatch-Waxman Act and the plain language of section 154(c)—would respect the innovator's intellectual property by first resolving the substantial investment and equitable remuneration issues.

In this regard, I must register my objection to the recent June 13 letter from Secretary Shalala that seems to interpret the language of section 154(c)(3) as allowing the continuation of infringing activities while the courts resolve the substantial investment and equitable remuneration issues.

This interpretation would be, in my estimation, rejected by the courts because it amounts to de facto compulsory licensing. The protection of prior judicial review is critical.

One of the key reasons why our Nation endorsed the intellectual property provisions of the GATT Treaty—the so-called TRIPS provisions—was to limit the ability of our trading partners to wrongfully devalue American intellectual property through compulsory licensing provisions.

This June 13 administration embrace of compulsory licensing may open up a real can of worms and will send a horrible signal both overseas and to our inventor community here at home.

I have taken too long, I understand. Let me close by simply saying that for the reasons I have given, I hope that my fellow Senators will agree with me that the best course is for the full Senate to adopt the Judiciary Committee compromise. It was hard fought and won in the Judiciary Committee.

It is a fair compromise and one that will benefit the health of the American people and the American public.

Last, but not least, let me just say this: As the author of the Hatch–Waxman bill, this is a very important issue for me. This is something that I believe in or I would not be doing this.

I have been vilified and mistreated and my efforts mischaracterized on this issue. I can live with that, because that has happened to me many times in my political career, as well as to many others here. But I really resent having the issues in this matter mis-characterized in the way some people have done.

I want to say that the generic industry, by and large, has been very fair to me and very decent. I personally appreciate them. I look forward to trying to help them in the future on issues on which they deserve to have help. Unfortunately, this does not happen to be one of those issues.

I hope our colleagues will pay attention to the things that have been said on the floor.

Mr. DODD. Mr. President, I rise today in support of the compromise that the Senator from Utah and chairman of the Judiciary Committee, Senator HATCH, has offered on the GATT pharmaceutical patent issue. I commend him for his leadership on this subject—a subject that is fundamentally an intellectual property issue and that is clearly in the purview of the Senate Judiciary Committee.

This is not the first time we have had this discussion. Earlier this year, the

Senator from Arkansas agreed to allow the Senate Judiciary Committee to consider this issue. On February 27 and March 5, the committee held hearings on this issue with a balanced set of witnesses, and reported out a compromise bill on May 2, 1996, on a bipartisan vote of 10 to 7.

The Judiciary Committee bill would allow the FDA to approve a generic drug for marketing prior to expiration of the GATT patent extension, but only after a generic drug manufacturer complied with requirements spelled out in both the GATT implementing law and the generic drug approval process in the 1984 Hatch-Waxman law.

Under this compromise, generic drug manufacturers would not be treated differently than any other generic manufacturer. Like other generic manufacturers, generic drug manufacturers would be required to prove in court that they had made a substantial investment in their product before June 8, 1995. Court determination of substantial investment and the establishment of equitable remuneration to the patent holder is required under the GATT implementing law prior to generic infringement of patents in all industries.

A generic drug company would have to make substantial investments in purchasing land, building a plant, or other capital investments comparable to what generic companies in other industries would have to make in order to qualify under the transition provision. The investment would have to be more than merely the filing of an abbreviated new drug application [ANDA] for regulatory approval with the FDA, although the generic company would be able to include these costs in proving their investment.

At the same time, this compromise provides unique protection to generic drug companies from the cost of potential delays from the court process prior to entering the market. If a generic drug company wins the determination of substantial investment, the court could order the patent holder to compensate the generic company for the delay in selling their product caused by litigation.

What's more, Senators have heard from dozens of patient and physician groups who point out that without the strong patent protections provided by the law, the investments that have yielded critical, life-saving drugs and biomedical products would not have been made. And unless that patent protection is preserved, pharmaceutical companies will have no incentive to continue their vital research.

Indeed, Daniel Perry, executive director of the Alliance for Aging Research wrote that . . .

Patent rights are the cornerstone of America's biomedical research enterprise. Patents provide a critical incentive for all companies, particularly pioneer pharmaceutical manufacturers, to conduct ground breaking biomedical research.

I would ask unanimous consent that Mr. Perry's and other letters be printed in the RECORD following my remarks.

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

(See exhibit 1)

Mr. DODD. Mr. President, this is a fair and balanced compromise. The committee took into account the unique benefits generic drug manufacturers receive under the FDA process. Generic drug manufacturers are given the use of the safety and efficacy data that is developed over years of research and at an average cost of $500 million by the brand name pharmaceutical manufacturer. The generic drug industry, in contrast, spends an average of less than $1 million on their products.

The cornerstone of our intellectual property system is that one person or company should not be able to profit unfairly from another's investment, be it in time or money, at the expense of the original person or company. This compromise protects that fundamental right, and I urge my colleagues to support it.

EXHIBIT 1

MAY 20, 1996.

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

DEAR SENATOR HATCH: We are concerned that the Senate may soon consider legislation that would diminish the strong patent terms for pharmaceuticals that resulted when Congress implemented the General Agreement on Tariffs and Trade (GATT). We thank you for your leadership and efforts to preserve strong intellectual property protection. It is vital that all Members of Congress share your understanding of the importance to our patients of strong intellectual property protection, and we ask that you share our concerns with your colleagues.

As gastroenterologists, we have seen first hand the tremendous power of pharmaceutical innovation to forge unparalleled advances in medical care. Prior to the discovery and development of the acid-reducing medicines called H2 antagonists, many patients suffering from peptic ulcer disease had to endure expensive corrective surgery. Since 1977, when the first H2 antagonist was introduced, the incidence of ulcer surgery as well as ulcer-related morbidity has dropped dramatically. This decline in surgery and morbidity has not only benefited our patients, but it has also reduced the overall health care costs for our country since drug therapy is substantially less expensive—not to mention less painful—than ulcer surgery.

The argument in support of changing the GATT patent benefit for pharmaceuticals seems to rest primarily on the potential cost savings to consumers of accelerating the availability of a generic version of one anti-ulcer drug. Such an argument totally ignores the fact that the anti-ulcer marketplace is highly competitive with a wide range of choices, including generics, for patients and physicians.

This argument also ignores the significant cost savings to consumers from advances in medical research. There are new medicines available and coming to the market that can cure peptic ulcer disease. The senior citizen on a fixed income will save far more from the availability of medicines that eradicate the cause of his/her ulcer after a few weeks of therapy than from a less expensive version of a medicine they must continue to take on a daily basis. Fortunately for the patient, the strong patent protection on existing anti-ulcer products has helped fund the research that has made these new medicines possible.

We firmly believe that it is in the best interest of patients to provide strong patent protection. The results of innovative biomedical research funded by patent protection for existing products benefit patients directly. Any attempts to determine the incentives to further research and development is short sighted and leaves patients short changed.

Sincerely,

JOHN H. WALSH, M.D.,
Professor of Medicine, UCLA, Los Angeles, CA.
JAMIE S. BARKIN, M.D.,
Professor of Medicine, Univ. of Miami, Miami, FL.
ROSEMARIE L. FISHER, M.D.,
Professor of Internal Medicine, Yale Univ., New Haven, CT.
STANLEY B. BENJAMIN, M.D.,
Professor of Medicine, Georgetown Univ., Washington, DC.
MALCOLM ROBINSON, M.D.,
Professor of Medicine, Univ. of Oklahoma, Oklahoma City, OK.
JOSEPH W. GRIFFIN, M.D.,
Professor of Medicine, Medical College of Georgia, Augusta, GA.
DAVID L. EARNEST, M.D.,
Professor of Medicine, Univ. of Arizona, Tucson, AZ.
DAVID E. FLEISCHER, M.D.,
Professor of Medicine, Georgetown Univ., Washington, DC.

AMERICAN ASSOCIATION FOR CANCER RESEARCH, INC.,
New York, NY, October 18, 1995.

Hon. ROBERT DOLE,
Majority Leader,
U.S. Senate, Washington, DC.

DEAR SENATOR DOLE: The American Association for Cancer Research (AACR) respectfully requests that you vote against Senator Pryor's effort to reduce patent protection for pharmaceuticals.

The medical researchers in the AACR have devoted their lives to research and innovation in the struggle to eradicate cancer. In this effort, innovative pharmaceuticals and biotechnology products are our most effective tools. Congress steadfast support of scientific discovery and strong patent protection has encouraged the investment in research and development that make these medicines possible. For the sake of patients everywhere, patent protection should not be weakened.

However, Senator Pryor's legislation to reverse the patent protection extended under GATT to one industry asks you to do just that. This bill attempts to grant exceptions to the GATT patent protections; these exceptions if adopted, have the potential to encourage future attempts to further erode patent protections in the United States. We are gravely concerned about the precedent of singling out one industry, especially one that has positioned the United States as the global leader.

The risk of supporting this legislation would be to weaken the incentives for innovation in academia, research institutions, and medical research-based companies. We believe that this will impede our capacity to address the growing epidemic of cancer.

We urge you to use your leadership position to preserve, not destroy, our national capacity to support research and innovation.

Respectfully,

JOSEPH R. BERTINO, M.D.,
President.

ALLIANCE FOR AGING RESEARCH
Washington, DC, October 11, 1995.

Hon. ROBERT DOLE,
Office of the Majority Leader, U.S. Senate, the Capitol Building, Washington, DC.

DEAR SENATOR DOLE: It has come to my attention that, in connection with a proposal sponsored by Senator David Pryor, Congress is considering changes to existing patent law that would erode patent protection in the United States. I ask you to oppose that effort.

America has always sought to protect and foster innovation primarily through our system of patent protection and patent-term restoration. Recently, in accordance with its multilateral obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights negotiated during the Uruguay Round of GATT, Congress amended the Patent Code to harmonize its provisions with international standards. As a result, patent terms for certain eligible products—in all industries—were extended. Under the Pryor proposal, however, Congress would weaken our implementation of GATT's patent provisions.

As the Executive Director of the Alliance for Aging Research, I am concerned by any proposal that would have such an effect. Patent rights are the cornerstone of America's biomedical research enterprise. Patents provide a critical incentive for all companies, particularly pioneer pharmaceutical manufacturers, to conduct ground breaking biomedical research. Patients and their physicians depend upon access to the fruits of biomedical research—access which can only occur if there are adequate incentives for the research to be conducted in the first place. Congress cannot expect the private sector to continue making high-risk investments in research and development if there is no assurance of strong patent protection (and if there is no assurance that the United States will meet its multilateral obligations to provide such protection.)

This is a particularly critical issue for the aging Americans represented by the Alliance. Clearly, the curtailment of biomedical R&D will lead to a downturn in a rate at which biomedical innovations will become available to the public. New incentives for research and innovation such as those provided by GATT must be maintained. Otherwise, Congress will erode the foundations of a system that has made America the leader in the discovery of new medicines.

I urge you to cast your vote in favor of innovation and research for new treatments that will benefit America's elderly.

Best regards,

DANIEL PERRY,
Executive Director.

THE NATIONAL ORGANIZATION ON FATAL ALCOHOL SYNDROME,
Washington, DC, October 10, 1995.

Hon. BOB DOLE,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR DOLE: It has come to my attention that, through an effort by Senator PRYOR, Congress is considering changes to existing law that would chip away at patent protections in the United States, and possibly around the world. I ask you to reject that effort.

This nation has sought to protect and foster innovation since its very beginnings, primarily through our system of patent protections. Most recently, as a result of the General Agreements on Tariffs and Trade, the U.S. changed its patent terms to bring them in line with international standards. Yet Congress is now considering weakening that agreement.

As a member of the National Organization on Fetal Alcohol Syndrome, I find that possibility very disturbing. Patients afflicted with disease look to biomedical research, especially research taking place in America's pharmaceutical industry, for new and better treatments to restore them to health. But this country's huge investments in research and development cannot be maintained without the assurance of strong patent protection, not only in the U.S., but also in other markets around the world.

If Congress begins chipping away at patent protection in the U.S., it begins chipping away at the foundations of a system that has made this country Number One in the world in the discovery of new medicines. It also begins to undermine patent protection standards around the world. And it begins the process of deflating the hopes of millions of patients in this country who depend on medical research to find a cure.

Please, cast your vote in favor of innovation, and against any effort to undermine patent protection in this or any other country around the world.

Sincerely,

PATTI MUNTER,
President.

UNITED PATIENTS' ASSOCIATION FOR PULMONARY HYPERTENSION, INC.,
Speedway, IN.

Hon. CAROL MOSELEY-BRAUN,
Hart Senate Office Building,
U.S. Senate, Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: I'm writing to you on behalf of 400–500 Americans who suffer from a very rare and very deadly disease known as Primary Pulmonary Hypertension (PPH). Until recently, the best hope for long-term survival from PPH was through a lung or heart/lung transplant. However, today, thanks to research which dates back to the 1970's, a new drug was recently approved to treat PPH which not only is extending these patients' lives but is allowing them to live full, active and productive lives.

I have learned that some generic companies are now trying to change the law so that they can gain financially by bringing their products to market before the patents on the pioneering companies' products expire. I can attest to the value that research-based companies bring to patients as a result of strong patent protection, and I urge you to oppose these efforts.

While I appreciate the cost savings that generic drugs can offer in the short term, I also know that innovative new therapies for complex, life-threatening diseases will come only from research-based pharmaceutical companies. When it comes to serving patients suffering from deadly orphan diseases like PPH, it is the research-based companies that give us hope.

Glaxo Wellcome recently received approval to market the first medicine that will significantly extend the life, greatly improve the quality of life, and help avoid complex, risky surgery for people suffering from PPH. I know of no generic drug company that would commit the millions of dollars or many, many years of research to discover or develop such a medicine, and it is unlikely that they will ever produce a generic version for a patient population so small. There are many other similar patient populations who depend on the research-based companies to bring these new medicines to market.

The purpose of the General Agreement on Tariffs and Trade (GATT) was to strengthen intellectual property law around the world and bring U.S. intellectual property law into compliance with other industrialized countries. If the GATT resulted in longer patent protection for a few medicines—all of which already face competition from other therapies—that in my view is a benefit for our society.

Our patients have experienced the direct benefits of the tremendous investments that the pharmaceutical industry has made in research and development. Research-based companies need and deserve the incentives provided by strong intellectual property protection. Please do nothing to weaken them.

Sincerely,

JUDITH SIMPSON, R.N., Ed. S.,
President, UPAPH.

AMERICAN SOCIETY OF TROPICAL MEDICINE AND HYGIENE,
October 13, 1995.

Hon. ROBERT DOLE,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DOLE: The American Society for Tropical Medicine and Hygiene (ASTMH) respectfully asks that you vote against Senator Pryor's effort to reduce patent protection for pharmaceuticals.

The ASTMH members have dedicated their lives to easing the suffering of patients under their care and returning them to health whenever possible. In this effort, modern medicines are among our most effective tools. Congress' steadfast support of strong patent protection has encouraged the investments in research and development that make these medicines possible. For the sake of patients everywhere, those protections should not be weakened.

Yet, legislation which Senators Pryor and Chafee intend to bring to the Senate floor asks you to do just that. They believe that Congress should grant exceptions to the patent protection provided under the General Agreement for Tariffs and Trade, which could encourage future attempts to further erode those protections in the U.S. It would surely encourage other countries to do the same, especially those who are not fully committed to implementing the patent protections required under GATT.

Long-term, we risk weakening the incentives for innovation that bring us new medicines from the labs of academia, research organizations, and pharmaceutical research companies. We risk losing more lives to disease that might otherwise be saved.

We are dedicated to improving the care we provide our patients. Further, our society is dedicated to the research, treatment and eradication of infectious and emerging diseases worldwide. We need to ensure the U.S. capacity to operate in the international arena. We ask that you lend your support by preserving the innovation that helps us to meet that goal. Please demonstrate your support for patent protection and medical innovation by voting against Senator Pryor's amendment.

Sincerely,

CAROLE A. LONG, Ph.D.,
President, ASTMH.

CYSTIC FIBROSIS FOUNDATION,
October 10, 1995.

Hon. ROBERT DOLE,
Majority Leader,
U.S. Senate, Washington, DC.

DEAR SENATOR DOLE: I understand Senators Pryor and Chafee are attempting to amend the Hatch-Waxman Act to eliminate extensions for existing pharmaceutical patents granted by GATT. I urge you not to vote for that amendment, but instead to protect existing legislation that preserves incentives for research and development.

As President and Chief Executive Officer of the Cystic Fibrosis Foundation, I have personally witnessed the great suffering endured by patients and their families in their fight against cystic fibrosis. I have also witnessed how, for many patients, modern medicines have brought hope, relief from suffering, and even a return to health—a miracle made possible by biomedical research.

By rewarding ingenuity and encouraging innovation, patent protection makes possible the investment of hundreds of millions of dollars and years of time and effort in medical research, all the while with no guarantee of success. Because of the discoveries born of these investments, the patients we come in contact with every day benefit through saved lives and improved quality of life. Our health care system benefits from a reduction in the overall cost of care.

While we certainly support patient access to lower cost treatments for disease, that short-term benefit pales if it comes at the long-term expense of finding cures to life-threatening illnesses. The current law governing pharmaceutical patents is fair and in the long-term best interest of patients.

On behalf of those patients who still await a cure or effective treatment to alleviate their suffering, I again urge you not to undercut the patent protection that underlies America's best hope for new and better answers to disease.

Sincerely,

ROBERT J. BEALL, Ph.D.,
President and Chief Executive Officer.

ALLERGY AND ASTHMA NETWORK,
MOTHERS OF ASTHMATICS, INC.,
Fairfax, VA, October 12, 1995.

Senator BOB DOLE,
Majority Leader.

DEAR SENATOR DOLE: At a time when health care delivery, research and development are evolving faster than anyone can accurately monitor, Senator Pryor's efforts to lead Congress down a road that chips away at patent protections for U.S. pharmaceutical products will dig a health care grave for Americans.

As the founder of the Allergy and Asthma Network/Mothers of Asthmatics, Inc., a mother of four children, three of whom have asthma, a person who has asthma, and as a member of several NIH and FDA advisory councils. I understand the importance, the bottom line impact, of the hastily constructed and poorly debated proposed changes.

I would be delighted to discuss the magnitude of this issue with you in person or over the phone at your convenience (703–385–4403), however, please vote in favor of a healthier America and against any Pryor and/or Chafee proposals to dilute research and development expenditures. Vote for innovation and oppose any effort to undermine patent protection in this country or any other country.

Sincerely,

NANCY SANDER,
President.

AUTISM SOCIETY OF AMERICA,
Bethesda, MD, October 12, 1995.

Senator BOB DOLE,
U.S. Senate,
Washington, DC.

DEAR SENATOR DOLE: I understand Senators Pryor and Chafee are attempting to amend the Hatch-Waxman Act to eliminate extensions for existing pharmaceutical patents granted by GATT. I urge you not to vote for that amendment, but instead to protect existing legislation that preserves incentives for research and development.

While we certainly support patient access to lower cost treatments for disease and disability rehabilitation, that short-term benefit pales if it comes at the long-term expense of finding cures to life-threatening illnesses. The current law governing pharmaceutical patents is fair and in the long-term best interests of patients.

Our organization, representing over 18,000 parents and professionals whose daily lives are touched by autism, has witnessed the great suffering endured by patients and their families in their struggle with autism. I have personally witnessed how, for many children and adults with autism, modern medicines have brought relief from the extreme, often life-threatening behavioral manifestations of autism, resulting in a renewed hope to the families for a better quality of life for their son or daughter. In some instances, the change was dramatic enough that the entire individual's life, and the lives of those family members who love them, have reached a new level of hope and enthusiasm—a ''miracle'' made possible by biomedical research.

By rewarding ingenuity and encouraging innovation, patent protection makes possible the investment of hundreds of millions of dollars and years of time and effort in medical research * * * all the while with no guarantee of success. Because of the discoveries born of these investments, the patients we come in contact with every day benefit through saved lives and improved quality of life. Furthermore, our health care system benefits from a reduction in the overall cost of care.

The Pryor and Chafee amendment offers a clear choice: a ''NO'' vote to preserve incentives for innovation that allow that research to continue, or a ''YES'' vote to undermine the hope of thousands of patients who await the discovery of an effective treatment for disease.

On behalf of those patients everywhere (including some 380,000 individuals with autism) who still await a cure or effective treatment to alleviate their suffering, I again urge you not to undercut the patent protection that underlies America's best hope for new and better answers to disease and life-threatening disabilities.

Sincerely,

SANDRA H. KOWNACKI,
President.

NATIONAL KIDNEY ASSOCIATION,
November 22, 1995.

Hon. CAROL MOSELEY-BRAUN,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: I am writing you as both a constituent, and as the President of the National Kidney Cancer Association. Thank you for your recent vote in support of the enforcement of the General Agreement on Tariffs and Trade (GATT) provision regarding drug patents.

Your action will allow significant pharmaceutical research to continue on numerous diseases, including kidney cancer. As you may be aware, kidney cancer afflicts thousand of individuals each year and at the present time, no cure exists for this disease.

Our greatest hope for a cure is innovative pharmaceutical and biotechnology products, derived from private sector efforts. To find this cure, millions of dollars will have to be spent. It is imperative that Congress provide steadfast support for scientific discovery and strong patent protection for new drugs and therapies. My view is that this new GATT law will encourage further investment in research and development, and make new medicines possible. This new law gives hope to millions around the world, including kidney cancer patients, who currently have no options.

I applaud your courage in opposing efforts to weaken the GATT patent provisions. Keep up the important battle to support research and development of new drugs. Thank you for your determination and insightful leadership.

Sincerely,

EUGENE P. SCHONFELD,
President and CEO.

Mr. THURMOND. Mr. President, the Pryor amendment concerns the complex interrelationship among the GATT Treaty, the Federal Food, Drug and Cosmetic Act, and the Patent Code.

We considered this very issue last December on the Senate floor when Senator PRYOR attempted to have this matter attached to the bill to ban partial birth abortions. The Senate voted at that time to have the Judiciary Committee—that is the committee with proper jurisdiction—to consider this important issue. The Judiciary Committee held a comprehensive hearing on this matter on February 27 of this year and Senator PRYOR testified at that time.

Mr. President, following the hearing in the Judiciary Committee, of which I am a member, the committee amended a proposal similar to Senator PRYOR's amendment with a bipartisan compromise. The Judiciary Committee approved the compromise. This bill will be available for Senate floor consideration in due course. It would be most appropriate to consider Senator PRYOR's amendment at that time. The Department of Defense reauthorization bill is not—and I want to repeat, is not—the proper vehicle on which to debate the Pryor amendment. Unfortunately, we are now having to debate this contentious intellectual property issue.

Our second-degree amendment would reflect a bipartisan compromise agreed upon by the Judiciary Committee. The chairman of the Judiciary Committee, Senator HATCH, has spoken today on the practical effect of this amendment which he drafted with others when this matter was before his committee.

Mr. President, as I noted earlier, this is a very difficult and complex issue which addresses how certain transition rules contained in the Uruguay Round Agreements Act apply to the pioneer pharmaceutical patents which have been extended by the act. The overall approach to this issue is to find an appropriate balance to encourage research and development of breakthrough innovator drugs while making low cost generic equivalents available to the public. The Judiciary Committee approved one approach which many believe reaches the goal of encouraging research and development but also expediting their generic equivalents to the marketplace.

It would be my preference to debate the Pryor amendment when the full Senate turns to consideration of the bill recently approved by the Judiciary Committee. That would seem to me to be the appropriate time to consider the Pryor amendment. Yet, here we are on the Defense bill debating the Pryor amendment in a compressed manner.

We should proceed on this Defense bill, which is vital to our national security.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BROWN. Mr. President, I know the Senator from Nevada was here ahead of me. If it is all right with him, I will just make a very brief statement.

Mr. BRYAN. By way of response, I am always delighted to hear the enlightened words of my friend from Colorado, and I anxiously await his important comments to the Senate.

Mr. BROWN. I can only wish my wife held me in similarly high esteem. She sometimes finds my talks somewhat too long.

Mr. President, I simply want to add a few words as cosponsor of the Pryor amendment. We have traded it back and forth. I think the distinguished Senator from Arkansas has made a great contribution by bringing this portion of our law up.

It is a complicated area. I would like, with the indulgence of Members, just to briefly try and simplify it, if I can.

We have in the past followed the law. The American law was 17 years of exclusive protection for a patented item. Many countries in the world had a law that said 20 years from the time of filing for that patent. So we differed from the world somewhat. When the trade pact was approved, which this Congress did approve, did ratify, we agreed to go to a system followed by most other countries; that is, 20 years from when you file it instead of 17 years from when it is approved. A modest change.

For some items that are patented, that is, the creator has exclusive protection, that meant they got a longer period of coverage than originally planned, a longer period of coverage than they had when they created the product or invented it, a longer period of coverage than what they budgeted for, a longer period of coverage than what the law said. In other words, when we ratified that treaty and passed the implementing language, we made a retroactive change in the law. Twenty years ago, if you said, ''What is the law, what protection do I get?'' we changed the law even though you relied on it.

What the GATT Treaty did and we did as a Congress was create an exception that said, look, if you relied on the old law and you invested money in reliance on that law, you should be allowed to compete with that product. So we did give people a serendipitous extension of the patent protection. But we said if someone is harmed by that—that is, they made a substantial investment in competing with you under the terms of the law—we are going to say OK for them, they have a right to compete.

That is all this issue is really about. The issue is whether or not if you as a businessman or businesswoman made an investment in reliance on our law to compete, whether or not you should have a chance to compete.

The way this Congress handled that issue is they drafted a transition rule that said, ''Yes, if you made a substantial investment, you relied on that law, you can compete.'' There was only one product they left out, and that was patented drugs. Every other patented item that this Nation recognizes and gives exclusive protection to got the treatment, got the exception, were allowed to compete if they made a substantial investment. The only one that did not get it was drugs.

Is there a reason to treat drugs differently? I do not think so. That case certainly has not been made in deliberations. The patent protection is not different in length for drugs than it is for anything else in the past. That transition law treated drugs totally different than anything else.

When we inquired about it, all the committees said, ''It's an oversight, it's a mistake, we'll correct it.'' That is all this amendment is. It simply treats drugs the same way we treat everybody else.

How do I feel about it? My sense is that we ought to treat drugs like any other patented item. My sense is, it is only fair if someone has relied on that old law—that is, made an investment, relied on the law—that you honor your obligation. It is the same as giving somebody your word. It is pretty basic. It is pretty simple.

If I say something, and you rely on it, and you invest in reliance on it, I ought to keep my word to you. That is what we did for every other patented item. That is all this amendment does.

Do people who have patented drugs who get a serendipitous 20 additional months, or in that range, oppose the amendment? Of course they do. It is not a surprise. If somebody said, ''Here's a check for $100 million''—the money involved in this is big; it is not small; and it may well be in the billions, not millions —of course they are interested in protecting that. I do not fault them. They are defending their rights.

But, Mr. President, our obligation goes much farther than simply helping out a friend or helping out a company that got a serendipitous gift out of this. Our obligation, as Members of the U.S. Senate and Members of Congress, goes to protecting the public.

There is no question that the public benefits by this amendment—no question. There is no question that this is fair because it is the same treatment everybody else got. There is no question that people who relied on the old law and made an investment, in my mind, deserve to be treated like in every other area.

The question is pretty basic. Do you carve out a special gift and exception for a few companies that benefited by this oversight? Or do you treat them the same as everybody else? Mr. President, this Congress ought to be concerned about encouraging competition, not hiding from it. This Congress ought to be concerned about fair treatment.

It is quite true, as the distinguished Senator from Utah indicated, this was considered in Judiciary. It is quite true that the Senator from Utah prevailed. I was unable to persuade the committee of the merits of my position. It is quite true that that measure that he passed is coming out to the floor.

My impression, though, is a bit different than what he described with regard to the condition of the report that is being put together. Our views on it, the views that favor this amendment, have been ready for some time. Certainly we feel that we have played no part in holding up the report. We have been ready to go all this time.

So I appreciate the Senator from Utah raising that point. Inasmuch as there appears to be a misunderstanding about it, we will clear it up this afternoon. Mr. President, let me also extend my thanks to the distinguished Senator from Nevada for his kindness and indulgence. I yield the floor.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. Mr. President, I thank the Chair, and I, again, express my appreciation to my colleague from Colorado for an extraordinarily clear and lucid explanation of what must appear to the folks at home, listening to this debate on television, as a very arcane, technical, esoteric kind of an argument. Let me try to distill his thoughts a little further, if I may.

What we are talking about is money, big money, hundreds of millions of dollars, even billions of dollars. When that kind of money is on the table, all kinds of special interests come forward and seek to protect themselves. I want to comment a little bit further on that.

One of my colleagues raised the question as to the propriety of adding this amendment to a Department of Defense authorization bill. I think there is a compelling argument as to why we should do so. The Department of Defense spends each year $900 million on drugs—$900 million. If the amendment authored by the distinguished Senator from Arkansas, of which the Senator from Colorado and I and others are cosponsors, is adopted, we save $30 million each year. So the relevancy of this debate is very much appropriately addressed to a DOD authorization bill.

My colleague from Colorado, I think, did an extraordinary job of explaining the history, and I will not belabor that point other than to make the point, as he did, this industry, the drug industry, through inadvertence and omission, is given separate treatment, separate, distinct and special treatment, that no other industry or product in America receives. It is that inequity that generates the interest of the Senator from Arkansas and others of us to remedy and to correct this.

Our amendment, which was debated sometime last year, had the endorsement of the U.S. Trade Representative,

the Patent Office, and the FDA, and would plug this loophole. Since last December, as these windfall profits have continued to accumulate, American consumers, veterans, seniors, and others across the country have continued to pay more than they should pay for certain prescription drugs.

Mr. President, the loophole is open today. We face the same issue. Each and every day, American consumers are paying millions of dollars more than they ought to. So let me suggest, as I view my responsibilities as a Member of this Chamber, it is highly appropriate that we seek to correct this inequity and to provide the relief to which American consumers are entitled and to do so immediately.

When the loophole-closing amendment came to the Senate floor last fall, a vote was taken, a critical vote in which, by a margin of one vote, 48–49 the Senate defeated the amendment that the Senator from Arkansas, the Senator from Colorado and others of our colleagues offered.

A compromise was reached after that vote. The Judiciary Committee would review the GATT treaty problem and report back to the Senate with its recommendation. This was to be a good-faith effort to analyze the issue. It is fair to ask the question, What was the outcome of this review? Well, the Judiciary Committee did report out a substitute bill to our GATT amendment, albeit 5 months after our amendment was voted upon, 5 months in which drug companies have continued to reap windfall profits and 5 months that the American public have been forced to pay higher drug prices than they should have, that the American taxpayer has been required to pay more money for those essential programs offered by the Department of Defense, the Veterans Administration, and other agencies of the Federal Government which purchase prescription drugs on behalf of the clientele which they service.

This substitute is called the Pharmaceutical Industry Special Equity Act of 1996. It has somewhat of an ironic ring to it—the Pharmaceutical Industry Special Equity Act of 1996. Who does it benefit? It benefits the drug industry in a very special way that is inequitable to American consumers and particularly those who are on fixed incomes.

What we are really being asked to support today, in the form of the substitute, is a bill that codifies—in my view codifies —the very GATT treaty mistake that our amendment seeks to correct, a bill that continues the GATT treaty loophole for such drug manufacturers as Glaxco-Wellcome, Inc. and its ulcer/heartburn drug Zantac, the world's best selling drug, which costs twice as much as it should because of this loophole that we seek to close.

More than 100 drugs are being protected from generic drug competition because of this loophole. These include the hypertension drug Capoten, which costs 40 percent more due to the loophole, and the cholesterol-lowering drug Mevacor, the ulcer drug Prilosec, and the antifungal agent drug Diflucan.

It is a bill that ensures that seniors across the Nation will continue to pay more than they should for prescription drugs that they need and that are essential to their health, a bill that ensures taxpayers will pay more than they should to provide prescription drugs for the Medicaid and the veterans medical programs, a bill that creates tremendous legal barriers—in my view, insurmountable barriers—to the generic drug manufacturing industry to ensure that these manufacturers cannot bring to the marketplace lower priced prescription drugs, a bill that ensures the prescription drug manufacturers continue to enjoy their $2.3 billion windfall, plus a bill that extends special patent extensions for two brand name drug companies, Zeneca and Wyeth Ayerst Laboratories, which received a 2-year patent extension for Lodine, its antiinflammatory medicine. What has occurred here? In my view, we have a situation that is worse than before. Not only do some prescription drug companies retain their windfall profits, they are protected from nearly any possibility that any generic manufacturer will be able to compete against them during this extended patent term.

Generic drug manufacturers will be required to prove a substantial investment before being allowed to compete against any brand name drug. The key change, however, is that this substantial investment requirement is being defined much differently, to ensure the generic manufacturers cannot, as a practical matter, compete against any brand-name drug benefiting from the extended patent period under the GATT Treaty.

Before the GATT Treaty, substantial investment was considered to be those expenses and activities involved in developing a submission to compete to the FDA. Under the substitute measure, substantial investment is defined much differently.

In addition, under the substitute bill, a generic manufacturer must prove not only they have a substantial investment, but also they are required to make a determination of the kind of equitable remuneration to the brand name manufacturer before any generic drug can be manufactured.

Mr. President, you do not have to be a rocket scientist to recognize those who are enjoying these windfall profits are not going to be eager to agree as to what equitable remuneration may be. In effect, we create a lawyers' field day to debate what is, in fact, equitable remuneration.

The effect of the change is, first, it will be virtually impossible for any generic manufacturer to meet the new substantial investment standard. Secondly, it will mean that generic manufacturers will be tied up in court proving substantial investment and what is equitable remuneration before they can bring any generic drug to the marketplace. Two obstacles, two hurdles, two barriers that, as a practical matter, are going to be virtually insurmountable.

Who is being forgotten? Who gets hurt in this change? Those Americans particularly that are on a fixed income. That is primarily our senior community. They have been paying and will continue to pay more than they should for lack of a prescription drug alternative.

I am puzzled to think as to why anyone believes it is equitable to force seniors, many on very limited incomes, to pay more for a drug than they should so prescription drug manufacturers can continue to reap the windfall profits that this loophole has created.

I must say I am astonished by the provisions of this Pharmaceutical Industry Special Equity Act—a misnomer, if ever there was one; a special interest provision, if there ever was. My colleagues who talk the virtues of competition in the marketplace surely must find this substitute bill to be a bit beyond the pale.

I remind my colleagues, there is no reason to allow a limited number of prescription drug companies an unintended windfall profit to the detriment of all Americans who depend upon prescription drugs in order to sustain their health. Seniors, veterans, and the most vulnerable in our country cannot fight the brand name pharmaceutical industry on its own. They deserve and need our protection from an industry that is trying to codify a mistake, to perpetuate their windfall profit markets.

I hope my colleagues can see the loophole for the mistake it is and this substitute bill for the larger mistake it would be. We should always remember who is being hurt by the loophole in the State.

We have the ability to end this inequity now. The means to do so is the amendment offered by my distinguished colleague from Arkansas. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

Mr. President, I have found the current controversy to be an extremely complicated one as it has worked its way through the Judiciary Committee in trying to structure an arrangement which would be fair to all sides—fair to those who have made investments in patent pharmaceutical products and fair to those who are relying upon generic drugs.

As has been indicated at some length, we have very substantial investments which were being made to find new pharmaceutical products, to cure many ailments—wonder drugs, so to speak. At the same time, there is an enormously important consideration that generic drugs be available to senior citizens and others who are of modest

means, and also to help reduce the tremendous governmental costs involved with health care in America.

The controversy has arisen because of the ambiguity in the term substantial investment and the difficulty in defining equitable remuneration. It is my view that the Congress ought to define those terms, as opposed to leaving the matter to judicial interpretation.

We talk a great deal on the floor of the U.S. Senate about not having judges involved in legislation and about having statutory definitions to express the will of the Congress. This, I think, is a classic case where the Congress really ought to come to grips with the complexities and define what we mean by substantial investment and what we mean by equitable remuneration.

In order to try to reach a resolution of this matter, my staff and I have worked for many months, including long meetings where I have personally participated with representatives from both sides in an effort to try to structure a definition which would be fair and equitable. There has been a consideration that substantial investment would be determined solely by the filing by the generic of the abbreviated new drug application (ANDA) prior to June 8 of 1995.

I am not persuaded that the filing of an ANDA in and of itself is sufficient to constitute a substantial investment. There is a contention that more has to be undertaken in order to constitute the so-called substantial investment.

I have supported the amendment by Senator HATCH in the Judiciary Committee with substantial reservations, waiting until the time the matter reached the floor with the hope we might work out an accommodation among all of the parties. As I have said to the parties privately and also publicly, they have a much firmer handle on the intricacies of these definitions than do we in the Congress. I am still hopeful that a compromise may be worked out.

What I have added to the so-called Hatch substitute is a very tight time line on judicial determination as to what is a substantial investment if we cannot find a legislative definition for substantial investment, and also a provision that any losses sustained by the generic companies for the lack of sales in the interim be compensated by the pharmaceutical companies which have the patents.

Another consideration which I find to be very problematic is the fact this has taken so long. As the distinguished Senator from Arkansas has pointed out, the fact that it takes so long disadvantages the generics and also those who would rely upon the generic products.

I just had a brief conversation with my distinguished colleague from Arkansas, Senator PRYOR, and I told him I thought it might be useful if we had a colloquy on the record. We have had quite a number of conversations and have exchanged correspondence, and at one point several weeks ago Senator PRYOR wrote me a very strong, friendly letter, but a strong letter in the sense of trying to resolve the issue. I responded the very next day because of the importance of the issue. I know the sincerity with which the Senator from Arkansas has dealt with the issue, as, candidly, have we all.

I think it would be useful to discuss with the Senator from Arkansas, the originator of the original legislation, the content of his proposal, which, as I understand it, is to have a determination of substantial investment or the generic filing of the so-called ANDA prior to June 8, 1995.

As I understand it, and I put this in the form of a question to my colleague from Arkansas, is it the intent of his bill that the generic, in order to qualify, would have to establish a substantial investment?

Mr. PRYOR. Mr. President, if I may respond to my friend from Pennsylvania, we all recognize that the question of substantial investment in this particular issue has been of great concern to the Senator from Pennsylvania.

It is true that we have corresponded about this issue. I have attempted to accommodate the Senator's concern in our legislation for a more precise definition of substantial investment. In fact, our original legislation included a provision which very narrowly defined substantial investment. While we, too, sought to provide guidance to the courts, the provision was regrettably attacked by Glaxo and its compatriots as an effort to provide special treatment to their generic competitors. To ensure that all parties understood that our amendment is a simple, straightforward effort to bring a rogue industry into compliance with the rest of the country, we withdrew this language.

Mr. President, as I understand the complex GATT implementing law, the generic competitor has the burden of establishing whether it has made a substantial investment in court. This is my understanding of the present law, and the present law would simply be extended in the area of substantial investment to the inappropriately exempted prescription drug industry if my proposal is adopted.

Mr. SPECTER. Mr. President, if I may follow up on that, I do not fully understand what the Senator from Arkansas just said. Would it be the obligation, then, of the generic manufacturer to show that there had been compliance with the law, that there had been a substantial investment?

Mr. PRYOR. That is absolutely true. The Uruguay Round Agreements Act clearly establishes it is the obligation of the generic competitor to prove a substantial investment before the court. It is the court which determines whether or not a substantial investment has, in fact, been made. This is true for all industries today, except for one.

Mr. SPECTER. Well, since that is the purported intent of the legislation of the Senator from Arkansas, then the sale of the generic could not be made until the court had determined that there was a substantial investment. It is my understanding that the substitute proposed by the distinguished Senator from South Carolina, Senator THURMOND, in collaboration with the distinguished Senator from Utah, Senator HATCH, would do the same thing. The substitute would not accept the filing, but would require the generic manufacturer to go to court and satisfy the court that there had been a substantial investment. Is that not the effect of the legislation of the Senator from Utah?

Mr. PRYOR. Mr. President, I regret I must correct the Senator from Pennsylvania. Both current law and our amendment allows for the sale of generic competitors, contemporaneous to a court determination of substantial investment. In other words, the term substantial investment is defined in the Pryor-Brown-Chafee-Bryan legislation in the present language of the GATT implementing legislation, the Uruguay Round Agreements Act. I thank my colleague for raising a very important point. We are not changing the GATT agreement on substantial investment in any shape, form, or fashion. In fact, by bringing this sole outlier industry into compliance with the rest of the country, one might argue that we are keeping even closer to the spirit and letter of our obligations under that agreement than is the case today.

Mr. SPECTER. Well, if the Senator from Arkansas is prepared to have a judicial determination as to what a substantial investment is before the generic is offered for sale —I see my colleague shaking his head in the negative. I thought that is what the Senator from Arkansas said.

Mr. PRYOR. No, my friend and colleague is mistaken. The present law says that a generic competitor may come onto the marketplace, even though the court has not resolved the issue of whether they have made substantial investment. If, hypothetically, after the generic competitor has entered the marketplace and competed with the patent holder, it is then determined by the court that a substantial investment has not been made, then the court imposes damages upon the generic competitor to render the patent holder whole.

Mr. SPECTER. Well, how is that fee or compensation determined?

Mr. PRYOR. That compensation is determined according to the language of the Uruguay Round Agreements Act, the GATT implementing legislation. On that point, let me reference the letter from the Department of Health and Human Services about the Thurmond-Hatch substitute. This is the agency which would have to implement the substitute. The letter states that ''it will be nearly impossible to meet the

'substantial investment' requirement'' under the substitute. Elsewhere, it concludes the substitute ''defines substantial investment—a matter that the URAA left to the courts—and does so in a manner that would make it virtually impossible for a generic drug company to meet the requirement.''

Mr. SPECTER. If the Senator from Arkansas would come back to my question, I am not on the Thurmond-Hatch substitute. My question is on the proposal of the Senator from Arkansas; that is, if you allow the generic to enter the field without a determination by a court of what is a substantial investment, and then, as the Senator from Arkansas said, if there is a later determination that there has not been a substantial investment and the generic company has to pay compensation, how is that compensation determined?

Mr. PRYOR. If I might respond to my colleague, in 35 U.S.C. 284, the situation is this. If, in the extremely unlikely event that a false claim of substantial investment is actually made by a generic competitor coming into the marketplace, the court may award damages in full, plus interest. If for some reason the court felt particularly strongly that the claim of substantial investment was false, fraudulent or otherwise inappropriate, it has further discretion to award treble damages to the patent holder.

Mr. SPECTER. If my colleague will yield, I am not talking about fraud, I am talking simply about a conclusion that there has not been a substantial investment, and then you have a situation where the generic has been selling its product. How is there a determination made as to what the damages are to the pharmaceutical company that has the patent?

Mr. PRYOR. I would answer my colleague with reference to the law as it currently affects every industry but one. The court would determine damages on the basis of lost sales or profits, the length of time expired, and the multitude of other facts which leave the court uniquely suited to make such determinations on a case-by-case basis. I believe that was the compelling logic behind adoption of the GATT language in this respect, and I feel it should be equally compelling for this single, rogue industry.

I would again emphasize that we are not changing the GATT or URAA language as it relates to substantial investment. We are keeping it. We are applying this language to the drug companies, just as it applies to every other company, every other industry, and every other business entity in our country.

Mr. SPECTER. Well, as the Senator from Arkansas outlines, there is going to be a judicial determination, and the question is whether the generic drugs may be sold prior to the time the judicial determination is made, or whether the generic drugs may be sold only after the judicial determination is made.

Under the expedited procedures that I am proposing, it would be a very, very prompt resolution. If the court determines that the generic had a substantial investment and had been denied access to the market for a period of time, then, for the period of time where the generic had been denied access, there would be damages paid. Really, we are very close together, as the Senator and I discussed this, with the essential difference being, who is going to bear the burden of proof in showing substantial investment? Those facts, really, are within the control of the generic manufacturer—after all, it is the generic manufacturer who knows what the generic manufacturer has sold, and it seems to me that there ought to be that determination made.

As I listened to the Senator from Nevada earlier, I understood him to say that there would be a determination of substantial investment prior to the entry into the market of the generic manufacturer. As I had listened to the Senator from Arkansas earlier, it seemed to me that that was the same contention, that there would be a determination of substantial investment prior to the entry by the generic manufacturer.

Mr. PRYOR. As I mentioned earlier, we are not in any way changing the URAA or GATT language. In fact, I look forward to the Senator from Pennsylvania offering language or an amendment to expedite the convoluted process contemplated in the substitute version. I emphasize again the reservations of the Department of Health and Human Services, regarding both the interminable delays in litigation and the unique, unattainable requirements imposed on generic competitors through the substitute version's unworkable definition of substantial investment. And as Professor Levin—I might say, probably known well by the Senator from Pennsylvania—of the University of Pennsylvania has concluded——

Mr. SPECTER. He is a good friend. He is not always necessarily right.

Mr. PRYOR. Professor Levin concluded that the sense-of-the-Senate language in the Hatch substitute purporting to encourage parties to litigate quickly was of little effect. I quote:

> This is laudable sentiment but without legal impact. In short, it evidences recognition of the problem but not an effective solution.

That is from Professor Levin.

So my colleagues and I look forward to the Senator's contribution to this issue. We have already addressed this question with him before. I can say without reservation that any changes proposed in the Senate to expedite litigation under the Hatch-Thurmond substitute would be welcome, as it currently contemplates an entirely unworkable and unbalanced process intended to block competition in the marketplace.

So I look forward to the Senator from Pennsylvania offering that contribution. I look forward to working with him. I agree that we are very close to a meeting of the minds on this particular issue.

Mr. SPECTER. Mr. President, I do intend to pursue the expedited procedure. One of the items that I agree with the Senator from Arkansas on is how much time has passed here. I think that his cause might be advanced by accepting the burden of proof on the generic manufacturer and allowing this litigation to go forward with the provision for expedited procedures, and then damages for any time that the generic manufacturers are denied entry into the market after a substantial investment had been made, as determined in judicial proceedings, because what is happening now is that there have been lengthy proceedings in the Judiciary Committee. We have a very busy calendar.

The managers of this bill want to move ahead with the Department of Defense authorization bill. But having brought this matter to the floor, it is an important one which merits at least this much discussion. We think that the Members could come to an agreement and find some way to expedite a legislative determination, which even if the burden is shifted to the generics—and they have to establish the judicial determination first—it may be very much more to the Senator's advantage than having this matter go over from today to sometime in the future. And who knows when there will be a determination, given the short year, the election year, the appropriations bills, and all of the work of the Congress will have?

Mr. PRYOR. Mr. President, let me respond. Then I am going to sit down because I am going to Little Rock in just a few minutes.

Mr. SPECTER. Mr. President, maybe I should save my better arguments for later.

Mr. PRYOR. This Senator looks forward to working with him on this matter. We also would like to respond by saying that we hope when the Senator offers an amendment or language in this field, that it will not be a lawyers relief amendment, which the substitute amendment very clearly is in fact and in effect. It would tie up the marketplace in litigation with impossible definitions and insuperable barriers for years and years.

Speaking of expedited procedure, I have been trying since January to get on the floor and have a vote on this amendment—just a simple vote with an hour or 30 minutes equally divided, whether up or down or to table the amendment. But for some reason or another, some of my colleagues on the other side, including some of my very best friends, have prevented this all year.

Before we move forward and before the final vote is cast on this DOD authorization bill, this Senator is going to get a vote on our amendment. We think that it should be voted on. We think that is only fair. And I am going to push for a vote on this proposal on the DOD authorization bill.

The Senator from Pennsylvania probably knows that the Department of Defense buys $900 million worth of prescription drugs every year for servicemen and servicewomen all over the world. They can save $30 million overnight by the passage of the amendment that my colleagues and I have proposed.

I hope our friend and colleague, the Senator from Pennsylvania, will help us find an expedited procedure to bring this amendment to a favorable resolution by letting the Senate vote up or down on it once and for all.

I thank the Senator.

Mr. SPECTER. I thank my colleague for the colloquy. I will try to help him find an expedited procedure. I will not suggest anything that would make a lawyer rich, even though my colleague may be returning to the practice of law after he finishes the distinguished service in this Congress. But it would be my suggestion that Senator PRYOR, Senator HATCH, Senator THURMOND, and the Members sit down and try to work it out, to try to get the parties in the pharmaceutical companies and the generics, where they really understand the intricacies and the facts of the matter, to try to solve this off the floor, because I think that would be in the best interest of the American people.

Mr. KEMPTHORNE. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER (Mr. ABRAHAM). The Kyl amendment No. 4049.

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent on behalf of Senator BROWN that he be added as a cosponsor to amendment No. 4055, the Kerrey-McCain amendment regarding compensation for lost commandos.

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

Mr. KEMPTHORNE. Mr. President, I ask unanimous consent to lay aside the pending amendment.

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

AMENDMENT NO. 4089

(Purpose: To waive any time limitation that is applicable to awards of the Distinguished Flying Cross to certain persons)

Mr. KEMPTHORNE. I offer an amendment which would waive the time limitations toward certain declarations for specified persons. I believe the amendment has been cleared on both sides.

The PRESIDING OFFICER. The clerk will report.

The clerk read as follows:

The Senator from Idaho [Mr. KEMPTHORNE] proposes an amendment numbered 4089.

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

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

The amendment is as follows:

At the end of subtitle D of title V add the following:

SEC. 540. WAIVER OF TIME LIMITATIONS FOR AWARD OF CERTAIN DECORATIONS TO SPECIFIED PERSONS.

(a) WAIVER OF TIME LIMITATIONS.—Any limitation established by law or policy for the time within which a recommendation for the award of a military decoration or award must be submitted shall not apply in the case of awards of decorations as described in subsection (b), the award of each such decoration having been determined by the Secretary of the Navy to be warranted in accordance with section 1130 of title 10, United States Code.

(b) DISTINGUISHED FLYING CROSS.—Subsection (a) applies to awards of the Distinguished Flying Cross for service during World War II as follows:

(1) FIRST AWARD.—First award, for completion of at least 20 qualifying combat missions, to the following members and former members of the Armed Forces:

Vernard V. Aiken of Wilmington, Vermont.
Ira V. Babcock of Dothan, Georgia.
George S. Barlow of Grafton, Virginia.
Earl A. Bratton of Bodega Bay, California.
Herman C. Edwards of Johns Island, South Carolina.
James M. Fitzgerald of Anchorage, Alaska.
Paul L. Hitchcock of Raleigh, North Carolina.
Harold H. Hottle of Hillsboro, Ohio.
Samuel M. Keith of Anderson, South Carolina.
Otis Lancaster of Wyoming, Michigan.
John B. McCabe of Biglerville, Pennsylvania.
James P. Merriman of Midland, Texas.
The late Michael L. Michalak, formerly of Akron, New York.
The late Edward J. Naparkowsky, formerly of Hartford, Connecticut.
A. Jerome Pfeiffer of Racine, Wisconsin.
Duane L. Rhodes of Earp, California.
Frank V. Roach of Bloomfield, New Jersey.
Arnold V. Rosekrans of Horseheads, New York.
Joseph E. Seaman, Jr. of Bordertown, New Jersey.
Luther E. Thomas of Panama City, Florida.
Merton S. Ward of South Hamilton, Massachusetts.
Simon L. Webb of Magnolia, Mississippi.
Jerry W. Webster of Leander, Texas.
Stanley J. Orlowski of Jackson, Michigan.

(2) SECOND AWARD.—Second award, for completion of at least 40 qualifying combat missions, to the following members and former members of the Armed Forces:

Ralph J. Deceuster of Dover, Ohio.
Elbert J. Kimble of San Francisco, California.
George W. Knauff of Monument, Colorado.
John W. Lincoln of Rockland, Massachusetts.
Alan D. Marker of Sonoma, California.
Joseph J. Oliver of White Haven, Pennsylvania.
Arthur C. Adair of Grants Pass, Oregon.
Daniel K. Connors of Hampton, New Hampshire.
Glen E. Danielson of Whittier, California.
Prescott C. Jernegan of Hemet, California.
Stephen K. Johnson of Englewood, Florida.
Warren E. Johnson of Vista, California.
Albert P. Emsley of Bothell, Washington.
Robert B. Carnes of West Yarmouth, Massachusetts.
Urbain J. Fournier of Houma, Louisiana.
John B. Tagliapiri of St. Helena, California.
Ray B. Stiltner of Centralia, Washington.

(3) THIRD AWARD.—Third award, for completion of at least 60 qualifying combat missions, to the following members and former members of the Armed Forces:

Glenn Bowers of Dillsburg, Pennsylvania.
Arthur C. Casey of Irving, California.
Robert J. Larsen of Gulf Breeze, Florida.
William A. Nickerson of Portland, Oregon.
David Mendoza of Mcallen, Texas.

(4) FOURTH AWARD.—Fourth award, for completion of at least 80 qualifying combat missions, to the following members and former members of the Armed Forces:

Arvid L. Kretz of Santa Rosa, California.
George E. McClane of Cocoa Beach, Florida.
Robert Bair of Ontario, California.

(5) FIFTH AWARD.—Fifth award, for completion of at least 100 qualifying combat missions, to the following members and former members of the Armed Forces:

William A. Baldwin of San Clemente, California.
George Bobb of Blackwood, New Jersey.
John R. Conrad of Hot Springs, Arkansas.
Herbert R. Hetrick of Roaring Springs, Pennsylvania.
William L. Wells of Cordele, Georgia.

(6) SIXTH AWARD.—Sixth award, for completion of at least 120 qualifying combat missions, to Richard L. Murray of Dallas, Texas.

AMENDMENT NO. 4090 TO AMENDMENT NO. 4089

(Purpose: To amend title 18, United States Code, with respect to the stalking of members of the Armed Forces of the United States and their immediate families)

Mr. WARNER. Mr. President, I send to the desk an amendment in the second degree.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Virginia (Mr. WARNER), for himself, and Mrs. HUTCHISON, proposes an amendment numbered 4090 to amendment No. 4089.

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

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

The amendment is as follows:

At the end of the amendment, add the following new section:

SEC. . MILITARY PERSONNEL STALKING PUNISHMENT AND PREVENTION ACT OF 1996.

(a) SHORT TITLE.—This section may be cited as the ''Military Personnel Stalking Punishment and Prevention Act of 1996''.

(b) IN GENERAL.—Title 18, United States Code, is amended by inserting after section 2261 the following:

''§ 2261A. Stalking of Members of the Armed Forces of the United States

''(a) IN GENERAL.—Whoever, within the special maritime and territorial jurisdiction of the United States or in the course of interstate travel, with the intent to injure or harass any military person, places that military person in reasonable fear of the death of, or serious bodily injury to, that military person or a member of the immediate family of that military person shall be punished as provided in section 2261.

''(b) DEFINITIONS.—For purposes of this section—

''(1) the term 'immediate family' has the same meaning as in section 115; and

''(2) the term 'military person' means—

''(A) any member of the Armed Forces of the United States (including a member of any reserve component); and

''(B) any member of the immediate family of a person described in subparagraph (A).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 2261(b) of title 18, United States Code, is amended by inserting ''or section 2261A'' after ''this section''.

(2) Sections 2261(b) and 2262(b) of title 18, United States Code are each amended by

striking ''offender's spouse or intimate partner'' each place it appears and inserting ''victim''.

(3) The chapter heading for chapter 110A of title 18, United States Code, is amended by inserting ''AND STALKING'' after ''VIOLENCE''.

(d) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 110A of title 18, United States Code, is amended by inserting after the item relating to section 2261 the following new item:

''2261A. Stalking of members of the Armed Forces of the United States.''.

(e) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the day after the date of enactment of this Act.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Mr. President, this amendment in the second degree I send on behalf of myself and the distinguished Senator from Texas [Mrs. HUTCHISON]. The amendment in the second degree reflects legislation that is badly needed by the whole of the United States. But given certain parliamentary situations at this time, this amendment submitted by myself and Senator HUTCHISON is limited to military personnel and their dependents.

It is my judgment that the Congress has been far too slow to address fully the rising problems associated with the many forms of domestic violence. This amendment directs the Congress' attention to one form, commonly referred to as ''stalking.'' It will enable military personnel and their dependents and families to better deal with this tragic problem, which, regrettably, is on the rise all across our land.

Yesterday I attended a press conference with Senator HUTCHISON, at which time she issued a plea concerning her bill, which is identical in many forms to this bill but applicable to all women across the United States—let her bill go free. It is at the desk, being held at the desk. Yet, all across this great Nation of ours, women every day are in fear for themselves, their families, and their children.

Mr. President, it is time for the Senate of the United States to act. The House has acted, and it is time for the Senate to act.

I have joined with Senator HUTCHISON on her bill, but we were informed—and I say with respect to the managers on the other side of the aisle—that the strongest objection would be issued if Senator HUTCHISON and I were to raise her bill as an amendment to this military authorization bill. Therefore, I, along with Senator HUTCHISON, have carved out from her bill companion legislation which applies to military personnel, their dependents and their families. That is what I have just sent to the desk as an amendment in the second degree.

Military women are in some respects at greater risk than others because so often they are, on the shortest of notice, transferred to other States, other jurisdictions, in a matter of an hour or less, to take on new responsibilities. It is imperative that they be given the maximum protection against this frightful crime.

Further, in my State of Virginia, an integral part of the greater Metropolitan Washington area covering Virginia, Maryland, and District of Columbia, it is a matter of great ease to cross the jurisdictional lines between the three entities. This amendment would provide the most important protection, Mr. President, whereby if a spouse were to obtain a restraining order in a court, that restraining order would be equally effective in other States and jurisdictions.

I want to repeat that. One of the main features of this amendment is to allow that individual menaced by the threat or actuality of stalking to get a court order and to have that court order effective equally in the 49 other States and the District of Columbia.

I bring to the attention of the Senate an article which appeared in the Washington Post just a few days ago dated June 16, 1996. The headline reads ''Navy Officer, Husband Die After Shooting at Andrews Air Force Base.'' This incident happened right here in Maryland. I will read the article in part and ask unanimous consent, Mr. President, the entire article be printed at the end of my presentation of the amendment.

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

(See exhibit 1.)

Mr. WARNER [reading]. When military police at Andrews Air Force Base received a warning early yesterday that a man was on his way to the military installation to kill his wife, they raced to close the gates of the base. But a short time later, both husband and wife, a Navy petty officer, lay dead inside their home and an Air Force police officer was seriously wounded. The slain woman was identified by Air Force officials as Melissa Comfort, age 28. Her husband was Michael Comfort, age 34. The couple's two young daughters and another adult who were inside the home for several hours after Michael Comfort arrived were unharmed.

The woman had obtained, Mr. President, a court order. This amendment would provide protection for persons like Petty Officer Comfort and military personnel all over the United States, their spouses and their dependents. It would make it a Federal crime to stalk another person on a military installation. Second, stalkers subject to restraining orders issued in any one State or the District of Columbia would be guilty of a Federal crime if they followed their victim to another jurisdiction and violated the terms of the order. In both of these instances, this amendment would enlist the resources of the Federal Bureau of Investigation to work with local law enforcement in the investigation and such other actions taken by law enforcement in the prosecution of the stalking cases. This amendment would be especially effective for military personnel and their families in this greater metropolitan area, as I stated, because of the close proximity of the three legal jurisdictions.

This extension of the enforcement mechanisms of a court order across State lines is the very heart of this legislation, Mr. President, together with enlisting the very able expertise of the Federal Bureau of Investigation.

This amendment is unquestionably relevant to the issues raised by the annual authorization bill because it is the duty of the Armed Services Committee and the duty of the Senate as a whole to provide military personnel every possible assistance in the prosecution of their duties in wearing the uniform. Protection of military personnel and their families is a key component in maintaining a well-trained and motivated military force. More and more women, fortunately, are joining our Armed Forces. I mention that in the context of the fact that women are by far the primary victims of this type of domestic violence. Congress must, therefore, take care that our support system for which we are responsible—remember, Congress is the one that is responsible for the support system of the U.S. military—is such that they can perform their duties.

Mr. President, I am a strong supporter of S. 1729, the bill that is currently at the desk, sponsored by the distinguished Senator from Texas, Mrs. HUTCHISON, entitled, ''Interstate Stalking, Punishment and Prevention Act of 1996.'' This legislation would do even more to significantly enhance the fabric of laws designed to deter and punish stalking.

First, the measure of the Hutchison bill would make it a Federal crime to stalk another person across State lines or on Federal property. The amendment I am introducing today will address those cases involving the military and their dependents. Hopefully, the Congress will take up the Hutchison bill so that it is applicable to all women. The value of today's procedure is that the Senate will vote on the Warner amendment eventually. It will vote. I predict this vote may well be 100 to nothing, sending the strongest signal that this legislation, which will be adopted for military personnel and their dependents, should be expeditiously adopted for all women across this land.

Stalkers, under both bills, covered by one State's restraining order would face a Federal felony—a Federal felony—if they followed their victims to another State or the District of Columbia and continued to perpetrate the criminal action of stalking.

Third, the relationships other than spouses and ex-spouses would be covered by the Hutchison bill, recognizing abusive relationships can and do happen between persons of the opposite sex who are not married or divorced.

Mr. President, this action by the Congress is long overdue. As I said, the House has acted on a companion piece

of legislation to that being held at the desk. There is no reason, in my judgment, why the Senate should not expeditiously act, as has the House of Representatives, to get this bill to the President for signature as quickly as possible.

Mr. President, I yield the floor.

EXHIBIT 1

[From the Washington Post, June 16, 1996]

NAVY OFFICER, HUSBAND DIE AFTER SHOOTINGS AT ANDREWS AIR FORCE BASE

(By Steve Vogel and Arthur Santana)

When military police at Andrews Air Force Base received a warning early yesterday that a man was on his way to the military installation to kill his wife, they raced to close the gates to the base. But a short time later, both husband and wife, a Navy petty officer, lay dead inside their home, and an Air Force police officer was seriously wounded.

The slain woman was identified by Air Force officials as Melissa Comfort, 28. Her husband was Michael Comfort, 34. The couple's two young daughters and another adult, who were inside the home for several hours after Michael Comfort arrived, were unharmed, authorities said.

Just before 2:30 a.m., someone called 911 and reported that Melissa Comfort's life was in danger. Officials have not identified the caller.

After police dispatchers altered the base about the call, military police sealed off Andrews to try to prevent Michael Comfort from entering, according to Air Force officials. But it is possible that he already may have been on the grounds. Michael Comfort, who is not in the military, did not live with his wife on the base, according to Lt. Karl Johnson, a Navy spokesman, who said Michael Comfort was barred from seeing his wife by a protective order.

''Unfortunately, the individual got in before they locked down, or he jumped the fence,'' said Mike Beeman, a base spokesman. Beeman said Air Force police took action ''moments after'' the warning was received.

Two members of Air Force Security Police were sent to check on Melissa Comfort and her daughters in the town house-style duplex in the 4600 block of Maple Court on the western edge of the base. But upon arrival, a man fired a shotgun at the officers, officials said.

''One guy opened fire and then retreated inside the house,'' Beeman said.

One of the military police officers, security Airman 1st Class Michael Blagoue, was struck in the face and abdomen by shotgun pellets, Johnson said. Blagoue was in stable condition at the base hospital, where he was expected to stay the night, officials said.

The military police fired back at Comfort, Johnson said. ''Whether they hit the suspect, we don't know,'' Beeman said.

Additional gunfire was heard soon afterward from inside the house. Military police surrounded the home and evacuated nearby homes, officials said.

The couple's girls, ages 4 and 2, were inside the home, along with a woman, a family friend who has been stationed overseas. It was not immediately clear whether the woman entered the home before or after Michael Comfort arrived.

''We were told he was holding everybody hostage,'' Beeman said.

After several hours without contact with anyone inside the town house, police forced their way into the home at 6:10 a.m. and found the friend and the two children unharmed and both Comforts dead from shotgun wounds. Officials could not immediately say why the friend did not try to contact police in the three hours before police entered the home.

''We don't know why they didn't exit the home earlier,'' Beeman said.

Air Force spokesman could not say in which rooms the dead couple, the children and the friend were found or the location of the children at the time of the shootings.

Johnson said Melissa Comfort, a petty officer second class originally from Fairmont, N.C., who joined the Navy in 1986, was assigned to the Office of Naval Intelligence in Suitland.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, has the Pastore rule expired for the day?

The PRESIDING OFFICER. Yes, it has.

Mr. BYRD. I thank the Chair. Time is not controlled?

The PRESIDING OFFICER. Time is not controlled.

HAPPY BIRTHDAY, WEST VIRGINIA

Mr. BYRD. Mr. President, most people in this city, the majority of my colleagues in this Chamber included, will walk around this harried town today and breathe deeply the sultry air of summer that has settled in upon us, registering only the mingling of Maine Avenue fish markets, tour-bus fumes, and suburban barbecues.

I, however, nudge open my office window and am greeted by the fragrances of breezes that have swept across the Appalachians, up and down the Alleghenies, and have gently settled into the Potomac Valley. My lungs fill with the spicy scents of cool sylvan settings and the sweet bouquet of mountain laurel.

The sounds that most others hear today may be just the clacking of Metro trains, the clamor of commuting workers, and the roar of circling airline traffic.

But through the urban din, I hear the sounds of string bands flowing down the hollows and over the hills, the rush of river rapids, and the laugher of adventurous climbers, scaling Seneca Rocks.

Mr. President, to most, today may mark merely the beginning of another long, sticky summer but to me it is a date that tugs at my soul, calling me home.

This day is the 133rd anniversary of the birth of West Virginia, my beloved home State.

At the time West Virginia was admitted to the Union, America was in the midst of a cruel and bloody civil conflict and West Virginia herself was gripped by a vicious type of guerrilla warfare which saw brothers and sons and neighbors and longtime friends, facing one another across battle lines in mountain skirmishes.

Fortunately, at the war's end, we remained one Nation—bound more strongly than before—and West Virginia, having recovered from her divisive beginnings and settled comfortably into this more solid union, went on to mature into a graceful, independent-minded State.

West Virginia is where I long to be—the land where saffron shafts of sunlight pierce through the early morning mists in spring; where hymns from the religious song books speak louder than guns, and the attendance at family reunions can still swell into the hundreds.

It is a land of hardworking, honest, loyal, patriotic God-fearing people who care about their communities and each other. Since the moment of her birth, West Virginia has undergone great change; yet, as I so often like to boast, she has never lost her grasp on the ''old values'' that continue to set her apart among the 50 States.

Today, faith resides in her hills just as surely as it did when I was just a boy, living in her southern coal mining communities.

Faith is what has kept us going when hope has been in short supply. But it is hope that shapes our vision of the future and drives us to achieve our dreams.

Mr. President, today, as we celebrate West Virginia's 133d birthday, it is appropriate that we should reflect upon her past. But it is also fitting that we should take this time to measure her progress and look toward her tomorrows.

Therefore, on her birthday, my wish for my State and her people is for the availability of quality education to prepare our workforce for the jobs of the future; access to adequate health care; a continuation of a comfortable quality of life; construction of a more modern, safer transportation infrastructure; and further development of a robust business climate; protection of her natural resources; a comfortable quality of life, and the preservation of those ''old values'' that will guide her on a successful and honorable path into the next millennium.

While West Virginia may adapt and modernize and enjoy the fruits of economic prosperity, I hope that she will always be the sort of place that fills her native sons and daughters with a longing to be home.

Happy birthday, West Virginia. You are always in my heart.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. THURMOND. Mr. President, I yield to the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I thank my friend and colleague.

CHURCH BURNINGS

Mr. PELL. Mr. President, to burn a church is to destroy more than a building. Burning a church strikes at the