

Mr. President, this is what my amendment is all about, promotions at the top versus the needs of the infantry battalions, sergeants versus generals. What does the Marine Corps need more, sergeants or generals? If we want the Marine Corps to be the 911 force, always ready to go, then we should make sure that the 27 infantry battalions are rock solid. We better make sure they have the essentials to be effective. We better make sure that they have a full complement of sergeants and lieutenants.

It would be irresponsible to give the Marine Corps more generals when its heart and soul is short of the stuff that it needs to do battle. The Marine Corps should not be topsizing while it downsizes. As the Marine Corps gets smaller, it seems to me it is legitimate to cut the brass at the top, as the other services have already done. I had a chart here to demonstrate that.

Of course, most importantly, the point was made by our Secretary of Defense of how important modernization is. Those at the top of the heap should have what they need to get the job done. By voting for my amendment, you will send the right message to the Marine Corps. I yield the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I ask unanimous consent to yield, as in morning business, to the Senator from Indiana for such time—how much time would the Senator wish? Five minutes.

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

Mr. COATS. I want to thank the Senator from Alaska for yielding this time.

#### EDUCATION IN AMERICA

Mr. COATS. Mr. President, earlier this afternoon the Senator from Massachusetts, Senator KENNEDY, spoke on the floor indicating his concern and expressing his criticism of remarks that Senator Dole made today in Minneapolis. I want to take just a few moments to respond to those remarks. I thank the Senator for yielding the time for me to do that.

What Senator Dole said today in Minneapolis was that this country needs education reform, not education reform as defined by this administration and by some in this Congress, but real education reform. Education reform that ensures that parents have authority to be involved in their children's education, and in their curriculum, and in the formation of educational programs for their children. Education reform that would break up the monopoly that dominates public education. Education reform that gets money into the classroom instead of the bureaucracy. Education reform that rewards teachers, and rewards the Governors who run effective programs, and rewards mayors and school boards. Education reforms that try new ap-

proaches, and education reform that loosens Washington's grip on this country's schools.

For a decade or more now, the Congress and the public have been debating how we can improve our public education system, and a number of proposals have been made. But there is an entrenched bureaucracy that insists on making no real changes, on perpetuating the status quo. What Senator Dole was talking about was shaking up that status quo and bringing about reform that brings real results.

One of the issues that was discussed and was criticized earlier is the question of choice for low-income students. This is an issue that I have been involved with for some time. I have offered amendments, on a bipartisan basis with Senator LIEBERMAN, allow test programs, or pilot programs, for vouchers for low-income parents which would allow us to test the concept of school choice.

It seems hypocritical for those of us who have the means to afford school choice, whether by moving to another school district because we are unhappy with the public school where we currently are situated, or by enrolling our children in private schools or parochial schools, to deny that freedom of choice to those families who do not have the resources to send their children to a private school.

The voucher demonstration program is an attempt to understand the impact of enabling families choice over their children's educational opportunities. Many of these families have children who are consigned to some of the most violence-prone, educationally challenged schools in America. Mothers and fathers know that the only way to successfully give their children a chance to escape a lifetime of these difficult environments is to get a better education. Yet the Congress and this administration have repeatedly blocked attempts at even the most minor of reforms to allow low-income children to escape their poor-performing, violent schools.

The reform Senator LIEBERMAN and I proposed was a 3-year demonstration grant. We proposed trying it in 10-20 school districts around the country—costing a very modest amount of money—to see if it works. Even that small of a reform effort is rejected, time after time. My Project for American Renewal includes an expansion of that concept to provide experiments in up to 100 school districts. By trying a demonstration program, we'll be able to see if what the opponents of school choice say is right, but the only way to test their arguments is to get some objective evidence to evaluate school choice. I fear, Mr. President, that the opponents know that school choice would work: they know it would pose a challenge to the existing system.

I suggest that that is exactly what the existing system needs—a challenge, a challenge to improve its educational efforts. That challenge will come

through competition. Public schools and private schools and parochial schools can exist side by side. The competition among the three of them provides better education for all students involved. This has been demonstrated in my hometown of Fort Wayne, IN, on a number of occasions. We ought to move in that direction.

To criticize Senator Dole for calling for education reform because he has failed to support the status quo initiatives provided by this administration that make no major change, efforts of the Clinton administration and the status quo that is perpetuated by Members of this body and call that educational reform—I think the American people know better. Call this what it is, and that is an attempt by a Presidential candidate to bring about some change in our educational system that will benefit the children—not the bureaucracy, not the unions, not the administration—the children that are actually receiving the education, or would like to receive the education. I commend Senator Dole for his remarks, for his initiative in this area. I hope he has the opportunity to carry it out.

I regret we cannot seem to get beyond the status quo of what in many cases is a failed education system, particularly in areas where children live in poverty, the District of Columbia being the prime example. We have struggled and struggled and struggled to try to give the young people opportunities that others of us have and they do not have. It is regrettable that we cannot discuss this on a rational basis and cannot support the efforts of someone trying to bring about this change.

I thank the Senator from Alaska for his patience and his time on this. I yield the floor.

#### DEPARTMENT OF DEFENSE APPROPRIATIONS FOR FISCAL YEAR 1997

The Senate continued with the consideration of the bill.

##### AMENDMENT NO. 4443, AS MODIFIED

(Purpose: To strike \$2,000,000 available for environmental activities with respect to the Joint Readiness Training Center at Fort Polk, Louisiana)

Mr. STEVENS. I send to the desk an amendment numbered 4443, as modified, pertaining to the Joint Readiness Training Center in Fort Polk, LA, and ask to set aside the pending amendment.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. McCAIN, proposes an amendment numbered 4443, as modified.

The amendment (No. 4443), as modified, is as follows:

On page 8, line 3, before the period, add the following: "Provided, That the amount made

available by this paragraph for Army operation and maintenance is reduced by \$2,000,000."

Mr. MCCAIN. Mr. President, this amendment would reduce Army operation and maintenance funding by \$2 million to eliminate an add-on for Readiness Training Center at Fort Polk, LA.

During Senate consideration of the fiscal year 1997 Defense authorization bill, an amendment was adopted which would authorize the transfer of additional acreage from the Forest Service to the Army at Fort Polk. This transfer would increase the training area at Fort Polk to ensure adequate acreage to conduct realistic land forces training. I had no objection to this amendment and believe it will serve the needs of the Army and the other Services.

However, at the same time, it is unclear that an additional \$2 million will be required in fiscal year 1997 to adequately protect the land and facilities in this additional area.

The report accompanying this bill describes the purposes for which this funding would be used, including hiring more foresters, environmental engineers, and natural resources support personnel, as well as maintaining the forest, roads, and public recreational areas, and protecting the red-cockaded woodpecker, long leaf pine, pitcher plant bogs, and archaeological resources. These are activities which certainly should be undertaken for this new property, but they are also activities which are underway on the current property utilized by the JRTC.

Mr. President, therefore, I suggest that, instead of setting aside \$2 million for these purposes now, we instead encourage the Army to conduct the necessary land management and environmental maintenance activities for these additional acres in the most cost-effective way possible. However, if the funds currently available to Fort Polk are insufficient to ensure that the high standards of land and environmental management are maintained at the newly expanded Fort Polk, I believe the Congress would look favorably on a reprogramming request from the Army to make funding available. In addition, I expect the Army to make funding available. In addition, I expect the Army to include in the fiscal year 1998 budget any additional costs associated with expanding Fort Polk's Joint Readiness Training Center.

Mr. President, I understand that my colleagues from Louisiana may offer an amendment to retain \$500,000 of these earmarked funds. While I would prefer that the Army proceed with this effort and request reprogramming authority if additional funds are required, I would have no objection if the managers preferred to retain \$500,000 of these funds.

AMENDMENT NO. 4448, AS MODIFIED, TO  
AMENDMENT NO. 4443

(Purpose: To restore \$500,000 for environmental activities with respect to the Joint Readiness Training Center at Fort Polk, Louisiana)

Mr. STEVENS. Mr. President, we have two amendments. One is in the first degree and one is the second degree.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. JOHNSTON, for himself and Mr. BREAUX, proposes an amendment numbered 4448, as modified, to amendment No. 4443.

The amendment (No. 4448), as modified, is as follows:

On page 1, line 7 strike out "\$2,000,000" and insert in lieu thereof "\$1,500,000".

Mr. JOHNSTON. Mr. President, I have identified \$500,000 in one-time costs that need to be funded immediately to ensure that the natural resources and archeological sites at Fort Polk are protected. The Army's environmental record has clearly demonstrated how seriously they take their stewardship of the land with which they are entrusted. I believe the money requested will be used in a cost effective manner and will ensure that the resources are protected to the same high standards currently maintained by Fort Polk.

The red-cockaded woodpecker is an endangered species and is protected by Federal law. Woodpecker nesting trees are marked with a 1-meter thick white band. The nesting trees are protected by a 62-meter buffer zone that are marked by orange bands. Military training is restricted within this the buffer zone. Funding will allow for the red-cockaded woodpecker sites to be identified, cleared, marked, and 62-meter buffer zone established.

There are Indian, archeological sites, cemeteries, and other historical sites located on this land and we must ensure that these sites are adequately protected. The balance of the funding will provide sufficient resources to survey the land, identify cultural and archeological sites, and mark them accordingly.

I also encourage the Department of the Army to identify any incremental costs associated with managing this land and I would support any reprogramming requests they find necessary to submit. I further expect that their fiscal year 1998 budget submission will include any of these recurring costs.

Mr. President, I believe the amendment is acceptable to Senator MCCAIN and the managers of this bill.

Mr. BREAUX. Mr. President, I rise today in support of the second degree amendment I am offering with Senator JOHNSTON that would give \$500,000 to the Department of the Army for environmental protection activities at Fort Polk, LA. Earlier this month my distinguished colleague and I were able to

include a provision in the Department of Defense authorization bill that would transfer acreage in the Kisatchie National Forest to the Army at Fort Polk. That amendment will allow Fort Polk to expand its training exercises while continuing its unique mission of providing our troops the best training possible at the Joint Readiness Training Center [JRTC]. I am pleased we were able to work with the managers of the authorization bill to have the transfer provision included in the bill.

On this pending amendment, I would like to thank Senators MCCAIN, STEVENS, and INOUE who have been very cooperative in working with Senator JOHNSTON and me to appropriate \$500,000 for environmental protection at Fort Polk. This funding will ensure that the high standards of land and environmental management are maintained at the newly expanded JRTC. The Army can use this funding to continue surveying and marking trees that are inhabited by the red-cockaded woodpecker. In its current operations, the Army establishes a 62-meter buffer zone around these trees to alert military personnel and the public to stay clear of the area. The Army also posts signs to clearly mark archeological sites, such as cemeteries and Indian burial grounds, and other sensitive areas. This \$500,000 will enable the Army to continue providing this and other important environmental programs at the JRTC.

I appreciate the help Senator MCCAIN and the managers of this bill have given Senator JOHNSTON and me on this amendment and I urge its adoption.

Mr. STEVENS. These are two amendments worked out with the Senators from Louisiana. They have combined their amendments. This is an amendment that has been on the list all day. It has been modified.

I ask unanimous consent the Breaux amendment to the McCain amendment be adopted. I yield to my friend from Hawaii.

Mr. INOUE. Mr. President, I am pleased to agree.

The PRESIDING OFFICER. The question is on agreeing to the second-degree amendment.

The amendment (No. 4448), as modified, was agreed to.

The PRESIDING OFFICER. The question is now on the first-degree amendment, as modified, as amended.

The amendment (No. 4443), as modified, as amended, was agreed to.

Mr. INOUE. I move to reconsider the vote.

Mr. STEVENS. I move to lay it on the table.

The motion to lay on the table was agreed to.

UNANIMOUS-CONSENT AGREEMENT

Mr. STEVENS. Mr. President, I ask unanimous consent that the cloture vote scheduled to occur today with respect to the pending bill S. 1894 be vitiated and during the Senate's consideration of S. 1894, the following amendments be the only first-degree amendments in order, and limited to relevant

second-degree amendments, and following the disposition of the amendments, S. 1894 be read for a third time, the Senate proceed immediately to House companion bill H.R. 3610, all after the enacting clause be stricken, the text of S. 1894 be inserted, H.R. 3610 be read for a third time, and the Senate proceed to vote on the passage of H.R. 3610, all without further action or debate.

The list is a Grassley amendment we are about to vote upon; a Bumpers F/A-18C/D amendment, on which there is a 30-minute time agreement; two relevant Daschle amendments; a Dorgan amendment pertaining to funding reduction, on which there is a time agreement of 30 minutes equally divided; Senator FORD's amendment on chemical demilitarization; Senator HARKIN's amendment on defense merger, on which there is a 45-minute agreement, 30 minutes for Senator HARKIN and 15 minutes to the managers of the bill; a Heflin amendment on pump turbines; a relevant amendment for Senator INOUE; a Levin amendment on counterterrorism; a relevant amendment for Senator NUNN; Senator SIMON, a labor related amendment; and one relevant amendment for myself as Senator managing. I add Senator FEINGOLD's amendment, on which there is a time limit of 30 minutes, if we do not work it out. He has two amendments.

I further ask that following the passage of H.R. 3610, the Senate insist on its amendment, request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate, and S. 1894 be returned to the calendar.

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

AMENDMENT NO. 4463

Mr. STEVENS. Mr. President, I regretfully disagree with the Senator from Iowa and state again that our act does not allocate funds to the entities of the Department of Defense by the roster, or in any way related to the force structure. If the Senator wishes to limit the funds so it cannot be used to support more than 68 general officers, that is an issue for the authorization committee.

At the request of the chairman of the Armed Services Committee, I move to table the amendment of the Senator from Iowa, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the Grassley amendment. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 79, nays 21, as follows:

[Rollcall Vote No. 196 Leg.]

YEAS—79

|           |            |               |
|-----------|------------|---------------|
| Abraham   | Ford       | Mack          |
| Akaka     | Frahm      | McCain        |
| Ashcroft  | Frist      | McConnell     |
| Baucus    | Glenn      | Mikulski      |
| Bennett   | Gorton     | Moseley-Braun |
| Biden     | Graham     | Moynihan      |
| Bond      | Gramm      | Murkowski     |
| Bradley   | Hatch      | Murray        |
| Breaux    | Hatfield   | Nickles       |
| Bryan     | Heflin     | Nunn          |
| Bumpers   | Helms      | Pell          |
| Burns     | Hollings   | Reid          |
| Byrd      | Hutchison  | Robb          |
| Campbell  | Inhofe     | Rockefeller   |
| Chafee    | Inouye     | Roth          |
| Coats     | Jeffords   | Santorum      |
| Cochran   | Johnston   | Sarbanes      |
| Cohen     | Kempthorne | Shelby        |
| Coverdell | Kennedy    | Simpson       |
| Craig     | Kerrey     | Smith         |
| D'Amato   | Kerry      | Snowe         |
| Daschle   | Kyl        | Stevens       |
| DeWine    | Leahy      | Thomas        |
| Dodd      | Levin      | Thurmond      |
| Domenici  | Lieberman  | Warner        |
| Exon      | Lott       |               |
| Feinstein | Lugar      |               |

NAYS—21

|           |            |           |
|-----------|------------|-----------|
| Bingaman  | Grams      | Pressler  |
| Boxer     | Grassley   | Pryor     |
| Brown     | Gregg      | Simon     |
| Conrad    | Harkin     | Specter   |
| Dorgan    | Kassebaum  | Thompson  |
| Faircloth | Kohl       | Wellstone |
| Feingold  | Lautenberg | Wyden     |

The motion to lay on the table the amendment (No. 4463) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, the Senator from Arkansas is seeking recognition.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Arkansas is recognized.

AMENDMENT NO. 4891

(Purpose: To reduce procurement of F/A-18C/D fighters to six aircraft)

Mr. BUMPERS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows.

The Senator from Arkansas [Mr. BUMPERS], for himself, Mr. FEINGOLD, and Mr. KOHL, proposes an amendment numbered 4891.

The amendment is as follows:

On page 22, strike lines 3 through 4, and insert in lieu thereof the following: "\$7,005,704,000, to remain available for obligation until September 30, 1999: Provided that of the funds made available under this heading, no more than \$255,000,000 shall be expended or obligated for F/A-18C/D aircraft."

Mr. STEVENS. Mr. President will the Senator yield to me just a moment?

Mr. BUMPERS. I will be happy to yield.

Mr. STEVENS. Mr. President, it is the plan of the managers of the bill to have the debate on the Bumpers amendment. We feel that amendment will go to a vote sometime between 20 after and 25 after 6. After that, we will have the Harkin amendment, and it will be voted on sometime around 7

o'clock. After that time it will be my intent to ask that all further votes be stacked until tomorrow morning commencing at 9:30, and we will have final passage following that. There will be some few statements just before final passage. We do have a series of amendments to debate yet tonight, but we will have no more votes after the Harkin amendment.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. Mr. President, I ask unanimous consent that I may yield to the Senator from Iowa for a unanimous-consent request.

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

PRIVILEGE OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Kevin Ayelworth, a congressional fellow on my staff, be permitted floor privileges during debate on the DOD appropriations bill.

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

Mr. BUMPERS. Mr. President, I wonder if we could enter into a time agreement on this amendment.

Mr. STEVENS. Mr. President, we entered into a time agreement, if I may respond to the Senator from Arkansas, based upon our conversation. There is at this time I believe 30 minutes equally divided.

Mr. BUMPERS. Parliamentary inquiry. Is that correct, Mr. President?

The PRESIDING OFFICER. That is correct, 30 minutes equally divided.

Mr. BUMPERS. Mr. President, I ask further unanimous consent that no second-degree amendments—

Mr. STEVENS. Could we have order?

The PRESIDING OFFICER. The Senate will be in order.

There is a request from the Senator from Arkansas that no second-degree amendments be in order. Is there objection?

Mr. STEVENS. There is no objection.

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

Mr. BUMPERS. Mr. President, this amendment is very simple.

While we have 30 minutes to debate it, I hope that we can yield back some of the time.

Let me start by explaining that Senator FEINGOLD has an amendment that deals with the Navy's plans to purchase the E and F models of the Navy's F-18 fighter, which is called the Super Hornet. Now, the existing C and D models of the F-18 Hornet are the Navy's premier carrier fighter interceptors. The General Accounting Office has just issued a report on the Navy's plans to purchase 640 of the advanced models which are now in development, namely the F-18E and F-18F. That report, which is the most powerful GAO report I have ever read, says that it is the height of foolishness to go forward with the purchase of that many F-18E/Fs.

The Navy originally wanted to buy 1,000 of them, 360 of which would go to the Marine Corps. And do you know what the Marine Corps said? "We don't want them."

"We don't want them." So that means the Navy is going to buy 640 at a cost of roughly \$53 million each. And the GAO says the present C/D models that we are using and could continue to use through the year 2015 will do virtually everything the E/F will do. By buying C/D models, at a cost of \$28 million, almost 50 percent less, the Navy would save \$17 billion.

Now, I tell you those were prefacing remarks because my amendment does not try to eliminate the E/F purchases of the Hornet. I am not trying to eliminate the E/F because Senator FEINGOLD has an amendment he is working on trying to get accepted that would give the Pentagon the opportunity to reconsider its plans to spend \$60 billion on the E/F models. It would fence the funds for the E/F until the Pentagon provides Congress with a better justification for its decision. I am a strong proponent of the Feingold amendment; I am a cosponsor. I would have liked to do something stronger, but I know that would not have a chance of winning a vote.

The Pentagon took the GAO study, which says you can save \$17 billion by buying F-18C/Ds instead of E/Fs, and they tried to refute every single point the GAO said, and the GAO came back and refuted conclusively—conclusively—Mr. President, every single point the Pentagon made in favor of squandering \$17 billion on the F-18E/F.

Here is my amendment. It is very simple. It cuts \$234 million for six F-18C/D aircraft that were not requested by the Pentagon and that were not included in the Defense Authorization Bill.

There is, in this bill, one of the strangest things I have ever seen. There is an appropriation for 12 of the C/D models, which the Pentagon says they want to get rid of. What is even stranger is, of the 12, only 6 are authorized; the other 6 are not authorized. The Navy says they want this new, premier, advanced E/F model, not the C/D. So, No. 1, the Pentagon did not ask for them. No. 2, the Senate authorizing committee, chaired by the distinguished Senator from South Carolina, with the ranking member from Georgia, Mr. NUNN, did not authorize them. We just passed the authorizing bill, and there is no authorization for these six airplanes.

With the utmost respect to the chairman and ranking member of the Appropriations Committee on Defense, my dear friends, they just put six more airplanes in the bill. They cost only \$234 million. If you say it real fast, it is just nothing.

So I say, if we are going to buy the E/F, why in the world are we going to keep buying C/Ds? And I know that we are going to buy the E/F despite the fact that between now and 2025 we will

spend at least \$500 million for fighter aircraft. I have been around here 22 years, and I can promise you I can get up on this floor and squeal like a pig under a gate every day and it will not change two votes.

You think about it. By the year 2030 we are going to spend \$500 billion for the advanced model Hornet and for the Joint Strike Fighter, and for the F-22.

So, I wish I could stop the E/F. But I am certain in the knowledge, the certain knowledge, that I would not prevail if I sought to stop the Pentagon from going forward with the E/F. You know, the Senate has only killed one weapon system that I can remember, and I cannot think what that was. We only killed one weapons system since I have been in the Senate. The Pentagon occasionally kills one, and they say, "We do not want it anymore." But a lot of times when they say "we do not want it," we impose it on them anyway.

And here is the GAO, which we give hundreds of millions of dollars a year to tell us things, saying you are about to squander \$17 billion for nothing, and here I am on the floor of the Senate saying, I know the Senate is going to ignore the advice of the GAO. So I am saying, if we are going to go ahead and buy 640 of these high-priced, \$53-million-a-copy fighter planes, for God sakes let us not buy 6 more of the C/D models which are neither requested by the Pentagon nor authorized by the authorizing committee.

Mr. President, I hope Senator NUNN would come to the floor and say that he is going to support this amendment because it was not authorized. I have heard him talk a thousand times about how sick he gets of the Senate appropriating money for things that are not authorized. So here is a chance for the Senate to save a paltry \$234 million.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who seeks recognition?

Mr. STEVENS. Does Senator FEINGOLD seek time on this amendment?

Mr. FEINGOLD. I do, Mr. President.

Mr. STEVENS. How much time is the Senator seeking?

Mr. FEINGOLD. Mr. President, 5 minutes.

Mr. BUMPERS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Arkansas has 6 minutes remaining; the Senator from Alaska, 14 minutes and 50 seconds.

Mr. STEVENS. I will not seek the floor if the Senator wishes to speak now.

Mr. BUMPERS. Mr. President, I would like not to use up all of my time at this point. I would like for the opponents of my amendment to use some time.

Mr. STEVENS. I will be happy to do that, but the Senator was on his feet. I will be glad to let him speak now if he wishes to speak.

Mr. FEINGOLD. I will be happy to defer to the Senator from Alaska.

Mr. STEVENS. Mr. President, it is true that the budget did not request any funds to buy more F-18C's for the Navy. The Armed Services bill included six F-18C's for the Navy. This is authorized. The committee, our subcommittee, added and the Appropriations Committee approved \$234 million to buy six single-seat F-18C's for the Navy.

Before his untimely death, we asked Admiral Boorda to list the 10 highest priorities for the Navy this year, and Admiral Boorda listed as the sixth priority, as the CNO, buying six more F-18C's. These replace the less capable F-18A's that are still in the active inventory. The C model has substantial upgrades over the A model. It has better radar and carries more sophisticated weapons. It can fly at night and in adverse weather.

The Navy really needs at least 30 more F-18C's to upgrade its force and accomplish its war-fighting mission. The F-18C procurement was ended because of financial considerations in the past. We still have financial considerations, but these F-18C's we buy now in fiscal year 1997 will be in the inventory of the Navy through at least the year 2018.

I say to my friend from Arkansas, as a pilot, these C models give Navy pilots the ability to fly at night, in adverse weather, with more sophisticated weapons and the best radar in the world. I think it is a needed addition to our Navy.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Alaska has 12 minutes and 31 seconds; the Senator from Arkansas, 6 minutes.

Mr. BUMPERS. Mr. President, I yield the Senator from Wisconsin 5 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I would like to speak briefly in support of the efforts of the distinguished Senator from Arkansas, who is trying to focus attention on the cost implications of decisions that are being made regarding the purchase of tactical aircraft for our various services. As we all know, there is no Member of the Senate who has been a more consistent leader in this area than Senator BUMPERS, constantly pressing for the Senate to subject our military procurement decisionmaking to greater scrutiny.

I appreciate his support for my amendment. A modified version of it appears to have been accepted. Of course, the motivation for that was the GAO report that Senator BUMPERS mentioned. It is entitled "F/A-18E/F Will Provide Marginal Operational Improvement at High Cost," and as the Senator indicated, that marginal improvement is a \$17-billion difference, potentially.

We are pleased that process will go forward. The Department of Defense

will respond to the GAO report, and then the GAO will respond to that. I am very pleased and appreciative to the Senator from Alaska for being cooperative on this.

But on the issue of the amendment of Senator BUMPERS, in these times of fiscal constraint, every item in the Federal budget has to be subjected to intense review. The Senator from Arkansas and I and many others are deeply concerned that the Department of Defense is embarking on a range of military aircraft purchases that cannot be sustained in the outyears. The downpayments on these aircraft in the short term really represent only the tip of the iceberg, from the point of view of the cost.

A GAO report in 1996 notes the military services plan to spend more than \$200 billion on aircraft and other interdiction weapons over the next 15 to 20 years to add to already extensive capabilities. GAO noted that the various services have overlapping programs, with each service proposing upgrades or new weapons that may offer little additional capability.

So, Mr. President, what the BUMPERS amendment is all about and our effort here is all about is the fact somewhere, somehow, there needs to be some overview of the range of these programs. In fact, the House defense authorization bill contains a requirement for a force structure analysis by the Institutes of Defense Analysis which examines the affordability, effectiveness, commonality, roles and missions and alternatives related to the wide range of aircraft. There are good arguments to be made that we should defer decisions on all these procurement plans pending such a review.

In the short term, the issues relating to the F/A-18 clearly need to be examined. On the one hand, the Navy is seeking to remove the C/D with the E/F. Yet this bill adds funding for 12 C/D's, planes which the Department of Defense has not requested. In fact, the DOD authorization bill just passed by the Senate only authorized six additional C/D's, and now the Appropriations Committee doubles that number.

Before we start adding these additional purchases, I think we ought to know where we are going. Is the Navy going to move toward the more expensive E/F or retain the C/D? My view is that we should rely upon the less expensive, but highly capable, C/D. But, Mr. President, one thing is clear, when it comes to the C/D versus the E/F, it is an either/or choice. We either buy the C/D's or the E/F's, one or the other. It is like going to buy a new washing machine. You find two slightly different and you decide, what the heck, we will buy both of them. We cannot afford to do that. We cannot afford dual purchases.

I support the amendment offered by the Senator from Arkansas which strikes the funding for the six additional C/D's. Whatever the ultimate decision is with regard to the future of

the F-18, there is no justification for this increase in the C/D purchases in this appropriations bill.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. I yield to the Senator from Hawaii such time as he may use.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUE. Mr. President, it is always difficult to speak against the GAO. After all, that organization is a child of the Congress. But in this case, I give great weight to the concerns and the professionalism of the United States Navy. I also note that in recent years, the United States Navy has suffered major aviation setbacks in the acquisition programs. For example, the Congress canceled the A-6F program, the Department of Defense canceled the A-12 program, the Navy canceled the Navy ATF and F-14D program and, as a result, what we have available for us is the F/A-18E and at the present time the C's.

If we are to maintain a production line for the F/A-18E at a reasonable rate, then it would make sense to continue the production even of six models of the C. It will come down to cost. The production line will continue.

Second, there are many who will argue that the millennium has arrived and, therefore, there is really no need for these fancy weapons systems. But I believe that we are being constantly reminded that this world is still very unstable, that there is a need for aircraft carriers, and if we are to have aircraft carriers, obviously there is a need to have planes flying off these carriers. These are carrier planes.

So, Mr. President, on this issue, I prefer to set my vote of confidence with the Navy. I think the Navy is correct in suggesting to us that if they are to carry out their mission, they need this aircraft.

Mr. BOND. Mr. President, the requirement for the additional procurement of F/A-18C/D aircraft does not come from the industrial community and is not a result of trying to string out a program which has come to the end of its viable life.

The requirement comes from the Department of the Navy and its own inventory requirements. According to the Director of Air Warfare for the Navy, a minimum of 436 F/A-18C/D aircraft are required to fill the 10 active carrier airwings. The Navy expects that without continued procurement, it will be 30 aircraft short of the CNO mandated and congressionally approved requirements. If we include the normal attrition factor into the equation, the gap grows even wider for even though the F/A-18 is the safest aircraft in tactical Naval aviation history, approximately eight aircraft per year are lost.

The night-strike capabilities of the C/D are critical to the fighting effectiveness of our carriers and allow for the use of the full range of the Navy's

current weapons inventory. These aircraft improve pilot situational awareness and survivability over their A/B model counterparts. They are also fully compatible with shipboard maintenance and diagnostic equipment.

The F/A-18E/F aircraft is on schedule and cost and its performance exceeds expectations so far. So why do we need more C/D's? Because the procurement schedule of the E/F will not produce significant numbers of aircraft until 2009. As my colleagues know, I am a staunch supporter of the F/A-18 E/F, for it does bring so much more warfighting capabilities to the men and women defending us, but that does not relieve us of the responsibility to provide our fliers with these additional C/D's which will bridge the technological void until the E/F's hit the fleet.

Let me put it to my colleagues this way. Advances in aviation, military aviation in particular, are a little like those experienced in the computer world. The strategic mix of aircraft currently in our inventory and those projected to be in our inventory are representative steps in technological advances which will face threats from weapon systems that are advancing as well. Much like computer systems, we can project capabilities beyond our production abilities.

The F-18C/D represents the current cutting edge in tactical Naval aviation, the E/F the next, JAST hopefully the next. But, we cannot in good conscience ask our young men and women to put their lives on the line for us and not give them the best we know we have to offer in the hope of dramatic future improvements which are not yet developed. I urge my colleagues to support, and support fully, the strategic growth of Naval aviation, starting with the continued buy of the C/D's appropriated in this bill.

Mr. BIDEN. Mr. President, I rise in support of the Bumpers amendment to the Defense appropriations bill. This amendment would save American taxpayers 234 million dollars by eliminating funding for six F/A-18C that the Pentagon has not requested.

Mr. President, the Defense appropriations bill allocates money for 12 more F-18's than the President requested. It appropriates funds for six more F-18C's than the Senate authorized. It commits us to spend 234 million dollars on six aircraft that the Navy does not want.

Mr. President, at a time when we need to cut Government spending, how can we justify throwing away 234 million dollars of the taxpayers' money on these soon-to-be outdated aircraft?

Within this bill is 1.8 billion dollars to purchase the first 12 new F-18E/F fighters for the Navy. The Navy has said that the F-18E/F will be the backbone of its carrier-based forces in the future. This aircraft is to replace the F-14 and older F-18's, so that by 2009, the F-18E/F will comprise a majority of the F-18's in the Navy's inventory. If we are worried about a future military threat, we should direct our procurement to systems of the future, not to

aircraft like the F-18C/D that will be obsolete soon after they are manufactured.

Mr. President, we cannot continue to squander our Nation's resources on aircraft that are not needed to defend this country. We must look for areas where we can cut spending while not jeopardizing our national security. The Bumpers amendment represents such an opportunity. I urge my colleagues to support it.

Mr. STEVENS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Alaska has 9 minutes 53 seconds remaining. The Senator from Arkansas has 2 minutes 2 seconds.

Mr. BUMPERS. Mr. President, I wonder if the Senator will object to adding 3 minutes to my time.

Mr. STEVENS. I add 3 minutes to the time of the Senator from Arkansas and yield back the remainder of our time.

Mr. BUMPERS. Mr. President, I thank the Senator very much.

I made this point a while ago, but charts are always much more graphic. Here is where we are headed. For the people around here who are fiscally responsible and really care about the deficit, this is what is going to happen between now and about the year 2025 or 2030. We are going to spend \$70 billion on the F-22 fighter for the Air Force; \$66.9 billion for the fighter plane that we have been talking about here, the model E/F of the F-18 Hornet, a very, very fine airplane, indeed. But so are the C/D models that we now use. The Joint Strike Fighter will cost about \$219 billion. And then sometime around the year 2010 we are going to start buying the replacement interdiction aircraft whose cost we do not know. The cost in today's 1996 dollars for those three fighter planes is \$355.7 billion, according to the Congressional Budget Office. With inflation at 2.2 percent, that will come to about \$500 billion between now and the year 2030, \$500 billion.

Look at this chart. Here are the military budgets of the United States and our potential enemies. The United States, \$269 billion; add NATO to it, \$510 billion; Russia, \$98 billion; China, \$29 billion; and the rogue nations, such as Libya, North Korea, a total of \$17 billion. We spend twice as much as all of the rogue nations, Russia and China combined. When you add NATO to it, almost four times as much.

This chart shows that today, we have 3,800 fighter aircraft, and they are all so-called fourth generation, the best there is. Look at poor Russia, China, North Korea—not even in the game. Not even in the game. The rogues have only 104 modern fighters divided among them. And we are getting ready to spend \$17 billion we should not spend, so says GAO.

Here is another chart. In the year 2005, we will have 3,200 fighter planes. Look, 3,200 fighter planes that all of them will either be fourth or fifth generation aircraft. And the rogues will be no better off than they are today.

I agree with the Senator from Alaska on this point. He says the C/D fighter plane, the Hornet C/D models are very fine night fighters, they are excellent aircraft. I could not agree with him more. If it were left up to me, that is what we would be buying. But, no, we are going to go spend twice as much, \$53 million a copy, on the E/F models which the GAO says is an outrageous waste of the taxpayers' money.

Back to my amendment. I am saying you cannot have it both ways. You cannot buy the E/F because it is going to be the hottest thing going and spend \$67 billion on it but say we want a few more C/D's at the same time. As a matter of fact, the committee wants 12.

Mr. President, the Pentagon did not ask for 12, even the Navy did not ask for 12, and the committee, chaired by the Senator from South Carolina who is sitting on the floor, the Armed Services Committee of the Senate chaired by Senator THURMOND, authorized six, not 12. And the Subcommittee on Defense appropriations, on which I sit, said, "No, we'll put another six in," even though they were not requested nor authorized. It is a paltry \$234 million. It will be the only chance you will have of this entire bill to save one single dollar and do it sensibly.

Mr. President, I yield back the remainder of my time and ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. STEVENS. Mr. President, before the vote starts, I ask unanimous consent that the time on the Ford amendment be limited to 30 minutes equally divided. I have this agreement with the Senator from Kentucky.

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

The question is on agreeing to the Bumpers amendment No. 4891. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 44, nays 56, as follows:

The result was announced—yeas 44, nays 56, as follows:

[Rollcall Vote No. 197 Leg.]

YEAS—44

|          |            |               |
|----------|------------|---------------|
| Akaka    | Glenn      | Lieberman     |
| Baucus   | Graham     | Moseley-Braun |
| Biden    | Grassley   | Moynihan      |
| Bingaman | Harkin     | Murray        |
| Bradley  | Hatfield   | Nunn          |
| Brown    | Hollings   | Pell          |
| Bryan    | Jeffords   | Pryor         |
| Bumpers  | Johnston   | Reid          |
| Byrd     | Kassebaum  | Robb          |
| Conrad   | Kennedy    | Rockefeller   |
| Daschle  | Kerrey     | Simon         |
| Dodd     | Kohl       | Snowe         |
| Dorgan   | Lautenberg | Wellstone     |
| Exon     | Leahy      | Wyden         |
| Feingold | Levin      |               |

NAYS—56

|          |          |           |
|----------|----------|-----------|
| Abraham  | Burns    | Coverdell |
| Ashcroft | Campbell | Craig     |
| Bennett  | Chafee   | D'Amato   |
| Bond     | Coats    | DeWine    |
| Boxer    | Cochran  | Domenici  |
| Breaux   | Cohen    | Faircloth |

|           |            |          |
|-----------|------------|----------|
| Feinstein | Inouye     | Roth     |
| Ford      | Kempthorne | Santorum |
| Frahm     | Kerry      | Sarbanes |
| Frist     | Kyl        | Shelby   |
| Gorton    | Lott       | Simpson  |
| Gramm     | Lugar      | Smith    |
| Grams     | Mack       | Specter  |
| Gregg     | McCain     | Stevens  |
| Hatch     | McConnell  | Thomas   |
| Heflin    | Mikulski   | Thompson |
| Helms     | Murkowski  | Thurmond |
| Hutchison | Nickles    | Warner   |
| Inhofe    | Pressler   |          |

The amendment (No. 4891) was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. STEVENS. Mr. President, we are awaiting an agreement on the disposition of the final amendments of the bill.

I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. STEVENS. 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. STEVENS. While we are waiting for the final agreement on the amendments, I will offer an amendment on behalf of Senators FEINGOLD, KOHL, BUMPERS, and myself.

AMENDMENT NO. 4892

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for himself, Mr. FEINGOLD, Mr. KOHL, Mr. BUMPERS, and Mr. INOUE, proposes an amendment numbered 4892.

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

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

The amendment is as follows:

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

SEC. 8099. (a) Not more than 90 percent of the funds appropriated or otherwise made available by this Act for the procurement of F/A-18E/F aircraft may be obligated or expended for the procurement of such aircraft until 30 days after the Secretary of Defense has submitted to the Congressional defense committees a report on the F/A-18E/F aircraft program which contains the following: (1) A review of the F/A-18E/F aircraft program.

(2) An analysis and estimate of the production costs of the program for the total number of aircraft realistically expected to be procured at each of four annual production rates as follows:

- (a) 18 aircraft.
- (b) 24 aircraft.
- (c) 36 aircraft.
- (d) 48 aircraft.

(3) A comparison of the costs and benefits of the F/A-18E/F program with the costs and benefits of the F/A-18C/D aircraft program taking into account the operational combat effectiveness of the aircraft.



(b) Not later than 30 days after the Secretary of Defense has submitted the report required by subsection (a), the Comptroller General of the United States shall submit to the Congressional defense committees an analysis of the report submitted by the Secretary.

Mr. STEVENS. Mr. President, this amendment restricts the obligation of 10 percent of the funds appropriated for the procurement of the Navy F/A-18E/F fighters until the Secretary of Defense submits a report on the F/A-18E/F program.

The amendment is similar to an amendment adopted in the defense authorization bill, and I believe that this is acting in concert with our colleagues on that Armed Services Committee.

This amendment is now acceptable to us. I believe I speak for my friend from Hawaii, also. Does the Senator want to be listed as a cosponsor?

Mr. INOUE. Yes.

Mr. STEVENS. Mr. President, I ask the Senator from Wisconsin if he has any comment to make.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, my amendment relates to funds appropriated under this bill for production of the F/A-18 E/F, or the Super Hornet as it is commonly called, which I understand will be accepted by the managers. I appreciate their willingness to work with us on this matter.

Mr. President, this amendment is very similar to an amendment that I offered which was adopted on the Defense authorization bill, S. 1745, when it was considered by the Senate on June 28.

Basically, this amendment seeks to limit obligation of funds for the production of this new aircraft until Congress has an opportunity to review carefully the recommendations made by the General Accounting Office in a report issued last month. The GAO report, entitled "Navy Aviation: F/A-18E/F will Provide Marginal Operational Improvement at High Cost," outlines some very important questions that should be considered before we proceed further with procurement of this aircraft. The amendment directs the Department of Defense to submit a report responding to the GAO concerns, and provides an opportunity for GAO to comment on the DOD response. It fences 10 percent of the funds appropriated for procurement of the new aircraft until 30 days after this report is submitted.

At the time I offered a similar amendment to the DOD authorization bill, I discussed extensively the issues raised by GAO. Although I do not want to take the Senate's time today to repeat each of these arguments, I want to highlight some of GAO's concerns.

First, GAO noted that a projected total program cost of more than \$89 billion, the Super Hornet Program is one of the most costly aviation programs in the Department of Defense.

Second, the Navy based the need for the development and procurement of

the Super Hornet on the basis of existing or projected operational deficiencies of the current model of the F/A-18 in the following key areas: strike range, carrier recovery payload and survivability. In addition, the Navy noted limitations of the current C/D model of the F/A-18 with respect to avionics growth space and payload capacity.

In its report, however, GAO concluded that the operational deficiencies in the C/D that the Navy had cited in justifying the E/F either have not materialized as projected or such deficiencies can be corrected with non-structural changes to the current C/D and additional upgrades which would further improve its capabilities.

Mr. President, let me stress here that the GAO did not conclude that the F/A-18 E/F is a bad plane. During the debate on this issue on the DOD authorization, several of the proponents of this aircraft spoke about this plane being a highly capable carrier-based tactical aircraft, as it was intended to be. I want to stress, again, that the issue here is whether the additional capabilities of this aircraft justify its additional cost, or whether the current C/D version of the F/A-18 can perform the mission at substantial cost-savings to the Federal taxpayer.

GAO found that the C/D's are performing at higher levels than originally contemplated. For example, the F/A-18C's operating in support of the current Bosnia operations are now routinely returning to carriers with operational loads of 7,166 pounds, which is substantially greater than the Navy projected for this aircraft. In fact, when initially procured in 1988, this aircraft had a total carrier recovery payload of 6,300 pounds. Today, it is significantly higher. In addition, GAO noted that while it is not necessary, upgrading F/A-18Cs with stronger landing gear could allow them to recover carrier payloads of more than 10,000 pounds—greater than that sought for the F/A-18E/F which would be 9,000 pounds.

GAO made similar findings with respect to the C/D's long-range mission capacity. GAO concluded that the Navy's F/A-18 strike range requirements can be met by either the Super Hornet or the C/D, using the 480-gallon external fuel tanks that are planned to be used on the E/F.

Mr. President, I will not detail any further today the areas where GAO noted that the differences in the capabilities of the two aircraft were either not as significant as anticipated or could be minimized by modifications of the C/Ds.

I do, however, want to stress the difference in the cost of these two planes. As I mentioned at the outset, the total program cost of the Super Hornet is projected to be over \$89 billion assuming a procurement of 1,000 aircraft—660 by the Navy and 340 by the Marine Corps—at an annual production rate of 72 aircraft per year. However, as GAO

noted, these figures are not accurate. The Marine Corps has made it clear that they do not intend to purchase any Super Hornets. Furthermore, an annual production rate of 72 aircraft is not feasible. The Navy has already been directed to calculate costs based upon a more realistic production rate, at 18, 36 and 54 aircraft per year.

Using the overstated assumptions, the Navy calculated the unit recurring flyaway cost of the Super Hornet at \$44 million. However, using GAO's more realistic assumptions of the procurement of 660 aircraft, at a production rate of 36 aircraft per year, the cost of the E/F balloons to \$53 million.

In comparison, the C/D's cost \$28 million each at a production rate of 36 planes per year.

GAO concluded that the cost difference in unit recurring flyaway would result in a savings of almost \$17 billion if the Navy were to procure 660 F/A-18 C/Ds rather than 660 F/A-18 E/Fs.

At a time of fiscal constraints on all aspects of the Federal budget, we need to look carefully at whether it is necessary to spend this additional \$17 billion on an aircraft that may produce only marginal improvements over the current model.

Mr. President, this question is also important because there is also a far less costly program already being developed which may yield more significant returns in operational capability. This program is the joint advanced strike technology or JAST program which is currently developing technology for a family of affordable next generation joint strike fighter [JSF] aircraft for the Air Force, Marine Corps and the Navy.

The JSF is expected to be a stealthy strike aircraft built on a single production line with a high degree of parts and cost commonality. The Navy plans to procure 300 JSF's with a projected initial operational capability around 2007. The JSF will be designed to have superior or comparable capabilities in all Navy tactical aircraft mission areas, especially range and survivability, at far less cost than the Super Hornet.

The estimated unit recurring flyaway cost of the Navy's JSF is estimated in the range from \$32 to 40 million, as compared to GAO's \$53 million estimate for the Super Hornet.

Mr. President, given the high cost and marginal improvement in operational capabilities the Super Hornet would provide, it seems that its justification is no longer clear. Operational deficiencies in the C/D aircraft either have not materialized or can be corrected with nonstructural changes to the plane. As a result, proceeding with the E/F program may not be the most cost-effective approach to modernizing the Navy's tactical aircraft fleet. A strong argument can be made that the Navy can continue to procure the C/D aircraft while upgrading it to improve further its operational capabilities. For the long term, the Navy

can look toward the next generation strike fighter, the JSF, which will provide more operational capability at far less cost than the E/F.

As I have indicated previously, the Navy does need to procure aircraft that will bridge between the current force and the JSF which will be operational around 2007. The question is whether the F/A-18C/D can serve that function, or whether we should proceed with an expensive new plane for what appears to be a marginal level of improvement. The \$17 billion difference in projected costs does not appear to provide a significant return on our investment.

For these reasons, I think it would be prudent to adopt a go-slow approach to the F/A-18 E/F program and allow Congress sufficient time to review GAO's findings, the Defense Department's response, and GAO's evaluation of that response.

Mr. President, there is one issue I want to specifically address regarding the obligation of funds under this appropriations bill for the F/A-18 E/F program. At the time the GAO report was submitted to Congress, the Navy responded that the GAO concerns were premature because the final procurement decision had not been made by DOD. DOD indicated that the final decision could not be made until the Defense Acquisition Board had made its low rate initial production [LRIP] milestone decision in the first quarter of calendar year 1997. At that time, DOD contended the Board would convene for a thorough program review. It is my understanding that although there may be some procurement funds obligated prior to the DAB decision, the bulk of the funds would not be committed until this milestone decision is made next year. DOD would, under this amendment, also be preparing its report in response to this amendment during the same period of time, and hopefully, answers to some of the questions raised by GAO would be thoroughly examined during this process prior to the final decisions for fiscal year 1997 funding. Congress will also have an opportunity to review this information and halt or slow down procurement if deemed appropriate.

Over the long term, it is important that we carefully consider all of the issues surrounding the planned procurement of some 1000 F/A-18 E/F's. I believe that this amendment will assist in getting the relevant information, and I appreciate the cooperation of the managers in moving us in that direction.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 4892) was agreed to.

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

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

The motion to lay on the table was agreed to.

#### ALUMINUM METAL MATRIX COMPOSITES

Mr. D'AMATO. Mr. President, I am concerned with a project under the Defense Production Act which is currently caught up in the Department of Defense. On October 5, 1995, the President notified Congress that DOD intended to utilize title III of the Defense Production Act (DPA) to address industrial resource shortfalls for the production of Aluminum Metal Matrix Composites (AL MMC). Funding in the amount of \$15,000,000 was to be made available for this effort. It is my understanding that staff in the Under Secretary of Defense (Acquisition & Technology) office are attempting to divert these funds to other title III programs.

According to Assistant Secretary of the Army (Research, Development and Acquisition) Gilbert F. Decker, "the Army has valid requirements for components manufactured with Al MMC to support its armored combat vehicle fleet." In fact, Mr. Decker wrote to Under Secretary Kaminski asking that he continue to reserve the funding for its original purpose, adding that "use of Al MMC material will result in both a significant weight reduction and increase in the durability of manufactured parts. It also promises a significant weight reduction and increase in the durability of manufactured parts. It also promises a significant cost savings over current materials."

Under Secretary of Defense Kaminski approved the project as well stating that "Aluminum Metal Matrix Composites (Al MMC) is an enabling technology that will increase combat performance and reduce life cycle costs for a variety of defense systems, e.g., missiles, where reduced weight will reduce time to kill and/or increase range."

The funds necessary for this project are already appropriated monies and need no further authorization or appropriation to be spent. Based upon my understanding, it is the desire of the Army to proceed expeditiously on the procurement of Aluminum Metal Matrix Composites with title III funds. Unfortunately, DOD personnel on the staff level have decided to step in the way of this project, Mr. Chairman, that is unacceptable.

Mr. STEVENS. I thank the distinguished Senator from New York for bringing this problem to the attention of the Committee. I can assure the Senator that we will look into this matter and further discuss it with our colleagues in the House when we go to Conference.

#### DOD NATURAL RESOURCES ASSESSMENT

Mr. WARNER. Mr. President, as you and Senator STEVENS know, the Defense authorization bill is currently in conference and I am a conferee on that legislation. Section 248 of that bill as passed by the House contains a provision which authorizes a natural resources assessment and training delivery system improvement program to enhance the Department of Defense's capabilities for complying with its own requirements to protect and conserve

the natural ecosystems on military installations. This provision was sponsored by Representative HANSEN of Utah. I am hopeful that the Senate conferees will accept the Hansen amendment in conference.

The purpose of this colloquy is to urge the prospective Senate conferees on the Defense Appropriations bill to give consideration to providing a means of funding the Hansen amendment. Specifically, it is my understanding that \$3,400,000 would be required to allow a consortium of environmental experts, including institutions of higher education in my State of Virginia and others, to assist the Department of Defense to monitor natural resources in training and weapons testing areas, to address the highest priority DOD environmental conservation requirements as identified by the Pentagon last year. It is my understanding that this program will help save funds in carrying out these important military requirements.

I ask that Senator STEVENS and the Senate conferees on the Defense appropriations bill do whatever is possible to identify funding to carry out this important military environmental initiative in fiscal year 1997. Can the distinguished Chairman address this matter?

Mr. STEVENS. I want to thank the distinguished Senator from Virginia for bringing this important matter to my personal attention. I am somewhat familiar with the proposal contained in the House-passed Defense authorization bill and it sounds reasonable. I will assure the Senator from Virginia that I will work between now and the conclusion of conference on this appropriations bill to find a way to provide funding for the natural resources assessment and training delivery system improvement program that has been identified by my colleague. One possible avenue that will be explored is the Defense Legacy Program.

Mr. WARNER. I thank my friend and colleague for his consideration of this project.

#### DOD TRANSIT PROGRAM

Mr. WARNER. Mr. President, I would like to bring to your attention the fact that none of the Department of Defense organizations currently participates in a transit benefit program available to all Federal civilian and military personnel. This is particularly significant given the Metro facilities at the Pentagon. The program, offered by the Washington Metropolitan Area Transit Authority (WMATA), and authorized under the Federal Employees Clean Air Incentives Act, Public Law 103-172, enacted in 1993, allows Federal agencies to provide a tax free benefit of up to \$65 per month in employer-provided transit passes to help defray the costs of daily commutes by public transportation. The Federal Government is also permitted to provide up to \$165 per month for parking costs, similarly excluded from an employee's taxable income. These benefits are identical to



those enjoyed by private sector employees under the Energy Policy Act of 1992.

This incentive program for Federal employees has been an unqualified success. The 100 Federal agencies in this area, including the United States Senate, that participate in the WMATA Program, called Metrochek, have reduced parking costs, decreased employee absenteeism rates and improved employee morale and productivity. The program also results in significant energy conservation and environmental benefits and serves to reduce traffic congestion, by encouraging Federal employees to take public transit, rather than driving alone in their automobiles.

Mr. STEVENS. This certainly appears to be a worthwhile program. I would like to join the distinguished gentleman in encouraging Department of Defense organizations to participate. In your opinion, what would be the most efficient method for gaining their participation?

Mr. WARNER. First, Mr. President, the Department of Defense should instruct its organizations to survey the area's Department of Defense employees to accurately estimate how many employees might benefit from this program. Additionally, I request the Chairman's support in directing some of DOD's largest organizations to conduct a demonstration program to test the effectiveness of this program. For example, there are over 40,000 civilian and military Army employees in the Washington area. WMATA estimates that approximately 6,400 employees could utilize the Metrochek Program. Similarly, the Navy and Marines have 58,000 employees in this area, of which 8,700 may be able to utilize the program; and the Air Force has over 21,000 employees, of which 3,300 could benefit.

Mr. STEVENS. I would be pleased to join the distinguished Senator in strongly encouraging these DOD organizations to establish demonstration programs in order to more closely examine the potential of this program.

Mr. WARNER. I want to thank the Chairman. It seems to me that given the substantial Federal investment made in Metrorail, we have an obligation to utilize this extraordinary asset. More than half of the Metro stations serve Federal installations. The Metrorail System was built with the full partnership of the Federal Government, dating back to the Eisenhower Administration. I appreciate the Chairman's willingness to promote this important program which benefits Federal employees, while reducing congestion and improving air quality in this region.

ADVANCED MATERIALS INTELLIGENT  
PROCESSING CENTER

Ms. MOSELEY-BRAUN. Mr. President, I would like to express my appreciation to my colleagues, the senior Senator from Alaska, TED STEVENS, and the Senior Senator from Hawaii, DAN INOUE, for the funding provided

for the Advanced Materials Intelligent Processing Center in the fiscal year 1997 Defense Appropriations legislation. I believe the Center will provide returns to the American taxpayers by enhancing the affordability of military hardware and defense readiness.

At present, the affordability of military hardware is determined in part by the cost of fabricating components and the stockpiling of weapons for future use. Advanced materials, which are increasingly used in military hardware because they provide important performance benefits, can be difficult and expensive to process. Weapons are presently manufactured and stockpiled at great cost in part because technologies are not yet in place that would allow a mothballed plant to be reactivated quickly, or a commercial manufacturing plant to be converted rapidly to military production.

The Advanced Materials Intelligent Processing Center can address both of these cost factors by providing an integrated approach for the fabrication of military hardware containing advanced materials. The Center will develop processing techniques that can help to lower the cost of fabricating military components from advanced materials, and help to lower the cost and the need for stockpiling.

Numerous studies have shown that inadequate processing technology can contribute to the high cost of advanced materials. In addition, the Federal Government spends far more on product development (95 percent of Federal research and development) than on process development, in contrast to Japan where the breakdown of research and development funding is exactly opposite, and where affordable advanced materials are being developed far more rapidly than in the United States.

The Center is the culmination of more than two years of discussion and planning with organizations such as the Army Materials Laboratory polymer composites group, the Air Force Material Laboratory controls group and ceramic-matrix composites group, Argonne National Laboratory, the NIST polymer composites group and the Office of Intelligent Processing of Materials, the IHP/TET Fiber Development Consortium, and the Navy's Center of Excellence in Composites Manufacturing Technology.

Northwestern University is uniquely qualified to establish and operate the Center because of its international reputation in materials science, its nationally recognized effectiveness in interdisciplinary R&D, industrial collaboration, technology transfer, and its experience in operating R&D consortia related to the production of advanced military hardware. Northwestern's Department of Materials Science and Engineering is consistently ranked among the top five such departments in the Nation, and Northwestern's Material Science Center was among the first of such laboratories funded by the Federal Government.

In addition, Northwestern's Institute of Learning Sciences is nationally recognized in using artificial intelligence for adaptive learning systems. Finally, Northwestern's industrial research laboratory, BIRL, has successfully worked with many commercial and military suppliers to develop and transfer new advanced materials and processing technologies.

With the end of the cold war, the Nation's industrial capacity to provide defense hardware has declined dramatically through the closure or conversion to commercial use of defense manufacturing facilities. Many U.S. defense firms may be unable to convert their operations rapidly to large-scale military production. The funding recommended in this year's legislation would allow for development of a center that can help address the defense readiness of our industrial base.

In closing, Mr. President, I would like to again commend my colleagues on the subcommittee for their efforts on behalf of this center.

Mr. STEVENS. I appreciate the kind words of the distinguished Senator From Illinois. I am aware that Northwestern University in Evanston, IL would be well qualified to operate the Advanced Materials Intelligent Processing Center and will give this program every consideration for funding during conference of this bill.

COMPUTER EMERGENCY RESPONSE SYSTEM

Mr. SPECTER. Mr. President, I have sought recognition for the purpose of engaging my good friend, the distinguished chairman of the Defense Appropriations Subcommittee, in a colloquy regarding support for the Computer Emergency Response Team Coordination Center [CERT/CC], located at Carnegie Mellon University's Software Engineering Institute in Pittsburgh, PA. CERT/CC has operated since 1988 under the sponsorship of the Defense Advanced Research Projects Agency [DARPA]. Its mission is to respond to computer security emergencies and intrusions on the Internet, to serve as a central point for identifying vulnerabilities, and to conduct research to improve the security of existing systems.

The number of computer emergencies handled by CERT/CC has grown from 132 in 1989 to nearly 2,500 in 1995. The severity of these incidents has also increased dramatically. Finance and banking, medicine and transportation rely heavily on computer networks. But as terrorists, ordinary criminals, and rogue states grow more technologically sophisticated, our vulnerability to attacks on our computer networks has grown. In light of these vulnerabilities, it is critical for the United States to develop networks capable of surviving attacks while protecting sensitive data. In my view, CERT/CC can play a critical role in ensuring the security of our computer systems.

The Defense Department had planned to reduce funding for this critically important activity. However, an amendment offered by Senators NUNN, SANTORUM and KYL, and included in the fiscal year 1997 Defense Authorization bill, authorizes \$2 million to the Software Engineering Institute to continue this effort. This important provision will enable CERT's incident-handling activity to continue through fiscal year 1997. It is my hope that an appropriate long-term source of funding for CERT will be identified during the coming fiscal year.

Mr. STEVENS. Mr. President, I thank my colleague from Pennsylvania for his comments. I agree that the CERT provides a critical function for the Defense Department at a time when our computer systems and networks are being attacked by computer hackers. I will work to provide an appropriate level of funding for CERT activities.

Mr. GRAMM. Mr. President. I would like to discuss with the distinguished Chairman and ranking member of the Defense Subcommittee an important matter that I and a number of our colleagues have been working on. As I am sure they are aware, the Senate adopted an amendment I offered to the fiscal year 1997 Senate Defense Authorization bill that would require the Defense Department and the Department of Health and Human Services to jointly submit to the Congress no later than September 6, 1996 a detailed military retiree Medicare subvention demonstration program implementation plan. That amendment also authorized funds to pay for the demonstration program. Currently, however, the fiscal year 1997 Defense Appropriations bill does not include funding for this important effort. I would like to bring this matter to the attention of my colleagues, and to propose expediting a reprogramming request in fiscal year 1997 to fund the demonstration program should the Congress authorize it for fiscal year 1997.

Mr. STEVENS. Mr. President, I am aware of the efforts of my colleague, and understand that if the Congress authorizes the demonstration program in fiscal year 1997 some funds may need to be appropriated. Since we do not yet know how much funding could be required, it is impossible for the subcommittee to act at this time. I assure my colleague that the subcommittee supports Medicare subvention and we would be willing to work with my colleague from Texas and the administration to expedite the reprogramming of 1997 funds if the Congress authorizes a Medicare subvention demonstration program in fiscal year 1997.

Mr. INOUE. Mr. President, I too am well aware of this issue. I am pleased to have been a cosponsor of the amendment to the fiscal year 1997 Defense authorization bill to which my colleague from Texas referred, as well as being an original cosponsor of his demonstration legislation, S. 1487. I strongly support the Senate's efforts to attempt to

authorize a Medicare subvention demonstration program in fiscal year 1997 and look forward to reviewing the joint report when it is submitted on September 6. I assure my colleague from Texas that I will be pleased to work with him and the administration to try to expedite the reprogramming of fiscal year 1997 funds if the Congress is able to authorize the demonstration in fiscal year 1997.

Mr. GRASSLEY. Mr. President, I would like to thank the chairman of the committee, my friend from Alaska, Senator STEVENS, and my friend the ranking minority member, Senator INOUE, for doing the good work again this year on the Defense Department's problem disbursements.

The bill includes a provision—section 8089—that makes the Department match disbursements with obligations before payments are made.

This measure helps to sustain the momentum we started back in 1994, continued in 1995, and re-energized this year.

Section 8089 ratchets down payment thresholds even more as recommended in audit reports just issued by the inspector general and General Accounting Office.

This piece of legislation and the accompanying report language send the right message to the Department.

We intend to keep the pressure on until this problem is fixed.

That's the message the bill sends. I thank Senator STEVENS and Senator INOUE for their willingness to follow through on this important issue.

Mr. DOMENICI. Mr. President, this Defense Appropriations bill, S. 1894, provides \$244.8 billion in new discretionary budget authority and \$243.2 in total discretionary outlays for the Department of Defense. There are some major elements to this bill that are important for Senators to know.

The bill, as reported, is within the Defense Subcommittee's Section 602(b) allocation and, thus, complies with the requirements of the Budget Act.

The bill fully funds certain important initiatives that were requested by the President, including a three percent pay raise for all military personnel and the end strengths for all of the active and reserve military services.

More importantly, the bill also funds needed increases in each of the major accounts of the defense budget. Each of these accounts was left with major underfunding problems by the administration's budget request. The administration would have us believe that these increases are uncalled for an excessive; following that advice would have the following consequences:

Programmed medical care for military beneficiaries would be underfunded by \$475 million, and that care would be reduced.

The average age of military barracks that is now over 30 years would increase.

The average age of tactical aircraft would increase to over 20 years, and some Air Force fighters would be as old as 40 years.

Flight training for Air Force fighter pilots would decrease from 20 hours per month to an unacceptable 16 hours.

The size of Air National Guard squadrons would shrink to 12 aircraft each from a level that was 18 to 24 just a few years ago.

In short, while the administration would have people believe that the increases we are funding in this bill are excessive and unnecessary, the facts are that these increases will only help to slow—not prevent, let alone reverse—some serious deterioration in our Armed Forces.

In fact, in terms of constant—inflation adjusted—dollars, this bill is a real-dollar decrease from last year's appropriations, and, despite its apparent increases, it constitutes the twelfth straight year of decline in real-dollar defense spending.

The chairman of the Defense Subcommittee, Senator STEVENS, and the Subcommittee staff deserve the thanks of the Senate for their extremely skillful crafting of this bill. It makes the best possible use of the limited funds available; in many respects, it does more—with less—than other defense bills before Congress, and, most importantly, it helps to stem the aging and shrinking in our weapons inventory and the reduced training and readiness that the administration's anemic defense budget would impose on our Armed Forces.

Finally, Mr. President, I ask unanimous consent that a table showing the relationship of the reported bill to the Defense Subcommittee's 602(b) allocation be printed in the RECORD.

I urge the adoption of this bill.

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

DEFENSE SUBCOMMITTEE SPENDING TOTALS—SENATE-REPORTED BILL

(Fiscal year 1997, in millions of dollars)

|   | Budget authority | Outlays |
|---|------------------|---------|
| <b>Defense Discretionary:</b>   |                  |         |
| Outlays from prior-year BA and other actions completed                      |                  | 80,733  |
| S. 1894, as reported to the Senate  | 244,561          | 162,247 |
| Scorekeeping adjustment   |                  |         |
| Subtotal defense discretionary  | 244,561          | 242,980 |
| <b>Nondefense discretionary:</b>  |                  |         |
| Outlays from prior-year BA and other actions completed                      |                  | 12      |
| S. 1894, as reported to the Senate  |                  |         |
| Scorekeeping adjustment   |                  |         |
| Subtotal nondefense discretionary   |                  |         |
| <b>Mandatory:</b>   |                  |         |
| Outlays from prior-year BA and other actions completed                      |                  |         |
| S. 1894, as reported to the Senate  | 184              | 184     |
| Adjustment to conform mandatory programs with budget resolution assumptions | 12               | 12      |
| Subtotal mandatory  | 196              | 196     |
| Adjusted bill total   | 244,757          | 243,188 |
| <b>Senate subcommittee 602(b) allocation:</b>                               |                  |         |
| Defense discretionary   | 244,565          | 242,985 |
| Nondefense discretionary  |                  | 12      |
| Violent crime reduction trust fund  |                  |         |
| Mandatory   | 196              | 196     |
| Total allocation  | 244,761          | 243,193 |

DEFENSE SUBCOMMITTEE SPENDING TOTALS—SENATE-  
REPORTED BILL—Continued  
[Fiscal year 1997, in millions of dollars]

|  | Budget authority | Outlays |
|--|------------------|---------|
| Adjusted bill total compared to Senate subcommittee 602(b) allocation: |                  |         |
| Defense discretionary .....  | -4               | -5      |
| Nondefense discretionary .....   | NA               | NA      |
| Violent crime reduction trust fund .....                               | NA               | NA      |
| Mandatory .....  |                  |         |
| Total allocation .....   | -4               | -5      |

Note: Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions.

Mr. STEVENS. Mr. President, I yield to the majority leader.

Mr. LOTT. Mr. President, again, I want to thank the managers of the bill for the good work they have done. They have done an incredible job in working through a long list of amendments and making sure that all the Senators' interests are protected.

It looks to me like they have reached a point here where we can bring the DOD appropriations bill to a conclusion, with votes in the morning. We are waiting for one final clearance. We hope to get that, and there are calls being made now.

I thank the Democratic leader publicly for his help in working through these amendments and on a number of other issues we are working on.

I will not ask unanimous consent right now, but I thought I might outline what the two managers have come up with, and that would be this: All remaining amendments to the Department of Defense bill be offered and all debate occur tonight, and that any rollcall votes ordered with respect to these amendments begin at 9:30 in the morning, with the first vote limited to the standard time, and all remaining stacked votes be reduced to 10 minutes in length, with 2 minutes equally divided on each before the votes so that there will be an explanation; following the disposition of all of those amendments and all other provisions of the bill, we would go to third reading, and Senator DORGAN would be recognized for 5 minutes for closing debate, and there would be 5 minutes equally divided between the two managers, and following that, final passage.

If sounds to me like all of this could probably be done within an hour or so, and then we would go right after that into the consideration of S. 1956, which is the reconciliation bill. If we can get a final clearance on that, then we would be able to officially announce that there would be no further votes tonight. We have not gotten that finally agreed to at this point. But I think it would be very good if we could get that completed and go to reconciliation. Of course, we would have to have it. The bill would have to be available, and we believe it will be available by 10:30 in the morning.

Let me do this while we are waiting. I thought maybe we could go the agreement at any moment now. Would the Senator from Iowa like to go ahead and proceed? Then would he be willing to

yield to me to put this unanimous consent as soon as we get final clearance? Mr. HARKIN. Any time.

Will the majority leader yield on the unanimous-consent request?

Mr. LOTT. Certainly.  
Mr. HARKIN. Again, maybe my ears did not pick it up. Any time we have debate in the evening and we stack votes in the morning, this Senator feels that it is appropriate to give at least a couple of minutes in the morning before the votes.

Mr. LOTT. That would be included in the unanimous-consent request.

Mr. STEVENS. A minute on each side.

Mr. LOTT. I yield the floor, and hopefully we can get the final word momentarily.

Mr. HARKIN addressed the Chair.  
The PRESIDING OFFICER. The Senator from Iowa is recognized.

AMENDMENT NO. 4492

(Purpose: Relating to payments by the Department of Defense of restructuring costs associated with business combinations)

Mr. HARKIN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:  
The Senator from Iowa [Mr. HARKIN], for himself, and Mr. SIMON, proposes an amendment numbered 4492.

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

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

The amendment is as follows:  
On page 88, between lines 7 and 8, insert the following:

SEC. 8099. (a)(1) Not later than February 1, 1997, the Comptroller General shall, in consultation with the Inspector General of the Department of Defense and the Director of the Office of Management and Budget, submit to Congress a report which shall set forth recommendations regarding the revisions of statute or regulation necessary—

(A) to assure that the amount paid by the Department of Defense for restructuring costs associated with a business combination does not exceed the expected net financial benefit to the Federal Government of the business combination;

(B) to assure that such expected net financial benefit accrues to the Federal Government; and

(C) in the event that the amount paid exceeds the actual net financial benefit, to permit the Federal Government to recoup the difference between the amount paid and the actual net financial benefit.

(2) For purposes of determining the net financial benefit to the Federal Government of a business combination under this subsection, the Comptroller General shall utilize a 5-year time period and take into account all costs anticipated to be incurred by the Federal Government as a result of the business combination, including costs associated with the payment of unemployment compensation and costs associated with the retraining of workers.

(b) No funds appropriated or otherwise made available for the Department of Defense by this Act may be obligated or expended to process or pay any claim for restructuring costs associated with a business combination under the following:

(1) Any contract, advance agreement, or novation agreement entered into on or after July 12, 1996.

(2) Any contract, advance agreement, or novation agreement entered into before that date unless the contract or agreement specifies that payment for costs associated with a business combination shall be made under the contract using funds appropriated or otherwise made available for the Department by this Act.

Mr. HARKIN. Mr. President, I ask unanimous consent that Senator SIMON's name be added as a cosponsor of the amendment.

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

Mr. LOTT. Mr. President, if the Senator will yield, I believe we have this agreement.

UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent that all remaining amendments to the Department of Defense appropriations bill be offered, that all debate occur today, and that the rollcall votes ordered with respect to these amendments begin at 9:30 a.m., on Thursday, July 18, with the first vote limited to the standard time, and all remaining stacked votes reduced to 10 minutes in length with 2 minutes equally divided prior to each vote for explanation.

I further ask unanimous consent that, following disposition of the amendments, all other provisions of this consent agreement apply; and, following third reading of H.R. 3610, that Senator DORGAN be recognized to be followed by 5 minutes equally divided between the two managers; and, following the conclusion or yielding back of time, the Senate proceed to vote on final passage of H.R. 3610, as amended, without further action or debate; and following disposition and passage of H.R. 3610, the Senate turn to consideration of S. 1956, the reconciliation bill.

Mr. DASCHLE. Reserving the right to object, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DASCHLE. 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. DASCHLE. Mr. President, I have no objection.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. Mr. President, for the information of all Senators, there will be no further votes this evening. However, Members who have amendments will have to remain to offer and debate their amendments. Those votes, including passage, will occur beginning at 9:30 a.m. Also, following passage of the DOD appropriations bill, the Senate will begin reconciliation.

Therefore, a number of votes will occur during Thursday's session of the Senate.

Again, I thank Senator DASCHLE, Senator STEVENS, and Senator INOUE

for the great work they have done here, and all Senators because it takes a lot of cooperation to get a unanimous-consent agreement.

We will continue to try to move bills that we get agreement on, and judges that we have agreement on, so that we can continue to work together and do the business of the Senate.

I thank Senator HARKIN for yielding this time.

AMENDMENT NO. 4492

The PRESIDING OFFICER. By previous agreement, the proponents of the Harkin amendment have 30 minutes under the control of the Senator from Iowa, and the opponents have 15 minutes.

The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, this is a very simple amendment. Let me try to explain it by beginning this way. If you remember the \$600 toilet seats, and the \$500 hammers in the Department of Defense, well, what is going on right now is going to make those look like a real bargain. What has happened since 1993, due to a policy change that was never debated on the Senate floor, never published in the Federal Register, is that taxpayers are now paying for mergers and acquisition costs of defense contractors.

Yes. You heard me right. Any defense contractor that merges—acquires other companies—the taxpayers get to pick up the bill. I know it is hard to believe. But it is actually happening.

The cost estimated so far of doing this just since 1993 is over \$300 million. There is somewhere in the neighborhood of about \$2 billion in costs pending that the taxpayers will have to pick up unless we do something about it and stop this nonsense—this egregious attack on the taxpayer dollars.

In 1993 the DOD, at the request of defense contractors, changed its policy on reimbursing companies for corporate mergers without adequately notifying Congress. This change in the interpretation of the Federal acquisition rules is far reaching. Every department and agency of the Government is affected. Yet, the Senate has not had one hearing nor significant floor debate on this issue.

Mr. President, this amendment simply seeks to assure that what proponents of this form of corporate welfare claim—that it will lead to rational downsizing of the defense industry and result in net savings to the taxpayer—is actually realized. As of now both of those claims do not seem to be supported by the facts.

Let me read a couple of passages from a recent DOD inspector general report dated June 28, 1996, on page 9. "Contractors"—meaning defense contractors—"are submitting cost proposals for activities called concentration, transition, economic planning, and other terms that do not immediately suggest restructuring and make the cost issues difficult for the Government to review, administer, and resolve."

On page 10 of the same IG report,

One contractor's restructuring proposal projected savings over 10 years. The contractor's projections are highly speculative since the volume of Government business is not guaranteed. The same contractor also proposed savings based on "synergies in the work force" [how about that one?] a term that is not defined in the existing procurement regulations, and is difficult at best to monetize and evaluate."

Another contractor proposed keeping subcontract profits [listen to this one] in its prime contract price, although it now owned the subcontractor and would be receiving a profit on top of a profit.

Another example:

A contractor voluntarily deleted costs to win a competitive program and subsequently identified those costs as restructuring.

And billed the taxpayers for it.

On page 16, the same IG report, which just came out about 3 weeks ago:

Amortization based on the projection of extended savings can almost make a marginal acquisition appear attractive by spreading costs over a long period, and comparing them to the projected savings to determine savings. In all cases, amortization periods were selected for arbitrary reasons, such as the length of time needed to achieve restructuring savings, or to meet available funding otherwise not supported by generally accepted accounting principles.

There is more, but I will leave that for right now.

As I said earlier, Mr. President, proponents also say the policy is going to save taxpayers' money. How many times have we heard that old song? The record is spotty at best.

According to a GAO study of one business combination, "The net cost reduction certified by DOD represents less than 15 percent of the savings projected to the DOD 2 years earlier when they sought support for the proposed partnership."

Less than 15 percent of the projected savings were actually being achieved. That alone proves the need for my amendment.

Clearly, projected savings are not being realized. Yet, there is absolutely no mechanism for DOD to recoup actual losses to the Government. As a result, the American taxpayer is being asked to pick up the tab.

In addition, the current practice is to measure only cost to the Department of Defense when contractors merge and lay off thousands of hard-working Americans. The costs associated with Government-subsidized social services like worker retraining are not tallied. Neither are the costs associated with lost payroll tax revenue. My amendment would fix that by requiring the Comptroller to include all costs to the Government in his recommendations.

Although I believe this practice must stop, maybe this is too much to do right now, but that is why I am offering this very modest amendment. What this amendment does is it merely puts a 1-year moratorium on these payments so the Comptroller General can give us the tools we need to take a close look at the policy and to ensure

that taxpayers recoup any payments in excess of realized benefits. It will also allow us to have hearings on this far-reaching policy change.

Mr. President, this amendment is very similar to one adopted in the House on June 13. On June 13—get this—the House of Representatives, by voice vote, adopted an amendment even more stringent than mine. It would be retroactive. It would go back even on the contracts that are held right now.

When I first proposed my amendment on the defense authorization bill, some of the Members came to me and said, "Oh, my gosh. This is going to open up the Government to all kind of lawsuits—breach of contract." Well, all right, I took that into account. This amendment that I offer is not like that amendment. This amendment is only prospective. It allows the Government to pay the costs for which it is currently obligated, but it prevents any further obligation.

Let me be very clear about this, especially to the managers of the bill. This amendment allows the Government to pay costs for which it is currently obligated but prevents any further obligation.

Let me just discuss this policy in more detail. Lawrence Korb, the Under Secretary of Defense under President Reagan, supports this amendment. According to an article by him in the summer 1996 issue of the Brookings Review, this wasteful practice was initiated by the Pentagon in July 1993. The Pentagon claims that this was not a change of policy but merely a clarification of existing policy. However, no one can come up with examples of such corporate welfare before the 1993 decision. And there are several examples of such requests being denied. So it was a policy change, a serious and costly one.

If this was not a policy change and merely a clarification of existing policy, then you better look out, because we have got mergers and acquisitions going back to the late 1970's, and they are all going to be marching up here and saying, well, it was existing policy.

I hope the managers of the bill and their staffs will think about this and respond to this. You cannot have it both ways. If this is a change in policy, then it was not published in the Federal Register. It did not follow the rules, Federal rules. There were no hearings held in the Senate. We never debated it. If, however, as the Pentagon claims, this was not a change in policy but only a clarification of existing policy, then the taxpayers of this country ought to have to pay for every merger and acquisition going all the way back, and so the ones that were denied in the past will now come back to haunt us because they will come back and say, by your own words, this was existing policy.

That is why even the \$2 billion we are looking at that is pending now is going to mushroom to \$3 billion, \$4 billion, \$5 billion. Who knows when it will all end?

Let me read a little bit from Mr. Korb's article. First of all, from his letter to me dated July 11.

As I testified in July 1994 before the House Armed Services Committee, and as I have written in *Foreign Affairs*, the *Brookings Review* and the *Baltimore Sun*, I do not believe that such payments are necessary to promote the rational downsizing of defense industry. Moreover, by its policy of subsidizing defense mergers and acquisitions, the Clinton administration has already created mega-companies that will stifle competition and wield tremendous political power.

The conditions that the amendment places on paying the subsidy will ensure that Federal money will not go towards mergers that would have occurred without the subsidy or before the policy change. In addition, your amendment—

Talking about my amendment—

Will guarantee that there will be real savings to the taxpayer and that these savings are documented.

In the article that he had in the *Brookings Review* in the summer issue, Mr. Korb pointed out how this happened. He said:

To date, the Pentagon has received 30 requests for reimbursement for restructuring. Lockheed Martin alone expects to receive at least \$1 billion to complete its merger.

How did it happen? In July 1993, John Deutch, then the undersecretary of defense for acquisition, responded to pressure on his boss, William Perry, from the chief executive officers of Martin Marietta, Lockheed, Loral and Hughes by deciding to allow defense companies to bill the Pentagon for the costs of mergers and acquisitions.

According to Deutch . . . the move was not a policy change but a clarification of existing policy.

Deutch is wrong . . . This is a major policy change. It is not necessary. And it will not save money.

Mr. Korb goes on in his article. He says:

Indeed, during the Bush administration, the Defense Contract Management Agency rejected a request by the Hughes Aircraft Corporation to be reimbursed for \$112 million in costs resulting from its acquisition of General Dynamics' missile division.

But on July 21, 1993, Deutch wrote a memorandum stating that restructuring costs are indeed allowable and thus reimbursable under Federal procurement law.

Deutch's position that he was merely clarifying rather than making policy is not supported by anyone, even those who favor the change. The procurement experts in his own department disagreed vehemently. On June 17, 1993, the career professionals at DCMA told him that the history of the FAR argues against making the nonrecurring organization costs associated with restructuring costs allowable and noted that they had disallowed these costs in the past.

The DCMA position was also supported by Don Yockey, the undersecretary of defense for acquisition in the Bush administration, the Aerospace Industries Association, the American Bar Association's Section on Public Contract Law, and the American Law Division of the Congressional Research Service. \* \* \*

In Luckey's opinion, Deutch's position is based on semantics, not legality.

Mr. President, I ask unanimous consent the cover letter to this Senator and the article that appeared in the *Brookings Review*, summer 1996, be printed in the RECORD.

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

THE BROOKINGS INSTITUTION,  
CENTER FOR PUBLIC POLICY EDUCATION,  
Washington, DC, July 11, 1996.

Hon. TOM HARKIN,  
U.S. Senator,  
Washington, DC.

DEAR SENATOR HARKIN: As you requested, I am writing to give you my opinion on your amendment to S. 1894, that would prohibit the secretary of defense from paying the restructuring costs resulting from a merger or acquisition in the defense industry after July 11, 1996, and permits the Federal government to recoup funds from those companies that merged prior to this date if the net federal benefit does not exceed the amount paid to the companies.

As I testified in July 1994 before the House Armed Services Committee, and as I have written in *Foreign Affairs*, the *Brookings Review*, and the *Baltimore Sun*, I do not believe that such payments are necessary to promote the rational downsizing of defense industry. Moreover, by its policy of subsidizing defense mergers and acquisitions, the Clinton administration has already created mega-companies that will stifle competition and wield tremendous political power.

The conditions that the amendment places on paying the subsidy will ensure that federal money will not go toward mergers that would have occurred without the subsidy or before the policy change. In addition, your amendment will guarantee that there will be real savings to the taxpayer and that these savings are documented.

I appreciate your asking for my opinion on this matter and would be happy to answer any questions you might have.

Sincerely,

LAWRENCE J. KORB,  
Director.

[From the *Brookings Review*, Summer 1996]

MERGER MANIA  
(By Lawrence J. Korb)

McDonnell Douglas, Martin Marietta, Ling-Temco-Vought (LTV). As the telltale compound names signal, mergers and acquisitions have long been a staple of the U.S. defense industry. But since the Clinton administration took office in 1992, the number of mergers has increased dramatically.

In 1991, military mergers were valued at some \$300 million. By 1993, the value had climbed to \$14.2 billion. It will top \$20 billion in 1996. In 1993 Martin Marietta purchased General Electric's defense division and General Dynamics' space division. At about the same time Lockheed purchased General Dynamics' aircraft division, while Loral purchased LTV, Ford Aerospace, and Unisys. Then in 1994 Lockheed merged with Martin to become Lockheed Martin, and a year later Lockheed Martin purchased Loral to produce a \$30 billion giant known as Lockheed Martin Loral, which now controls 40 percent of the Pentagon's procurement budget.

During this same period, Northrop outbid Martin for the Grumman aircraft company, and the new company in turn bought the defense division of Westinghouse. On a somewhat smaller scale, Hughes bought General Dynamics' missile division and Raytheon purchased E-Systems. Among the true defense giants, only McDonnell Douglas has not yet made a major purchase.

Spokesmen for the defense industry cite two reasons for this sudden rush of mergers. First, merger mania is sweeping U.S. industry generally. Second, with the end of the Cold War, defense spending has fallen so dramatically that excess capacity in the defense industry can be eliminated only through

consolidation. As Norman Augustine of Lockheed Martin has observed, for the defense industry this is 1929.

Superficially these reasons seem quite plausible. Merger mania has certainly hit many areas of American industry, such as banking and communications. In 1992 Chemical Bank merged with Manufacturers Hanover, and in 1995 they combined with Chase Manhattan to form a single company. In the past year, Time, which had merged with Warner Communications in 1990, purchased Turner Broadcasting; Capital Cities/ABC merged with Pacific Telesis; and Bell Atlantic merged with NYNEX.

And defense spending has indeed fallen since the end of the Cold War. In current dollars, projected defense spending for fiscal year 1997 is about 40 percent below that of a decade ago, and procurement spending is about one-third what it was at its peak in the 1980s.

But what industry spokesmen fail to note is that the decline in defense expenditures has been greatly exaggerated and that, unlike the private-sector restructuring, the government is subsidizing defense mergers.

Remember the \$600 toilet seats and the \$500 hammers that had taxpayers up in arms during the mid-1980s? Today's subsidized mergers are going to make them look like bargains. The outrageously priced toilet seats and hammers were the result of defense companies taking advantage of a loophole in acquisition regulations. This time, the taxpayers are being fleeced at the hands of the Pentagon's civilian leadership, whose secret reinterpretation of the regulations has rained hundreds of millions of dollars upon the defense industry. To date the Pentagon has received 30 requests for reimbursements for restructuring. Lockheed Martin alone expects to receive at least \$1 billion to complete its merger.

HOW DID IT HAPPEN?

In July 1993, John M. Deutch, then the undersecretary of defense for acquisition, responded to pressure on his boss, William Perry, from the chief executive officers of Martin Marietta, Lockheed, Loral, and Hughes by deciding to allow defense companies to bill the Pentagon for the costs of mergers and acquisitions. According to Deutch, who has since been promoted to deputy secretary of defense and then to director of Central Intelligence, the move was not a policy change but a clarification of existing policy. In Deutch's view, not only was the clarification necessary to promote the rational downsizing of the defense industry, it would also save taxpayers billions in the long run.

Deutch is wrong on all three counts. This is a major policy change. It is not necessary. And it will not save money.

A commonsense reading of the Federal Acquisition Regulations (FAR) would lead a reasonable person to conclude that organization costs are not allowable. The regulations state that since the government is not concerned with the form of the contractor's organization, such expenditures are not necessary for or allowable to government contracts. Indeed, during the Bush administration, the Defense Contract Management Agency (DCMA) rejected a request by the Hughes Aircraft Corporation to be reimbursed for \$112 million in costs resulting from its acquisition of General Dynamics' missile division. As far back as the Nixon administration, during the post-Vietnam drawdown of defense spending, which was as severe as the current drawdown, the Defense Department rejected a similar request from General Dynamics.

But on July 21, 1993, Deutch wrote a memorandum stating that restructuring costs are

indeed allowable and thus reimbursable under federal procurement law. Because Deutch regarded the memo as merely a clarification of existing policy, he saw no need for a public announcement. Indeed, he did not discuss his "clarification" with the military services or Congress or even inform them of it. Congress found out about it accidentally nine months after the memo was written when Martin Marietta tried to recoup from the Pentagon about \$60 million of the \$208 million it paid for General Dynamics' space division. A somewhat astonished Senator Sam Nunn (D-GA), then chairman of the Senate Armed Services Committee, remarked, "Why pay Martin Marietta [60] million?"

Deutch's position that he was merely clarifying rather than making policy is not supported by anyone, even those who favor the change. The procurement experts in his own department disagreed vehemently. On June 17, 1993, the career professionals at DCMA told him that the history of the FAR argues against making the nonrecurring organization costs associated with restructuring costs allowable and noted that they had disallowed these costs in the past.

The DCMA position was also supported by Don Yockey, the undersecretary of defense for acquisition in the Bush administration; the Aerospace Industries Association (AIA), the trade association for aerospace companies; the American Bar Association's Section on Public Contract Law; and the American Law Division of the Congressional Research Service.

Yockey, who was Deutch's immediate predecessor as procurement czar and who is both a retired military officer and former defense industry executive, argued in a July 13, 1994, letter to the professional staff of the House Armed Services Committee that by definition, structure means organization, and that the FAR does not allow the reimbursement of organization costs. Indeed, it was Yockey himself who told DCMA to reject Hughes' request for reimbursement for its purchase of General Dynamics' missile division.

In a September 28, 1993, letter to Eleanor Spector, the director of defense procurement, Leroy Haugh, vice president of procurement and finance of AIA, stated that the Deutch memo constituted a significant policy decision and an important policy change. Therefore, Haugh asked Spector to promptly publish notice of this policy change in the Federal Register and to consider amending the regulations. In a May 3, 1994, letter to Deutch, Donald J. Kinlin, the chair of the ABA Section on Public Contract Law, urged Deutch to modify the FAR since at that time it did not reflect the changes made in Deutch's July 1993 memorandum. What is significant about the AIA and ABA positions is that both groups support Deutch's change.

Finally in a June 8, 1994, memorandum John R. Luckey, legislative attorney for the Congressional Research Service, stated that while formal amendment of the FAR could make restructuring costs allowable, the argument that they are allowable under the current regulations appears to contradict their plain meaning. In Luckey's opinion, Deutch's position is based on semantics, not legality.

In short, the political leadership of the Clinton defense department made a significant policy change that as a minimum should have been published in the Federal Register and, as Secretary Perry later admitted, cleared in advance with Congress.

#### THE SUBSTANCE OF THE ISSUE

This end run around the administrative and legislative processes by the Pentagon is unprecedented, but even more important is whether the Defense Department and the

Taxpayers should be giving the defense industry a windfall by allowing a write-off of substantial parts of restructuring costs. For four reasons, the answer to that question should be an emphatic "No."

First, like Mark Twain's death, the decline of the defense industry in this country has been greatly exaggerated. As Pentagon and industry officials endlessly point out, defense spending in general, and procurement spending in particular, have declined over the past decade. They note that between fiscal year 1985 and fiscal year 1995, the defense budget declined 30 percent in real terms and procurement spending fell 60 percent. But that comparison ignores the fact that between fiscal year 1980 and fiscal year 1985, the defense budget grew 55 percent and the procurement budget grew a whopping 116 percent. Defense spending in real terms is still at about its Cold War average, and the defense budget for fiscal year 1996 was higher than it was for fiscal year 1980. In inflation-adjusted dollars, Bill Clinton spent about \$30 billion more on defense in 1995 than Richard Nixon did in 1975 to confront Soviet Communist expansionism. Using fiscal year 1985, the height of the Reagan buildup, as a base year distorts the picture. It would be like comparing spending in the Korean and Vietnam wars to the level of World War II and concluding we did not spend enough in Korea and Vietnam. Moreover, procurement spending will rise 40 percent over the next five years, and the pentagon is now soliciting bids for the \$750 billion joint strike fighter program.

Similarly, while defense employment has fallen 25 percent over the past eight years, it grew 30 percent in the five years before that. More people work in the defense sector now than at any time in the decade of the 1970s. Moreover, much of the decline in the defense industry is attributable to the reengineering or slimming down that is sweeping all American industries, even those with an increasing customer base.

Finally, if one adds the \$266 billion worth of U.S. arms sold around the world since 1990 (a scandal in itself) to the \$300 billion in purchases by the Defense Department, American defense industry sales are still at historic highs. Defense is still a profitable business—which explains why defense stocks are still quite high despite the jeremiads of industry spokesmen. Over the past year Lockheed Martin stock has increased 48 percent in value. Northrop Grumman is up 50 percent and McDonnell Douglas a whopping 80 percent.

Second, taxpayer subsidization is no more necessary today to promote acquisitions and mergers than it has ever been. Just about every major defense company today is the product of a merger, some of them decades old. For example, General Dynamics acquired Chrysler's tank division in the early 1980s, and McDonnell acquired the Douglas Aircraft Company in the late 1960s. Even today in the supposed "bull market," plenty of bidders vie for the available companies. Three years ago, several companies engaged in a fierce bidding war for LTV. And Northrop outbid Martin Marietta for Grumman. It is hard to believe that if taxpayer subsidies were not available, companies would not buy available assets if it made good business sense. If they paid a little less for their acquisitions, the taxpayers rather than the stockholders would benefit. In the bidding war for Grumman, both Martin and Northrop offered significantly more than market value, thus giving Grumman's shareholders a financial bonanza of \$22 a share (a bonus of nearly 40 percent). Raytheon paid a similar premium to acquire E-Systems in April 1995. Should the government allow Northrop's and Raytheon's stockholders to reap a similar bonanza by subsidizing those sales?

Over the past five years, William Anders, the former CEO of General Dynamics, made himself and his stockholders a fortune by selling parts of his company to Hughes, Martin, and Lockheed. Since 1991 General Dynamics' stock increased 550 percent and the company has stashed away \$1 billion. Should we also help the stockholders and executives of the buying companies? Did defense companies offer the taxpayers a rebate during the boom years of the 1980s when their profits reached unprecedented levels?

Third, the Defense Department has no business encouraging or shaping the restructuring of defense industry, or as Deutch puts it, "promoting the rational downsizing of the defense industry." Who is to determine what is rational? A government bureaucrat or the market? While government shouldn't discourage restructuring, it should stay at arm's length. If the deal does not make good business sense, the company will not proceed. As Martin did not when the price for Grumman became too high. Moreover, might not these mergers create megacompanies that will reduce competition and may be very difficult for the political system to control? The Lockheed Martin Loral giants, for example, is larger than the Marine Corps. With facilities in nearly every state and 200,000 people on its payroll, its political clout is enormous. And it presents problems over and above its sheer size. For example, Loral sells high-tech components to McDonnell Douglas for its plane, which is competing with Lockheed Martin for the \$750 billion joint strike fighter program. How can Loral be a partner in promoting the McDonnell Douglas plane against the Lockheed Martin entry?

Fourth, past history indicates that these mergers end up costing rather than saving the government money. Both the General Accounting Office and the Department of Defense Inspector General have found no evidence to support contentions by Deutch and defense industry officials that previous mergers had saved the government money. Indeed, on May 24, 1994, the Inspector General found that the claim of Hughes Aircraft that its 1992 purchase of General Dynamics' missile division saved the Pentagon \$600 million was unverifiable. Moreover, under the Deutch clarification, contractors can be reimbursed now for savings that are only projected to occur in the distant future. And if these savings do not occur as projected, how will the Pentagon get its (our) money back?

#### BRING BACK THE MERGER WATCHDOGS

Mergers always have been and always will be a feature of the U.S. defense industry. And the government has a role in those mergers. But that role—as exemplified by the successful 1992 Bush administration challenge of Alliant Techsystem's proposed acquisition of Olin Corporation's ammunition division—is to ensure that they preserve sufficient competition to enable the Pentagon to get the best price for the taxpayer. It is definitely not to increase company profits and limit competition by subsidizing the merger. Not only should the Defense Department abolish the new merger subsidy, it should follow the lead of its predecessors and scrutinize the anticompetitive aspects of all future mergers.

Mr. HARKIN. So this practice is clearly an abuse of taxpayers' money. If these companies are compelled to merge for business reasons, why do they need a handout from the taxpayer? If the business deals are good, the mergers will happen anyway and the taxpayers will receive any savings without paying anything out. If the deals are bad, then we should not gamble taxpayer funds on them.



You would think we would have learned from the savings and loan debacle. You would think we would have learned from the \$600 toilet seats and \$500 hammers, too. I just do not think it is right to make taxpayers absorb the business costs of an industry capable of paying its own merger expenses.

Mr. Korb points out defense is still a profitable business. Over the past year, Lockheed Martin stock increased 48 percent in value, Northrop Grumman is up 50 percent, McDonnell Douglas, a whopping 80 percent.

Anyway, right now we have a situation where we give an up-front payment, hopefully for some savings that come down the line. But we do not know whether those savings are going to accrue. One analysis we have shows that only about 15 percent of the savings actually accrued. Here is what other groups have to say on the subject.

The Cato Institute: "The costs associated with mergers should not be absorbed by federal taxpayers. This is an egregious example of unwarranted corporate welfare in our budget."

Taxpayers for Common Sense: "It is time for the Pentagon to drop this ridiculous 'Money for nothing' policy."

The Project on Government Oversight: "The new policy is unneeded, establishes inappropriate government intervention in the economy, promotes layoffs of high-wage jobs, pays for excessive CEO salaries, and is likely to cost the government billions of dollars."

Mr. President, I ask unanimous consent these letters from Taxpayers for Common Sense and the Project on Government Oversight be printed in the RECORD.

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

TAXPAYERS FOR COMMON SENSE,  
July 15, 1996.

Senator TOM HARKIN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR HARKIN: Taxpayers for Common Sense supports your amendments to the Defense Appropriations Bill that would place a moratorium on payments by the Department of Defense to defense contractors for restructuring costs associated with corporate mergers. Your amendment would also require proof for the taxpayers, in the form of a report to Congress, that there is a net savings when defense contractors merge. As you know, a similar amendment recently passed the House during consideration of the Defense Appropriations.

Under existing policy, the Pentagon can spend appropriated funds to reimburse defense contractors for expenses related to corporate mergers. Proponents will argue that in the end these mergers could save U.S. taxpayers money. However, the recent merger of the Lockheed company and Martin Marietta for form Lockheed-Martin provides disturbing evidence of the cost to the taxpayer. Lockheed-Martin may be eligible for up to \$1.6 billion in reimbursements. Until there is proof that mergers by defense contractors save taxpayer money, we should no longer be blindly handing out "several billions of dollars" as estimated by GAO (GAO/T-NSIAD-94-247).

Taxpayers for Common Sense believes no tax dollars should be spent subsidizing a business cost of a mature industry. We support your amendment as a step in the right direction toward common sense spending by the Pentagon and urge all members of the Senate to support your amendment.

Sincerely,

JILL LANCELOT,  
Legislative Director.

PROJECT ON GOVERNMENT OVERSIGHT,  
Washington, DC, July 11, 1996.

Attn: Kevin Aylesworth.  
Senator TOM HARKIN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR HARKIN: The Project on Government Oversight strongly endorses the Harkin Amendment to the Fiscal Year 1997 Defense Appropriations bill, S. 1894, to ban payments to defense corporations for post-merger "restructuring" costs, and to improve assurances that past agreements on mergers do in fact lead to actual savings for the public treasury.

The government should not be in the business of promoting and subsidizing defense mergers, which are already happening at a record pace. The defense industry is already dangerously concentrated—the newly-formed Lockheed Martin Loral accounts for an astounding 40% of the defense procurement budget. The subsidy payments thrust the government inappropriately into free market decision making, and will serve to further reduce the economic competition that is the ultimate basis for low-cost production.

The payments are also exacerbating two highly disturbing trends in U.S. industry—widespread layoffs in high-wage jobs, and the parallel explosion of outrageously high CEO salaries. By subsidizing the costs of restructuring, which usually means laying off tens of thousands of workers, and reimbursing corporations for lavish executive salaries, this unfortunate policy accelerates rather than restrains these trends.

The defense industry continues to be awash in profits, "pork" contracts, and federal subsidies. At a time when government resources are severely constrained, this wasteful corporate welfare program subsidizing mergers should be halted immediately.

We applaud your efforts to reverse the damage caused by the Defense Department's misguided policy on merger payments, and appreciate the leadership you have shown in exposing and correcting this waste, which will otherwise end up costing the government billions of dollars.

Sincerely,

DANIELLE BRIAN,  
Director.

Mr. HARKIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Iowa has 12 minutes 15 seconds.

Mr. HARKIN. I would like to address some issues that may be bothering some of my colleagues. I know some representatives of defense contractors have visited with my colleagues. They have told them my amendment will hurt workers because the companies are relying on the taxpayer money to help them. This is completely and totally untrue.

According to the rules of this subsidy, DOD cannot reimburse companies for helping fired workers unless the companies were already obligated to do that. Understand, under the subsidy

rules, Government money cannot go to a company to help fired workers unless the companies were already obligated to do that under existing contracts with the workers. In other words, the taxpayers' subsidies will never reach the laid-off workers.

Mr. President, if you do not believe me, let me read a letter from James Carroll, directing business representative of the International Association of Machinists, Lodge 709, Marietta, GA. He says:

I am the Directing Business Representative and President of . . . Local Lodge 709, based in Marietta, Georgia. Our Local represents workers at Lockheed Martin's assembly plant. Over the past five years, many thousands of our members have been laid off because of these cutbacks in defense and cost cutting measures by Lockheed Martin. Contrary to the facts of an increasing stock value and skyrocketing executive compensation, our members did not receive any compensation or retraining assistance from the Lockheed Martin Corporation.

Mr. President, I want to make it very clear that, under the present subsidy arrangement, these workers will not get any Government money regardless of what representatives of the defense industry may have told my colleagues. "Our Members did not receive any compensation from Lockheed Martin Corporation."

If they did not under the company's agreement, they will not get any from the Government. They will only get the money from the Government if the company already helped them.

Mr. President, I ask unanimous consent the letter from James Carroll of the International Association of Machinists be printed in the RECORD.

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

AERONAUTICAL MACHINISTS  
LODGE No. 709, IAMAW—AFL-CIO,  
Marietta, GA, June 13, 1996.

Hon. BERNIE SANDERS,  
House of Representatives,  
Washington, DC.

DEAR MR. SANDERS: Following up on the letter sent by our International President George Kourpias on May 15, I would like to bring to your attention the urgent need of defense industry workers who have been and continue to be displaced during this time of reduced defense spending and cost cutting by America's private defense companies.

I am the Directing Business Representative and President of the International Association of Machinists and Aerospace Workers Local Lodge 709 based in Marietta, Georgia. Our Local represents workers at Lockheed Martin's assembly plant. Over the past five years, many thousands of our members have been laid off because of these cutbacks in defense and cost cutting measures by Lockheed Martin. Contrary to the facts of an increasing stock value and skyrocketing executive compensation, our members did not receive any compensation or retraining assistance from the Lockheed Martin Corporation. In fact, during this last round of negotiations which concluded only two months ago, we proposed several innovative ideas to Lockheed Martin which would provide for retraining assistance to displaced aerospace workers. However, we were unable to reach agreement on any of these innovative ideas.

We certainly hope that you are successful in your attempts to bring some fairness and

equity to these workers and workers in the future who have dedicated years of service to building America's defense products.

With best regards,

JAMES M. CARROLL,  
*Directing Business Representative,  
 IAM Local Lodge 709.*

Mr. HARKIN. Some colleagues have said the contractors are going to sue the Government for breach of contract. I do not know what they are talking about. If a company has a contract with the DOD that specifies that payment must be made from fiscal year 1997 funds, it will be paid under my amendment. If there is no such clause in the contracts, then they will not be paid from 1997 funds. There is no breach of contract here. What my amendment is, is simply a 1-year moratorium on payments we are not obligated to pay in 1997.

I know there was an amendment adopted earlier today of Mr. BRADLEY. It called for a study. That amendment makes the best case for my amendment. It is a clear recognition we do not know how to assure that any payments for merger claims are purely waste. What my amendment does is it says we are going to have a moratorium for 1 year. If you had in your contract you would be paid out of fiscal year 1997 funds, you will be paid. If there is no such existing agreement, then there is a 1-year moratorium until we can get the study done that I call for.

I might add, that is a study done by GAO in concert with OMB and the inspector general, not some internal study done by the Department of Defense. So we can get the study back early next year, we can take a look at it and we can address this a year from now.

But mind you, if we do not put in a 1-year moratorium, you mark my words, they are going to rush in and they are going to sign these things in the next few months and they are going to lock it in. Then the arguments will be true that if we attempt to stop it, they will sue for breach of contract. Now is the time to put the 1-year moratorium on. Now is the time to stop this nonsense.

I know, I remember when the \$600 toilet seats and \$500 hammers came up, people scoffed. The people of this country understood it. The taxpayers of this country understand this, too. They understand it is not right for them to pay compensation for executives, board members getting \$200,000-and-some a year bonuses when they merge, and the workers being fired and not getting any retraining or compensation whatsoever. This money will not help the workers one bit.

It is egregious. I cannot think of anything in my 22 years here in the Congress that I have seen to be this egregious. All I can say is those in the defense industry—and not all of them—but those who have propounded this, those who came to Secretary Perry and Under Secretary Deutch and got this changed, all I can say is: Don't you

have any shame at all? None whatsoever? It is time to end this practice.

I reserve the remainder of my time. The PRESIDING OFFICER. Who seeks recognition? The Senator from Alaska is recognized. The Senator has 15 minutes. The Senator from Iowa has 6 minutes 45 seconds.

Mr. STEVENS. Mr. President, we have faced a dilemma. As we have reduced defense procurement by more than 60 percent in the last 10 years, that has led to significant overcapacity in the defense industry. But at the same time, we have had the difficulty of trying to ensure the preservation of an industrial base capable of maintaining the strongest military power in the world. Now, without restructuring this industry, that overcapacity would have led to higher overhead costs that would have increased the price of defense goods and services and continued the downward spiral, really, of the amount actually available for acquisition of systems that we need to assure our men and women of the armed services that they have the best in the world to be prepared to defend us with.

Restructuring of this defense industry, in my judgment, has reduced the unit prices. We have lower unit prices, and we now have long-term savings for the Department of Defense and the taxpayers as a result of the restructuring. Our committee has urged and fostered that restructuring.

A contractor must negotiate restructuring costs with the Department. Not all costs of restructuring are paid by the Department. The Department of Defense policy that has been laid down by the Congress and the Department is such that if the restructuring plan, and its allowable costs, do not save the taxpayers money, the Department of Defense will not agree to pay any of the restructuring costs.

In the past 3 years, the Department of Defense has reimbursed contractors \$300 million in these restructuring costs, and we estimate that will save \$1.4 billion in defense costs. That is a 450 percent return on the contribution of the Department of Defense to the restructuring plans.

I might add that if there are plans that are approved, restructuring costs that benefit employees would not be allowed if the amendment of the Senator from Iowa is adopted. It would not allow severance pay for employees. It would not allow early retirement incentive payments for employees. It would not allow employee retraining costs. It would not allow relocation expenses for retained employees, and many times they are moved to different locations. I know several significant examples of very long movements for those who have retained. Those clearly ought to be a cost to be repaid by the Department when it results in a lower cost to the Government.

The amendment of the Senator from Iowa would not allow the repayment of outplacement services for employees helping them find new jobs. Above all,

it would not allow continued medical, dental, life insurance coverage for terminated employees for the period of time involved.

We believe the amendment of the Senator from Iowa goes in the wrong direction. We have adopted now by consent the Bradley amendment, which the Senator from Iowa mentioned. It does require the comptroller general to give us a study by early next year—I believe it is by April 1—on the analysis of these restructuring costs.

Under current procedure, the costs that are not allowed are incorporation fees of the new entity, the merged entity; attorney, accountant, broker, promoter, organizer, management consultant, investment banker, or investment counselor fees cannot be paid, and those are the substantial costs of restructuring; interests or other costs of borrowing to finance an acquisition or merger are not recoverable from the Department of Defense; any payment to employees of special compensation in excess of the contractor's normal severance pay practice are not recoverable; any payment to employees of special compensation which is contingent upon the employee remaining with the contractor for a specified period of time following a change in management control are not payable by the Department of Defense; and any cost deemed unreasonable or excessive by the Department are not repayable.

Mr. President, as I said, in my judgment, we face a very difficult task. We look forward to the report that we will get from the Bradley amendment. But in other areas, we are actually paying money to maintain industrial base. We had the President, contrary to my judgment, decided to buy the *Seawolf*. Why? Because we had to maintain the industrial base to build submarines. We have had other instances where we actually paid industries to keep going in order to maintain the industrial base for the future.

The restructuring process brings together and merges industrial parts so that the successor entity is capable of producing for the Government at a lower cost under the circumstances that we are buying smaller amounts and we are buying different types of equipment.

I really do believe restructuring is in the best interest of the taxpayers of this country. I look forward to the study, but I oppose the Senator's amendment. This is not a question of a hammer or toilet seat or coffee pot. This is a question of maintaining the industrial base of the United States so that we can continue to be the leader of the world.

We are exporting, as we said this morning, some 14 billion dollars' worth of industrial products that are made by these industries. They are sold overseas. The fact that they are constructed by these industries and produced by these industries and sold overseas yields us a lower unit price for the taxpayers of this country to allow

us to continue to replace, I do not care what it is, tanks or ships or aircraft. We need to maintain those to maintain the defense of this island Nation.

I say to the Senator from Iowa, with all good will to him and what he is trying to do, it is wrong to put this concept of restructuring costs in the same category as those fees which we all condemned which were wasteful. These are not wasteful costs, Mr. President. They are the costs of downsizing the production units that we built up during the cold war in order to maintain our freedom. Now we are downsizing those units so that we can continue to be able to defend our freedom in the future.

I spent a lot of my personal time going over some of these plans to try to assure that they are, in fact, in the public interest. We have had conversations with the Department of Justice on them and with other entities, industry and Government, to make sure it is on the right course, because of the fact that we know there are going to be increased costs down the line in the future because we are, in fact, going to acquire fewer units for our own use. Our policy should be to assure the survival of an industrial base that is capable of meeting demands throughout the world in order that we, too, may continue to have the advantage of prices based upon substantial production and not the limited production to meet our own needs.

Does the Senator from Hawaii have any comments? I yield the remainder of my time to the Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUE. Mr. President, it is always very difficult to speak in opposition to my friend, Senator HARKIN, but I am certain all of us will agree that corporate restructuring and corporate mergers are part of the daily business world. It is not the exception, it is the rule.

These mergers are carried out for a very simple reason, and that is to reduce the cost of operations. In recognition of this, the Department of Defense has adopted a policy that not only allows but encourages defense contractors to enter into restructuring or corporate mergers in order to save money for our Department and, in turn, save money for our taxpayers.

These costs, Mr. President, have to be certified by auditors of the Department of Defense.

And these auditors will have to determine that the cost to be offset must be lower than the savings accrued to the Government through efficiencies.

As a result, having encouraged industry to consolidate and to have lower costs, obviously industry responded. Based upon that anticipation, many companies have entered into restructuring. This amendment, though it may appear to be meritorious, would not allow defense contractors to charge the restructuring costs as legitimate overhead costs on DOD contracts.

I believe logic will lead us to conclude that if industry cannot consolidate, if industry cannot merge, if it cannot restructure, it will not become more efficient and thereby lower overall costs. This will simply mean that the taxpayers of the United States will have to pay additional sums to support an inefficient industrial base.

So, Mr. President, I concur with the current policy of the Department of Defense that encourages contractors to restructure and merge, and that this amendment would be contrary to that policy. So I join my chairman in opposing the Harkin amendment. I yield back the balance of my time.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized. The Senator has 6 minutes, 43 seconds. The Senator from Alaska has 2 minutes, 22 seconds.

Mr. HARKIN. Mr. President, I listened to my two good friends—and they are just that—responding to my remarks. I am wondering if they are talking about my amendment. My friend from Hawaii says that this amendment would not allow them to restructure and reorganize. There is nothing in my amendment that says that, not one thing in my amendment, I say to my friend from Hawaii.

My amendment simply says, No. 1, we get a report by next spring, the inspector general and OMB and GAO to submit a report to set out just what is happening here and what kind of savings.

It says then that no funds appropriated in this bill can be used this year. This is this year's bill, fiscal year 1997. No funds in this bill can be used to pay for a merger acquisition unless it has already been contracted to do so. So if there is an existing contract right now, that specifies that we are to pay merger and acquisition costs out of this bill. That is OK.

What we say in this amendment is that we are going to put a 1-year moratorium on signing any new ones, just signing any new ones. As I said, Mr. President, mark my word, if we do not adopt this amendment, in the next few months you will have a rush by these companies to sign them, lock themselves in, and then they will raise the specter of, uh-oh, it is a breach of a Government contract if you do not ante up and pay it. That is why we need the 1-year moratorium. That is all it is.

I say to my friend from Alaska, my amendment does not say that we cannot pay all of these attendant costs that he mentioned. He mentioned housing costs. He mentioned all these kinds of things, severance pay, retraining, relocation.

He said my amendment would not allow for that. My amendment does not mention that. My amendment says a 1-year moratorium. That is all, a 1-year moratorium. But if they have gotten contracts that say they should be paid this year, they will be paid.

Further, I again reply to my friend from Alaska with the letter from the head of the Machinists Union at Martin Marietta, who said that over the last 5 years members have been laid off because of cutbacks. “\* \* \* our members did not receive any compensation or retraining assistance from the Lockheed Martin Corporation.”

The way the subsidy is now structured, I say to my friends, under the Department of Defense, they still will not get anything. They will only get it if, in fact, there was an agreement by those companies to provide it in the first place. So, again, I hope that they would look at my amendment and read it for what it is.

Let me just say one other thing. We talked about two other things. The industrial base—we have heard about, well, we are going to erode the industrial base. I say to my friend from Alaska, profits are at an all-time high in the defense industry. I do not think we have to worry about eroding the industrial base of this country.

Again, I refer to the article by Lawrence Korb that appeared in the Brookings review where he pointed out that they are making record profits, that Grumman shareholders got a bonanza of \$22 a share, a bonus of 40 percent when they merged. Since 1991, General Dynamics' stock increased 550 percent, and the company has stashed away \$1 billion. We are not eroding the industrial base of this country. If it is good business practice, they are going to merge.

That brings me to my final point, I say to my two good friends. We asked representatives of the defense industry, I say to my friend from Hawaii, we asked them—you know, these industries do not just deal with the Government. They have private industries that they deal with and that they contract with. We asked them, in any of your contracts with the private sector, do you have a clause like this in your contract that they will help pay? Not a one. Not a one. Just for the Government. So I say to my friends, this is not an overburdensome amendment.

I know the first amendment I offered—maybe the managers of the bill think this is the first amendment I offered back under the authorization bill. It is not. I recognized that there might be a problem with breach of contract. That is why we put a clause in there that said if they have an existing contract, that they are to be paid those out of this bill—we are only talking about fiscal year 1997—they must be paid. I am only talking about those who did not have that kind of an agreement. Then there is a 1-year moratorium. We get the report back. We find out what we are talking about. That gives us some time.

I say to my friends from Alaska and Hawaii, please do not put us in a position where, over the next several months, companies will come in, lock in their contracts, and there is not a darn thing we will be able to do about

it because then it will be a breach of a Government contract. Let us stop it right now, put a moratorium for 1 year, get the report, and then figure out what we want to do. Let us figure out—maybe the defense authorizing committee or the Appropriations Committee might want to spell out in more detail what it is that will be reimbursable, what is the period of time that we will take into account, and should we have a recoupment clause.

Mr. President, what if they project all these savings, the taxpayers rush in, give them hundreds of millions of dollars for mergers and acquisitions, and then the savings are not realized? What do we do? Nothing. Perhaps we need a policy of recoupment that if, in fact, those savings are not realized over, say, 5 years, that we should have a policy of recoupment so that we can recoup back to the taxpayers the money that was spent out if, indeed, the savings do not accrue.

So I think it is a logical and a reasonable amendment with just a 1-year moratorium. I think the facts are on our side. I think the people are on our side on this issue, too. This does not go as far as the House bill. The House bill was retroactive, and there may be some—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARKIN. Mr. President, I ask unanimous consent for 2 minutes.

The PRESIDING OFFICER. Is there objection for an additional 2 minutes? Without objection, it is so ordered.

Mr. HARKIN. I think there may be some problems with that House bill in terms of breach of contract, so that is why we took it out of here.

I hope the managers will take another look at this amendment and how it is written and hopefully be able to support and include it in this bill, because I think it will go a long way towards, again, letting companies restructure, if in the marketplace—if in the marketplace—that is the best thing for them to do. Let it happen. But the Government should not be an active player in it one way or the other. That is all this amendment seeks to do.

Mr. President, I ask unanimous consent that a document by the Congressional Research Service, the Library of Congress, be printed in the RECORD.

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

CONGRESSIONAL RESEARCH SERVICE,  
THE LIBRARY OF CONGRESS,  
Washington, DC, June 8, 1994.  
From: American Law Division.  
Subject: The allowability of restructuring costs in Federal procurement.

This memorandum is furnished in response to your request of June 2, 1994, for a legal analysis of the position of the Department of Defense (DOD) stated in the memorandum of July 21, 1993<sup>1</sup> and supported in subsequent DOD documents that restructuring costs are allowable costs and thus reimbursable under Federal procurement law. Specifically you

have requested an opinion as to whether this represents a change in policy from that set out in the Federal Acquisition Regulations (FAR) so as to call for amendment of the FAR and the accompanying administrative procedures or is merely a clarification of existing practice.

The FAR does not use the term restructuring costs. Therefore, while it is quite correct to say, as DOD does, that there are no cases or regulations which make restructuring costs unallowable,<sup>2</sup> it is equally true that there are no cases or regulations which do allow their reimbursement. "Restructuring cost" is not a term which has been used in this area, and therefore, it is misleading to draw a conclusion from this lack of mention.

DOD would define restructuring costs as: "Restructuring costs result from changes to a contractor's organization in an effort to address a declining base or to enhance business efficiencies. Restructuring represents events driven by internal change such as downsizing or external changes such as acquisitions, mergers divestitures, etc. This implementing guidance addresses restructuring costs which result from nonroutine nonrecurring, or extraordinary events. Restructuring efforts are expected to result in a current or future economic benefit for the Government."<sup>3</sup> These costs would include such costs as "facilities consolidation, facilities shut down, severance pay, relocation, equipment write-off, and information system conversion."<sup>4</sup>

To find restructuring cost to be allowable, DOD has attempted to distinguish or exempt these costs from two types of costs which the FAR states are unallowable. First, the FAR does not allow reimbursement of organization costs. Part 31 of the FAR states:

"(a) Except as provided in paragraph (b) of this section,<sup>5</sup> expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, (2) resisting or planning to resist the reorganization of the corporate structure of a business or a change in controlling interest in the ownership of a business, and (3) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counselors, whether or not employees of the contractor. Unallowable reorganization costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised."<sup>6</sup>

The guiding principle behind this regulation appears to be that the Government is not concerned with the form of the contractor's organization and so therefore such expenditures are not necessary for (or allocable to) Government contracts.<sup>7</sup>

The history of this regulation as set out in the DCAA memo of June 17, 1993 seems to argue against, not for, the use of the non-recurring nature of these costs or the potential savings to the Government as reasons for allowing reimbursement. The memo states that "the intent of the subject cost principle was to make non-recurring organization costs unallowable" and quotes the subcommittee responsible for the section as stating: "The subcommittee does not believe that the allowability of organization and reorganization costs, including merger and acquisition costs, should depend on benefits. . . . the benefits to the government are normally too remote to form a valid basis for the allowability of costs."<sup>8</sup>

DOD has attempted to avoid the unallowability described in §31.205-27 in two ways. First, it has stated that restructuring costs are not organization costs even though by their own definition restructuring costs are costs resulting from changes in the contractor's organization such as acquisitions mergers and divestitures.<sup>9</sup> This appears to be less a legal argument than a semantic one, i.e. an unallowable cost is allowable because it is given a new name.

Second, DOD argues that these costs are not costs of the organization or reorganization event, but rather costs which arise subsequent to the organization or reorganization event, and while they would not have arisen "but for" the event, the costs, are not part of that event.<sup>10</sup> This argument might be persuasive especially for some of the restructuring costs more removed from the actual reorganization, merger, or acquisition, but it does appear to severely limit any purpose for the words "in connection with" or "executing the organization or reorganization" of §31.205-27.<sup>11</sup>

The second type of unallowable cost which DOD has tried to distinguish in order to find restructuring costs allowable are those which are unallowable under a novation agreement. A novation agreement is often required in the situation which would give rise to what DOD calls restructuring costs. The Government may, when it is in the best interests of the Government, agree to recognize a successor in interest to a contract (a novation agreement) but the agreement must include the following clause:

"The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this agreement, other than those that the Government in absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts."<sup>12</sup>

DOD appears to have accepted that reimbursement of restructuring costs would be prohibited by this provision of the novation agreement. The solution is provided by the memorandum in the form of an exception to the provision which states:

"The Government recognizes that restructuring by the Transferee incidental to the acquisition/merger may be in the best interests of the Government. Restructuring costs that are allowable under part 31 of the Federal Acquisition Regulation<sup>13</sup> may be reimbursed under flexibly-priced novated contracts, provided that the Transferee demonstrates that the restructuring will (1) reduce overall costs to DOD and/or NASA, or (2) preserve a critical capability that might otherwise be lost to DOD."<sup>14</sup>

It can be argued that DOD has attempted to alter the policy embodied in these two FAR provisions without going through the administrative formalities and requirements, such as notice and comment periods and notification of Congress, necessary to amend these regulations. While formal amendment of the FAR could make these restructuring costs allowable, the argument that they are allowable under the current regulations appears to contradict their plain meaning.

JOHN R. LUCKEY,  
Legislative Attorney.

#### FOOTNOTES

<sup>1</sup>This memorandum was issued by John M. Deutch, Under Secretary of Defense Acquisition.

<sup>2</sup>See, Defense Contract Audit Agency (DCAA), Memorandum for Director, Defense Procurement, Analysis Paper on the Allowability of Restructuring Costs Under FAR 31.205-27, Organization Costs, dated June 17, 1993.

\*Footnotes are at the end of the letter.

<sup>3</sup>DCAA, Memorandum for District Commanders, Guidance Paper on Restructuring Costs, dated January 14, 1994.

<sup>4</sup>DCAA Memorandum of June 17, 1993.

<sup>5</sup>Paragraph (b) exempts the cost of certain activities primarily intended to provide compensation such as employee stock option plans. FAR §31.205-27(b).

<sup>6</sup>FAR §31-205-27(a).

<sup>7</sup>L.K. Anderson, Accounting for Government Contracts, §5.06[10] (1989).

<sup>8</sup>DCAA Memorandum of June 17, 1993, See, discussion of DAR Case 68-153. See also, Dyanalelectron Corp., 77-2 B.C.A. ¶ 12,835 (Oct. 26, 1977).

<sup>9</sup>DCAA Memorandum of January 14, 1994. See, sections entitled Definition of Restructuring Costs and Allowability of Restructuring Costs.

<sup>10</sup>Id. at 4.

<sup>11</sup>See, Dyanalelectron Corp., 77-2 B.C.A. ¶ 12,835 (Oct. 26, 1977).

<sup>12</sup>FAR §42.1204(e), novation agreement paragraph (b)(7).

<sup>13</sup>Therefore, the cost may not be an organizational cost under FAR §31.205-27 for this new provision to be effective.

<sup>14</sup>DCAA Memorandum of Jan. 14, 1994, Novation Agreement Language.

Mr. HARKIN. Mr. President, I yield my time, and I thank the managers.

The PRESIDING OFFICER. The Senator yields back his time. The Senator from Alaska has 2 minutes, 22 seconds.

Mr. STEVENS. Mr. President, I regret the disagreement with the Senator from Iowa. It appears to me the process we are following is one that has been worked out by the authorization committees, by the Appropriations Committees, and by the administration. It is really a nonpartisan area we are dealing with of trying to assure the survival of the defense industrial base and maintain that at the lowest possible cost to the taxpayers.

I do believe they have had some profits and there are profits that are coming back, primarily because they are writing off a lot of losses. They are abandoning a lot of buildings, selling buildings at a lot less than they paid for them. I expect we will see a period of time where there is some recouping of losses through tax advantages. That is another subject. I do think that is one of the incentives toward the restructuring, to try and take the losses and take advantage of them while there is still income from existing contracts.

I can reassure the Senate when we are paying 60 percent less than we were 10 years ago for procurement, we are not expanding the industrial base. This restructuring is reducing it. It is downsizing it. I hope we will end up by maintaining what we need.

I move to table the amendment of the Senator from Iowa, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. A vote will take place at 9:30 tomorrow morning.

Under the previous agreement, further amendments to the bill were to be offered this evening. Are there additional amendments?

Mr. STEVENS. Mr. President, I believe there are still some amendments.

The PRESIDING OFFICER. The Chair will mention under the previous

agreement, if Members do not appear to offer their amendments their right to offer additional amendments will be extinguished.

Mr. LEVIN. Mr. President, I will offer an amendment which is a fairly straightforward amendment to transfer funds for two F-16's which the Air Force did not request either in its original budget request or in the so-called wish list, and to transfer that to antiterrorism initiatives of the Defense Department and specifically to a fund which was added this morning by an amendment authored by Senator MCCAIN and myself.

We have a pressing need in the antiterrorism area. The number of F-16's which were funded by the appropriations bill exceeds the request of the Air Force, again, both in its original budget request and in its supplemental request, the so-called wish list.

Here is the way this is actually working, Mr. President. The appropriations bill would add four F-16's to the Air Force's budget request of four. That is a total, then, of eight aircraft. Now, what happened during the Armed Services Committee consideration of the defense authorization bill was that each of the armed services was asked to provide a list of items that they would like to have funded by Congress if more money became available. These have been described in many ways and titled in many ways, but the service wish list is one of the ways they have been entitled it, and perhaps they are known best by that.

The Air Force, in its wish list, the list of items that it would like to have if it was given more money than was in the original budget request, asked for two extra F-16's. That is in the wish list above the budget request, but the bill before us provided four extra F-16's. So there is no urgent requirement for these two extra F-16's. The Air Force fighter force structure is fully protected. Even if we do not add any of the four extra F-16's, the Air Force needs roughly 1,250 F-16's to protect its fighter force structure.

We currently own more than 1,800 F-16 aircraft, including over 260 F-16's that are parked in long-term storage in the desert. Now, while these stored aircraft are not as modern as the brand new aircraft that we would buy in this year's budget, they would prevent the Air Force from needing to retire any squadrons in the near term because not enough aircraft would be available.

AMENDMENT NO. 4893

(Purpose: To strike out funding for new production of F-16 aircraft in excess of six aircraft, and to transfer the funding to increase funding for antiterrorism support)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN] proposes an amendment numbered 4893.

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

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

The amendment is as follows:

On page 26, line 10, strike out "\$6,630,370,000" and insert in lieu thereof "\$6,582,370,000".

SEC. 8100. None of the funds appropriated under title III of this Act may be obligated or expended for more than six new production F-16 aircraft.

SEC. . The \$48,000,000 reduction of funds for F-16 aircraft in excess of six new production aircraft shall be made available for funding for the emergency anti-terrorism program element established in Sec. 8099 of this Act.

Mr. LEVIN. Mr. President, the Air Force budget continues to buy F-16's because the service feels that they need to buy more F-16's to prevent a force structure reduction sometime around the turn of the century. But I do not see that anyone could really argue that having a couple more modern F-16's in a force structure of more than 1,200 aircraft is nearly as important as taking an immediate step to reduce our vulnerability to terrorist activities.

What this amendment would do would be to shift \$48 million from aircraft that we do not need now, that was in neither the Air Force budget request nor in its wish list, and instead of spending that \$48 million on the additional two F-16's not requested, would fund higher priority antiterrorist activities. We are familiar with a recent report of the Joint Chiefs that show that antiterrorism funding in this budget reflects a reduction over the past several fiscal years. We have heard that referred to today in an amendment that was offered by Senator MCCAIN and myself.

These antiterrorist efforts have fallen short by some \$56 million over this period. There were mitigating circumstances that may have led the Defense Department to make these reductions, such as changes in the number of bases, completion of construction projects, or other changes. But, surely, this recent attack in Saudi Arabia makes it abundantly clear that there is much more that we should be doing in our effort to address the terrorism problem. And those of us that were able to be at breakfast with Secretary Perry and General Shalikashvili this morning, I think, were given a very detailed list of the kind of efforts that we have to make if we are going to truly carry the war against terrorism to the terrorists. Spending \$48 million more for antiterrorism instead of spending it on aircraft that we do not need right now surely makes good sense to me, and I hope it does to my colleagues, as well.

The amendment that I am offering tonight is an amendment that I said I would be offering during the authorization bill debate. At that time, I indicated an interest in trying to remove from the authorization bill these additional two F-16's above the original

budget request in the supplemental wish list of the Air Force. I did not do it at that time. We were in a great hurry to address the issues in that bill at that time, and I did not do it.

But given the fact that this is now really the last chance that we will have to address this issue, and given the current need to put some resources into our antiterrorist activity, I thought that this would be an opportune moment to offer an amendment to transfer the money from the two F-16's not requested by the Air Force into the antiterrorism efforts that the Defense Department must engage in.

So I offer this amendment in that spirit and hope that it commands broad support in the Senate.

Mr. STEVENS. Mr. President, I must express some surprise at the Senator, in view of his position on the Armed Services Committee, and in view of the fact that today we have already, at the request of Senator MCCAIN and Senator LEVIN, transferred, subject to authorization, \$14 million to the Department of Defense for the purpose of antiterrorism activities. Now, that is subject to authorization.

The effect of Senator LEVIN's amendment now would be to transfer money that is authorized for F-16's to more money for the antiterrorism activities, and it is not authorized either. They have not received authorization for the first \$14 million we put up for this antiterrorism program. That is not even defined yet. It is not defined by the authorization committee or by the Department.

Now, we did that in the spirit of bipartisanship and cooperation with the Armed Services Committee members. I find it very difficult to understand this amendment now, when the Chief of Staff of the Air Force came to see me, General Fogleman. He listed to me personally, as one of his highest priorities, getting these F-16's. The F-16's—all four of them, not just two—really are our weapons system for cooperation between the Air Force and the Army now, which is the close air support fighter that works in conjunction with ground troops in combat.

I say to my friend from Michigan that nowhere in the world can you see that so vividly as in the joint training exercises in my State of Alaska. We use the F-16's along with our Army forces there, and army forces from throughout the world come to participate in the training in my State in order to develop the ability to really use these new close air support fighter and ground troop accommodations. This is really one of the great things about our Defense Department now. This is a team. The Air Force and Army are now a team because of the F-16. I think this is the message General Fogleman brought to us.

These F-16's are needed. As a matter of fact, we have gone from the concept of trying to meet the Soviets anywhere in the world—a worldwide concept of defense to a concept of two major re-

gional contingencies being what we will plan for. We plan for our ability to meet two major regional contingencies. If we carried out the plans that were previously approved by the authorization committee to do so, to meet two major regional contingencies, the Air Force would need 114 more F-16's. The Air Force is not fully supplied with aircraft to meet the plans to carry out their missions in the event of two major regional contingencies. Now, we are trying to move along in this way as best we can.

The Senate passed an authorization bill that included eight F-16's. Our committee has funded that request from the Armed Services Committee. We have not added funds for unauthorized F-16's. As a matter of fact, if you want to talk to the budget, we have \$10 billion more money in this bill than was requested in the budget, and that is a battle we are going to have to face later with the administration to see whether they really want to maintain that figure.

Our bill, I point out once again, is \$1.2 billion over last year's bill, but in terms of actual items covered, last year we did not fund the contingencies. This year we did fund the contingencies.

So, if you look at our bill fairly, we are below the level of 1996. This bill, despite the fact we have increased more than \$10 billion over the budget, is less than we are spending now for defense. I think the recent events in Saudi Arabia, the fact that we have troops in Bosnia, and we have the crises that we are facing in the Pacific, God knows. I hope we are right. We believe we can get by with what we have in this bill. But I fear for the future of this country if we are wrong.

The Department budgets approximately \$1 billion for military security forces. Antiterrorism is their primary mission. We have added \$14 million to the \$1 billion already budgeted, and the Senator wants to add more before there is even a plan to spend what we have budgeted now.

I say, with all good grace, to my friend that I am just surprised at this, after we have already agreed to the amendment that he and Senator MCCAIN already delivered to us on the subject of antiterrorism. I can just state categorically that I oppose the amendment of the Senator from Michigan.

I yield the remainder of my time to the Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUE. Mr. President, Chairman STEVENS has most adequately articulated the position of the subcommittee, and I join my chairman in opposing the Levin amendment.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I will make two brief points.

First, to buy more F-16's now, we are going to be parking F-16's in desert

storage. We already have more F-16's than the force structure needs. They need 1,250 F-16's to support the current fighter force structure. There are 1,370 currently available.

But the main point that I want to make here this evening is that the Air Force in its budget request asks for four more—for four F-16's this year.

Then the Armed Services Committee submitted to the Air Force, as well as to the other services, a request. "If you had more money, how would you spend it?" The Air Force came up with almost a \$3 billion wish list. How many F-16's are on that wish list? Two. How many are on the appropriations bill extra? Four. At the same time that there has been criticism of a shortage of antiterrorism funds, and at the same time that we know we are going to have to invest more in antiterrorism, we are providing the Air Force in this appropriations bill with eight F-16's when the budget request of the Air Force is for four and the wish list would add two to that.

I think we have a greater priority than to be doing that. I hope that the Senate will support the transfer of this money from F-16's that have not been requested in either request of the Air Force, and to put it into an area where we know there is going to be a growing and critical need.

I, at this point, ask unanimous consent that a letter from Secretary Perry to Senator DASCHLE describing the money which is going into the antiterrorist effort be printed in the RECORD.

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

THE SECRETARY OF DEFENSE,  
Washington, DC, July 17, 1996.

Hon. TOM DASCHLE,  
Minority Leader,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR DASCHLE: As you know, last week the Department was sharply criticized for cutting its budget for anti-terrorism. Citing a report by the Joint Staff, critics claimed that we cut anti-terrorism funding by as much as 82% and implied that this contributed to the tragic bombing in Saudi Arabia. I think it is critical to correct this misperception, put this study in context, and explain the Department's funding for anti-terrorism.

The JCS report was commissioned by myself and CJCS Shalikashvili following the Riyadh bombing. Its purpose was to identify and assess all of the anti-terrorism programs, actions and preparedness of the DoD and possible areas for additional action. A portion of the report did describe some program funding reductions, specifically the cut in an Air Force program from \$10.6 million in FY 1994 down to \$1.9 million in FY 1996—the 82% cut seized upon by some as evidence on lack of attention to anti-terrorism. The report notes, however, that these cuts resulted from personnel reductions, domestic base closings, completed construction projects or program completions, and the programs themselves were just a minor portion of the overall DoD expenditures on anti-terrorism.

The reality is that the Department of Defense spends billions annually on anti-terrorism efforts. There are two categories normally associated with Defense activities to



combat terrorism: anti-terrorism and counter-terrorism.

Anti-terrorism activities deal with traditional defensive measures such as barriers, fences, detection devices and Defense personnel who have as part of their mission protecting DoD personnel and facilities against the threat of terrorism. The Defense Department spends nearly \$2 billion annually on such anti-terrorism activity overall. Traditionally we have not budgeted anti-terrorism activities in a single program because force protection is part of each individual commander's responsibility and is therefore budgeted by every installation in, for example, their operation and maintenance accounts.

In the area of counter-terrorism, DoD has many programs and activities which are more often associated with proactive activities undertaken to neutralize the terrorist threat or respond to terrorist acts. All combatant forces in Defense potentially have as part of their mission a counter-terrorism function; however, these activities are more commonly associated with special operations forces, which have annual budgets in excess of \$3 billion. Further, that amount is in addition to the considerable sums spent from our intelligence portion of the budget to counter terrorism.

The JCS report did fault DoD procedures for funding unanticipated contingencies, and urged the establishment of a special annual contingency fund for anti-terrorism emergencies. Currently, when a crisis emerges, we have to put together a special team and borrow funds from other accounts. The JCS report argued that we needed a separate contingency account, controlled centrally by OSD. I accepted that recommendation and directed the Comptroller to proceed accordingly.

It is unfortunate that a minuscule portion of the JCS review is now being used to draw wider, and inappropriate, conclusions in light of the Dhahran bombing. I have concluded, however, that the Department does need more systematic insight and control over its widely-dispersed anti-terrorism and counter-terrorism efforts. That could very well mean a reassignment of priorities and additional funding to reflect that reassignment. To this end, the Defense appropriations floor amendment proposed by Senators McCain and Levin providing targeted anti-terrorism spending can help facilitate this effort. Further, I have specifically directed that Deputy Secretary John White head up a comprehensive effort for systematic programming and budgeting in this area. I will keep you and all members of Congress informed of our plans as they unfold.

Sincerely,

WILLIAM J. PERRY.

Mr. STEVENS. Mr. President, is there a time limit?

The PRESIDING OFFICER. There is a time limit on this amendment.

Mr. STEVENS. Mr. President, I am constrained to say that if the Senator's amendment were to be adopted, our bill would be subject to a point of order. I hope that will not happen. So I move to table the Senator's amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The vote will follow the Harkin amendment.

#### MORNING BUSINESS

(During today's session of the Senate, the following morning business was transacted.)

#### COLONEL ROBERT L. SMOLEN, U.S. AIR FORCE

Mr. DASCHLE. Mr. President, as we debate the fiscal year 1997 Department of Defense Appropriations bill, I hope my colleagues will take a moment to reflect on the enormous assistance we receive from the legislative liaison offices for the various branches of the Armed Forces.

The men and women who serve in the Air Force, Army, Navy and Marine Corps legislative liaison offices are a valuable link between Members of Congress and the Pentagon. These offices give us with the Pentagon's views on defense bills and specific amendments being considered on the Senate and House floors. They also provide timely answers to our questions and help educate us on a variety of defense issues. Moreover, they are instrumental in notifying us about actions affecting military installations or activities in our States or districts.

South Dakota is the proud home to Ellsworth Air Force Base and the B-1B bomber. As I have worked to promote Ellsworth and the B-1 over the years, I have had the opportunity to get to know many of the fine men and women who serve in the Air Force's Legislative Liaison offices. I must say that Maj. Gen. Normand E. Lezy, the Director of the Air Force's Legislative Liaison Office and Brig. Gen. Lansford E. Trapp, Jr., the Deputy Director, and their staff at the Pentagon, have been understanding, responsive and fair.

The Air Force Legislative Liaison staff located in the Russell Building has also been very helpful to me on a number of matters that my staff and I have brought to their attention. They, too, perform a tremendous service for the Air Force and the U.S. Senate. Although we may at times take their assistance for granted, I know all my colleagues truly appreciate their hard work and dedication.

I have been particularly impressed by Col. Robert L. Smolen, the Chief of the Air Force's Senate Liaison Office. Colonel Smolen is an extraordinarily gifted and dedicated officer whose military experiences in the United States and the Republic of Korea have made him an enormous asset to the Air Force's Legislative Liaison Office. During the past year, I have had the opportunity to work with and get to know Colonel Smolen. He has been very helpful to me and to many of my colleagues in the Senate.

Earlier this year, for instance, he devoted a great deal of time to arranging a congressional delegation trip for me, Senator HATCH and Senator REID. General Trapp and Colonel Smolen graciously accompanied us on our trip to the former Yugoslavia. Despite dif-

ficult circumstances, it was a very successful and informative trip due in large part to their excellent preparation and assistance.

Unfortunately for all of us in the Senate, Colonel Smolen is departing Washington for Oklahoma where he will be the new Air Base Wing Commander at Tinker Air Force Base. I have a great deal of respect and admiration for Colonel Smolen. I know he is scheduled to leave this week, and before he does, I would like to review some of the highlights of his distinguished career in the U.S. Air Force.

Bob Smolen began his career in the Air Force in 1974 as a graduate of the Air Force Reserve Officers' Training Program at Allegheny College in Meadville, PA. In what I would argue may have been his best assignment, he served at Ellsworth Air Force Base as an Airborne Missile Operations Officer in the 4th Airborne Command Control Squadron's 28th Bomber Wing from January 1977 to March 1979.

Since then, Bob Smolen has served in a number of capacities for the Air Force in the United States and around the world. He served as an aide to the Commander in Chief of the North American Aerospace Defense Command in Colorado Springs, CO. He also served in Washington before as a Congressional Liaison Officer and Special Assistant to the Director of the Legislative Liaison Division in the Office of the Secretary in the early 1980's.

Bob Smolen has also been a squadron and deputy air base commander. He served as the Deputy Commander for the 12th Air Base Group in Randolph Air Force Base in Texas from October 1989 to August 1991. He also served as the Commander of the 750th Support Squadron at Onizuka Air Force Base in California. In addition, he was the commander of the 51st Support Group at Osan Air Base in the Republic of Korea from May 1993 to June 1995.

After returning to the United States, Colonel Smolen served as the Chief of the Inquiry Division of the Air Force Office of Legislative Liaison from July 1995 to September 1995. Since then, he has been the Chief of the Air Force's Senate Liaison Office.

Knowing of Colonel Smolen's previous assignments here and abroad, I am confident the Air Force made the right decision in selecting him to be the new 72nd Air Base Wing Commander at Tinker Air Force Base. I congratulate him on his new assignment and wish him, his wife Adriane, and their three children the very best.

#### S. 1936—THE NUCLEAR WASTE POLICY ACT

Mr. KYL. Mr. President, I appreciate the opportunity to discuss an issue of great importance to the State of Arizona and the Nation. As you may know, Arizona is home to the Palo Verde Nuclear Generating Station, the Nation's largest nuclear power plant. Palo Verde's three 1,270 megawatt pressurized water reactors serve more than