By Mr. FEINGOLD:

S. 1917. A bill to abolish the death penalty under Federal law; to the Committee on the Judiciary.

By Mrs. BOXER:

S. 1918. A bill to waive the 24-month waiting period for disabled individuals to qualify for medicare benefits in the case of individuals suffering from terminal illness with not more than 2 years to live; to the Committee on Finance.

By Mr. DODD (for himself and Mr. LEAHY):

S. 1919. A bill to permit travel to or from Cuba by United Staes citizens and lawful resident aliens of the United States; to the Committee on Foreign Relations.

By Mr. LEVIN (for himself and Mr. SPECTER):

S. 1920. A bill to combat money laundering and protect the United States financial system by addressing the vulnerabilities of private banking to money laundering, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GRAHAM:

S. Res. 231. A resolution referring S. 1456 entitled ''A bill for the relief of Rocco A. Trecosta of Fort Lauderdale, Florida'' to the chief judge of the United States Court of Federal Claims for a report thereon; to the Committee on the Judiciary.

By Mr. LOTT (for himself and Mr. DASCHLE):

S. Res. 232. A resolution making changes to Senate committees for the 106th Congress; considered and agreed to.

By Mr. WELLSTONE:

S. Con. Res. 72. A concurrent resolution expressing condemnation of the use of children as soldiers and the belief that the United States should support and, where possible, lead efforts to establish and enforce international standards designed to end this abuse of human rights; to the Committee on Foreign Relations.

By Mr. LIEBERMAN:

S. Con. Res. 73. A concurrent resolution expressing the sense of the Congress regarding Freedom Day; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CAMPBELL:

S. 1899. A bill to redesignate the Federal Emergency Management Agency as the ''Federal Fire and Emergency Management Agency,'' and to amend the Federal Fire Prevention and Control Act to 1974 to authorize the Director of the Federal Fire and Emergency Management Agency to make grants to local fire departments for the purpose of protecting the public and firefighting personnel against fire and fire-related hazards; to the Committee on Environment and Public Works.

THE FIREFIGHTER INVESTMENT AND RESPONSE ENHANCEMENT ACT OF 1999

Mr. CAMPBELL. Mr. President, today I am introducing legislation which would better equip our nation's firefighters to fight the ever-increasing threat of property destruction and potential loss of life.

The ''Firefighter Investment and Response Enhancement (FIRE) Act of 1999'' would authorize the newly-named Federal Fire and Emergency Management Agency to make available matching grants on a competitive basis to fire departments for the purpose of protecting the public and firefighting personnel against fire and fire-related hazards. This bill is a companion to H.R. 1168, which was introduced by my colleague in the House of Representatives, Congressman PASCRELL.

Mr. President, each year approximately 100 of our nation's firefighters pay the ultimate sacrifice to preserve the safety of our communities. Increased demands on firefighting personnel have made it difficult for local governments to prepare for necessary fire safety precautions. The fire loss in the United States is serious, and the fire death rate is one of the highest per capita in the industrialized world. Fire kills more than 4,000 people and injures more than 25,000 people each year. Today, 11 people will die due to fire. Two of these people are likely to be children under the age of 5. Another 68 people will be injured due to fire. Financially, the impact of America's estimated 2.2 million fires annually is over $9 billion in direct property losses. Those numbers are staggering, and many of these losses could have been prevented.

The bill I introduce today would make grants available to train firefighter personnel in firefighting, emergency response, arson prevention and detection, and the handling of hazardous substances or pollutants or contaminants associated with the illegal manufacture of amphetamine or methamphetamine.

This bill also creates partnerships by allowing for the effective use of the capabilities of the National Institute of Standards and Technology, the Department of Commerce, and the Consumer Product Safety Commission for research and development aimed at advancing the health and safety of firefighters; information technologies for fire management; technologies for fire prevention and protection; firefighting technologies; and burn care and rehabilitation.

In addition, this legislation would ensure that grants would be made to a wide variety of fire departments, including applicants from paid, volunteer, and combination fire departments, large and small, which are situated in urban, suburban and rural communities.

Mr. President, despite the risks, 1.2 million men and women firefighters willingly put their lives on the line responding to over 17 million calls, annually. Our greatest challenge is to put limited resources to work where they will make the most difference in saving lives and reducing losses.

I am pleased that the bill I introduce today has been endorsed by the Colorado State Fire Chief's Association.

I urge my colleagues to join me in supporting this important bill. I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1899

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Firefighter Investment and Response Enhancement (FIRE) Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) increased demands on firefighting personnel have made it difficult for local governments to adequately fund necessary fire safety precautions;

(2) the Federal Government has an obligation to protect the health and safety of the firefighting personnel of the United States and to help ensure that the personnel have the financial resources to protect the public;

(3) the United States has serious fire losses, including a fire death rate that is one of the highest per capita in the industrialized world;

(4) in the United States, fire kills more than 4,000 people and injures more than 25,000 people each year;

(5) in any single day in the United States, on the average—

(A) 11 people will die because of fire;

(B) 2 of those people are likely to be children under the age of 5;

(C) 68 people will be injured because of fire; and

(D) over $9,000,000,000 in property losses will occur from fire; and

(6) those statistics demonstrate a critical need for Federal investment in support of firefighting personnel.

SEC. 3. REDESIGNATION OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The Federal Emergency Management Agency is redesignated as the ''Federal Fire and Emergency Management Agency''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal Emergency Management Agency shall be deemed to be a reference to the Federal Fire and Emergency Management Agency.

(c) CONFORMING AMENDMENTS TO FEDERAL FIRE PREVENTION AND CONTROL ACT OF 1974.—Sections 4(4), 17, and 31(a)(5)(B) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203(4), 2216, and 2227(a)(5)(B)) are amended by striking ''Federal Emergency Management Agency'' each place it appears and inserting ''Federal Fire and Emergency Management Agency''.

SEC. 4. FIREFIGHTER INVESTMENT AND RESPONSE ENHANCEMENT.

The Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.) is amended by adding at the end the following:

''SEC. 33. FIREFIGHTER INVESTMENT AND RESPONSE ENHANCEMENT.

''(a) DEFINITION OF FIREFIGHTING PERSONNEL.—In this section, the term 'firefighting personnel' means individuals, including volunteers, who are firefighters, officers of fire departments, or emergency medical service personnel of fire departments.

''(b) GRANT PROGRAM.—

''(1) AUTHORITY.—In accordance with this section, the Director may make grants on a competitive basis to fire departments for the purpose of protecting the health and safety of the public and firefighting personnel against fire and fire-related hazards.

''(2) ESTABLISHMENT OF OFFICE FOR ADMINISTRATION OF GRANTS.—Before making grants under paragraph (1), the Director shall establish an office in the Federal Fire and Emergency Management Agency that shall have the duties of establishing specific criteria for the selection of grant recipients, and administering the grants, under this section.

''(3) USE OF GRANT FUNDS.—The Director may make a grant under paragraph (1) only if the applicant for the grant agrees to use grant funds—

''(A)(i) to train firefighting personnel in firefighting, emergency response, arson prevention and detection, or the handling of hazardous materials, which shall include, at a minimum, the removal of any hazardous substance or pollutant or contaminant associated with the illegal manufacture of amphetamine or methamphetamine; or

''(ii) to train firefighter personnel to provide any of the training described in clause (i);

''(B) to make effective use of the capabilities of the National Institute of Standards and Technology, the Department of Commerce, the Consumer Product Safety Commission, and other public and private sector entities, for research and development aimed at advancing—

''(i) the health and safety of firefighters;

''(ii) information technologies for fire management;

''(iii) technologies for fire prevention and protection;

''(iv) firefighting technologies; and

''(v) burn care and rehabilitation;

''(C) to fund the creation of rapid intervention teams to protect firefighting personnel at the scenes of fires and other emergencies;

''(D) to certify fire inspectors;

''(E) to establish wellness and fitness programs for firefighting personnel to ensure that the firefighting personnel can carry out their duties;

''(F) to fund emergency medical services provided by fire departments;

''(G) to acquire additional firefighting vehicles, including fire trucks;

''(H) to acquire additional firefighting equipment, including equipment for communications and monitoring;

''(I) to acquire personal protective equipment required for firefighting personnel by the Occupational Safety and Health Administration, and other personal protective equipment for firefighting personnel;

''(J) to modify fire stations, fire training facilities, and other facilities to protect the health and safety of firefighting personnel;

''(K) to enforce fire codes;

''(L) to fund fire prevention programs; or

''(M) to educate the public about arson prevention and detection.

''(4) APPLICATION.—The Director may make a grant under paragraph (1) only if the fire department seeking the grant submits to the Director an application in such form and containing such information as the Director may require.

''(5) MATCHING REQUIREMENT.—The Director may make a grant under paragraph (1) only if the applicant for the grant agrees to match with an equal amount of non-Federal funds 10 percent of the funds received under paragraph (1) for any fiscal year.

''(6) MAINTENANCE OF EXPENDITURES—The Director may make a grant under paragraph (1) only if the applicant for the grant agrees to maintain in the fiscal year for which the grant will be received the applicant's aggregate expenditures for the uses described in paragraph (3) at or above the average level of such expenditures in the 2 fiscal years preceding the fiscal year for which the grant will be received.

''(7) REPORT TO THE DIRECTOR.—The Director may make a grant under paragraph (1) only if the applicant for the grant agrees to submit to the Director a report, including a description of how grant funds were used, with respect to each fiscal year for which a grant was received.

''(8) VARIETY OF GRANT RECIPIENTS.—The Director shall ensure that grants under paragraph (1) for a fiscal year are made to a variety of fire departments, including, to the extent that there are eligible applicants—

''(A) paid, volunteer, and combination fire departments;

''(B) fire departments located in communities of varying sizes; and

''(C) fire departments located in urban, suburban, and rural communities.

''(9) LIMITATION ON EXPENDITURES FOR FIREFIGHTING VEHICLES.—The Director shall ensure that not more than 25 percent of the assistance made available under paragraph (1) for a fiscal year is used for the use described in paragraph (3)(G).

''(c) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to the Director such sums as are necessary to carry out this section.

''(2) LIMITATION ON ADMINISTRATIVE COSTS.—Of the amounts made available under paragraph (1) for a fiscal year, the Director may use not more than 10 percent for the administrative costs of carrying out this section.''.

By Mr. LAUTENBERG (for himself, Mr. JEFFORDS, Mr. MOYNIHAN, Mr. CLELAND, Mr. KERRY, Mr. BIDEN, Mrs. BOXER, Mr. KOHL, Mr. SPECTER, Mr. ROBB, Mr. LEAHY, Mr. DEWINE, Mr. SARBANES, Mr. TORRICELLI, Mr. L. CHAFEE, Mr. GRAHAM, Mr. KENNEDY, Ms. MIKULSKI, Ms. SNOWE, Mr. SCHUMER, Mr. LEVIN, and Mrs. HUTCHISON):

S. 1900. A bill to amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued by Amtrak, and for other purposes; to the Committee on Finance.

HIGH-SPEED RAIL INVESTMENT ACT

Mr. LAUTENBERG. Mr. President, overcrowding on our highways and in our skies is almost at the crisis point. We're spending billions of dollars each year in wasted gas and wasted time because there are fewer and fewer ways to get somewhere quickly and comfortably.

We're not going to solve that problem by simply building new roads or airports. People don't want airports in their backyards, and there just isn't enough space in many parts of the country for new roads. Besides, new airports and new roads cost billions. And they become obsolete almost as quickly as we build them.

Instead of wasting money on ineffective short-term solutions, we should be investing in a transportation plan that promises lasting benefits far into the next century.

High-speed rail is the future of transportation in this country. Train travel is comfortable, reliable, and it's getting faster all the time. The rail lines are already there. All we need to do is bring them up to 21st-century standards.

The legislation I'm introducing today would make a serious investment in the future of high-speed rail. And an investment in high-speed rail is an investment in less crowded highways and airports, cleaner air, and a new level of productivity for millions of Americans whose jobs and lifestyles depend on efficient transportation.

Mr. President, I'm willing to bet that every Member of this Senate has at least one recent memory of a plane flight that went horribly wrong. Missed connections. Hours spent inside an overheated plane stuck on the tarmac. Lost baggage. I know I've had plenty of experiences like that.

And even when everything goes according to plan, air travel is uncomfortable at best. You almost have to know yoga just to cram yourself into one of those tiny seats.

Commuting by car isn't any better. Parts of Interstate 95 regularly turn into parking lots during week-day rush hours. And all this congestion can lead to truly life-threatening situations. Traffic accidents. Higher pollution levels. Explosions of road rage that actually lead people to pull guns on each other on the highway.

Land and financial resources are scarce and we need to make better use of what we already have. Our rail lines are there, ready to help solve the overcrowding problems that are making our other transportation options less and less appealing. But for the most part, U.S. transportation policy has ignored the potential of high-speed rail and our rail system has fallen far below the standards set in nearly every other developed nation on the planet.

My legislation seeks to change that by authorizing Amtrak to sell $10 billion in high-speed rail bonds over ten years to develop high-speed corridors across the nation. This leveraging of private sector investment will allow Amtrak to complete the Northeast Corridor high-speed project and provide the funding needed to bring faster, better service to federally designated high-speed corridors in other regions.

These corridors cover states in the Northeast, the Southeast, the Midwest, the Gulf Coast, and the Pacific Coast. Our aim is to take what we've learned in the Northeast and provide it to the rest of the nation.

The Federal Government would subsidize these bonds by providing tax credits to bondholders in lieu of interest payments. And state matching funds would help to secure repayment of the bond principal.

Mr. President, the money we don't spend on high-speed rail today we will have to spend tomorrow—on things like highway construction and pollution controls.

Investing in high speed rail is not only good transportation policy, it is good land use policy. Constructing an airport or highway outside of city limits promotes sprawl, robs cities of valuable revenue, and increases the pressure for even more road construction.

Rail travel, on the other hand, is downtown-to-downtown, not suburb-to-suburb. Rail transportation encourages efficient, ''smart growth'' land use patterns, preserves downtown economies, protects open space, and improves air quality.

Furthermore, passenger rail stations serve as focal points for commercial development, promoting downtown redevelopment and generating increased retail business and tax revenue. Making efficient and cost-effective use of existing infrastructures is an increasingly important goal and one which this legislation will help achieve.

Mr. President, high-speed rail is already proving itself. In 1999, Amtrak's Metroliner train between Washington and New York set its third consecutive ridership record with over two million passengers, and Amtrak reported the highest total revenues in the corporation's 28-year history. The reason is simple—people are becoming less and less satisfied with traveling by plane. And more and more frustrated with gridlock on our highways.

You can see why. The summer of 1999 was the most delay-plagued season in history for airlines. And these delays are expensive. In 1998, air traffic control delays cost the airlines and passengers a combined $4.5 billion.

Unfortunately, this problem is only going to get worse. The number of people flying is increasing significantly. In 1998 there were 643 million airplane boardings in the U.S., up 25 percent from just five years ago. The Federal Aviation Administration estimates that boardings will increase to 917 million by 2008. Our current aviation system can't handle this demand. We need a quality passenger rail system to relieve some of this pressure.

Passenger rail can make a difference, particularly between cities located on high-speed corridors. I went back and looked at the list of the 31 airports expected to experience more than 20,000 passenger hours of flight delays in 2007. The vast majority of these airports—more than three out of four—are located on a high-speed rail corridor. If the funding envisioned in this legislation were made available to develop these corridors, we could take much of the burden of short flights off our aviation system. That would allow airlines to concentrate their limited slots and resources on longer-distance flights.

Traffic congestion costs commuters even more—an estimated $74 billion a year in lost productivity and wasted fuel. These commuters, even the ones who continue to drive, will be well served by an investment in high-speed rail corridors. Amtrak takes 18,000 cars a day off the roads between Philadelphia and New York. Without Amtrak, these congested roads would be in far worse shape. Commuters in other parts of the country should be able to benefit from high-quality, fast rail service that takes cars off the road and helps to improve the performance of our overall transportation system.

This bill does not just benefit those who ride trains. Everyone who drives a car on congested highways or suffers from delays while using our overburdened aviation system will benefit from the rail investment called for in this legislation. I can tell you, as a former businessman who helped run a very profitable company, that high-speed rail is a smart investment. And it's an investment that deserves support from Congress.

By Mr. KOHL (for himself and Mr. TORRICELLI):

S. 1901. A bill to establish the Privacy Protection Study Commission to evaluate the efficacy of the Freedom of Information Act and the Electronic Freedom of Information Act Amendments of 1996, to determine whether new laws are necessary, and to provide advice and recommendations; to the Committee on the Judiciary.

THE PRIVACY PROTECTION STUDY COMMISSION ACT OF 1999

Mr. KOHL. Mr. President, I rise today to introduce the Privacy Protection Study Commission Act of 1999 with my colleague Senator TORRICELLI. This legislation addresses privacy protection by creating an expert Commission charged with the duty to explore privacy concerns. We cannot underestimate the importance of this issue. Privacy matters, and it will continue to matter more and more in this information age of high speed data, Internet transactions, and lightning-quick technological advances.

There exists a massive wealth of information in today's world, which is increasingly stored electronically. In fact, experts estimate that the average American is ''profiled'' in up to 150 commercial electronic databases. That means that there is a great deal of data—in some cases, very detailed and personal—out there and easily accessible courtesy of the Internet revolution. With the click of a button it is possible to examine all sorts of personal information, be it an address, a criminal record, a credit history, a shopping performance, or even a medical file.

Generally, the uses of this data are benign, even beneficial. Occasionally, however, personal information is obtained surreptitiously, and even peddled to third parties for profit or other uses. This is especially troubling when, in many cases, people do not even know that their own personal information is being ''shopped.''

Two schools of thought exist on how we should address these privacy concerns. There are some who insist that we must do something and do it quickly. Others urge us to rely entirely on ''self-regulation''—according to them most companies will act reasonably and, if not, consumers will demand privacy protection as a condition for their continued business.

Both approaches have some merit, but also some problems. For example, even though horror stories abound about violations of privacy, Congress should not act by anecdote or on the basis of a few bad actors. Indeed, enacting ''knee-jerk,'' ''quick-fix'' legislation could very well do more harm than good. By the same token, however, self-regulation alone is unlikely to be the silver bullet that solves all privacy concerns. By itself, we have no assurance that it will bring the actors in line with adequate privacy protection standards.

Because it is better to do it right—in terms of addressing the myriad of complicated privacy concerns—than to do it fast, perhaps what is needed is a cooling off period. Such a ''breather'' will ensure that our action is based on a comprehensive understanding of the issues, rather than a ''mishmash'' of political pressures and clever soundbites.

For those reasons, and recognizing that there are no quick and easy answers, I suggest that we step back to consider the issue of privacy more thoughtfully. Let's admit that neither laws nor self-regulation alone may be the solution. Let's also concede that no one is going to divine the right approach overnight. But given the time and resources, a ''Privacy Protection Study Commission'' composed of experts drawn from the fields of law, civil rights and liberties, privacy matters, business, or information technology, may offer insights on how to address and ensure balanced privacy protection into the next millennium.

The bill I am introducing today would do just that. The Commission would be comprised of nine bright minds equally chosen by the Senate, the House, and the Administration. As drafted, the Commission will be granted the latitude to explore and fully examine the current complexities of privacy protection. After 18 months, the Commission will be required to report back to Congress with its findings and proposals. If legislation is necessary, the Commission will be in the best position to recommend a balanced course of action. And if lawmaking is not warranted, the Commission's recognition of that fact will help persuade a skeptical Congress and public.

This is not a brand new idea. Twenty-five years ago, Congress created a Privacy Protection Commission to study privacy concerns as they related to government uses of personal information. That Commission's findings were seminal. A quarter of a century later, because so much has changed, it is time to re-examine this issue on a much broader scale. The uses of personal information that concerned the Commission 25 years ago have exploded today, especially in this era of e-commerce, super databases, and megamergers. People are genuinely worried—perhaps they shouldn't be—but their concerns are real.

For example, a Wall Street Journal survey revealed that Americans today are more concerned about invasions of their personal privacy than they are

about world war. Another poll cited in the Economist noted that 80 percent are worried about what happens to information collected about them. William Afire summed it up best in a recent New York Times essay: ''We are dealing here with a political sleeper issue. People are getting wise to being secretly examined and manipulated and it rubs them the wrong way.''

One final note: given that privacy is not an easy issue and that it appears in so many other contexts, I invite all interested parties to help us improve our legislation to create a Commission. We need to forge a middle ground consensus with our approach, and the door is open to all who share this goal.

Mr. President, I ask unanimous consent that the previously cited material be printed in the RECORD.

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

[From the Economist—May 1, 1999]

THE END OF PRIVACY

Remember, they are always watching you. Use cash when you can. Do not give your phone number, social-security number or address, unless you absolutely have to. Do not fill in questionnaires or respond to telemarketers. Demand that credit and datamarketing firms produce all information they have on you, correct errors and remove you from marketing lists. Check your medical records often. If you suspect a government agency has a file on you, demand to see it. Block caller ID on your phone, and keep your number unlisted. Never use electronic tollbooths on roads. Never leave your mobile phone on—your movements can be traced. Do not use store credit or discount cards. If you must use the Internet, encrypt your e-mail, reject all ''cookies'' and never give your real name when registering at websites. Better still, use somebody else's computer. At work, assume that calls, voice mail, e-mail and computer use are all monitored.

This sounds like a paranoid ravings of the Unabomber. In fact, it is advice being offered by the more zealous of today's privacy campaigners. In an increasingly wired world, people are continually creating information about themselves that is recorded and often sold or pooled with information from other sources. The goal of privacy advocates is not extreme. Anyone who took these precautions would merely be seeking a level of privacy available to all 20 years ago. And yet such behaviour now would seem obsessive and paranoid indeed.

That is a clue to how fast things have changed. To try to restore the privacy that was universal in the 1970s is to chase a chimera. Computer technology is developing so rapidly that it is hard to predict how it will be applied. But some trends are unmistakable. The volume of data recorded about people will continue to expand dramatically (see pages 21-23). Disputes about privacy will become more bitter. Attempts to restrain the surveillance society through new laws will intensify. Consumers will pay more for services that offer a privacy pledge. And the market for privacy-protection technology will grow.

Always observed

Yet there is a bold prediction: all these efforts to hold back the rising tide of electronic intrusion into privacy will fail. They may offer a brief respite for those determined, whatever the trouble or cost, to protect themselves. But 20 years hence most people will find that the privacy they take for granted today will be just as elusive as the privacy of the 1970s now seems. Some will shrug and say: ''Who cares? I have nothing to hide.'' But many others will be disturbed by the idea that most of their behaviour leaves a permanent and easily traceable record. People will have to start assuming that they simply have no privacy. This will constitute one of the greatest social changes of modern times.

Privacy is doomed for the same reason that it has been eroded so fast over the past two decades. Presented with the prospect of its loss, many might prefer to eschew even the huge benefits that the new information economy promises. But they will not, in practice, be offered that choice. Instead, each benefit—safer streets, cheaper communications, more entertainment, better government services, more convenient shopping, a wider selection of products—will seem worth the surrender of a bit more personal information. Privacy is a residual value, hard to define or protect in the abstract. The cumulative effect of these bargains—each attractive on their own—will be the end of privacy.

For a similar reason, attempts to protect privacy through new laws will fail—as they have done in the past. The European Union's data protection directive, the most sweeping recent attempt, gives individuals unprecedented control over information about themselves. This could provide remedies against the most egregious intrusions. But it is doubtful whether the law can be applied in practice, if too many people try to use it. Already the Europeans are hinting that they will not enforce the strict terms of the directive against America, which has less stringent protections.

Policing the proliferating number of databases and the thriving trade in information would not only be costly in itself, it would also impose huge burdens on the economy. Moreover, such laws are based on a novel concept: that individuals have a property right in information about themselves. Broadly enforced, such a property right would be antithetical to an open society. It would pose a threat not only to commerce, but also to a free press and to much political activity, to say nothing of everyday conversation.

It is more likely that laws will be used not to obstruct the recording and collection of information, but to catch those who use it to do harm. Fortunately, the same technology that is destroying privacy also makes it easier to trap stalkers, detect fraud, prosecute criminals and hold the government to account. The result could be less privacy, certainly—but also more security for the law-abiding.

Whatever new legal remedies emerge, opting out of information-gathering is bound to become ever harder and less attractive. If most urban streets are monitored by intelligent video cameras that can identify criminals, who will want to live on a street without one? If most people carry their entire medical history on a plastic card that the emergency services come to rely on, a refusal to carry the card could be life-threatening. To get a foretaste of what is to come, try hiring a car or booking a room at a top hotel without a credit card.

LEADERS

In a way, the future may be like the past, when few except the rich enjoyed much privacy. To earlier generations, escaping the claustrophobic all-knowingness of a village for the relative anonymity of the city was one of the more liberating aspects of modern life. But the era of urban anonymity already looks like a mere historical interlude. There is, however one difference between past and future. In the village, everybody knew everybody else's business. In the future, nobody will know for certain who knows what about them. That will be uncomfortable. But the best advice may be: get used to it.

THE SURVEILLANCE SOCIETY

New information technology offers huge benefits—higher productivity, better crime prevention, improved medical care, dazzling entertainment, more convenience. But it comes at a price: less and less privacy

''The right to be left alone.'' For many this phrase, made famous by Louis Brandeis, an American Supreme Court justice, captures the essence of a notoriously slippery, but crucial concept. Drawing the boundaries of privacy has always been tricky. Most people have long accepted the need to provide some information about themselves in order to vote, work, shop, pursue a business, socialise or even borrow a library book. But exercising control over who knows what about you has also come to be seen as an essential feature of a civilised society.

Totalitarian excesses have made ''Big Brother'' one of the 20th century's most frightening bogeyman. Some right of privacy, however qualified, has been a major difference between democracies and dictatorships. An explicit right to privacy is now enshrined in scores of national constitutions as well as in international human-rights treaties. Without the ''right to be left alone,'' to shut out on occasion the prying eyes and importunities of both government and society, other political and civil liberties seem fragile. Today most people in rich societies assume that, provided they obey the law, they have a right to enjoy privacy whenever it suits them.

They are wrong. Despite a raft of laws, treaties and constitutional provisions, privacy has been eroded for decades. This trend is now likely to accelerate sharply. The cause is the same as that which alarmed Brandeis when he first popularized his phrase in an article in 1890; technological change. In his day it was the spread of photography and cheap printing that posed the most immediate threat to privacy. In our day it is the computer. The quantity of information that is now available to governments and companies about individuals would have horrified Brandeis. But the power to gather and disseminate data electronically is growing so fast that it raises an even more unsettling question: in 20 years' time, will there be any privacy left to protect?

Most privacy debates concern media intrusion, which is also what bothered Brandeis. And yet the greatest threat to privacy today comes not from the media, whose antics affect few people, but from the mundane business of recording and collecting an ever-expanding number of everyday transactions. Most people know that information is collected about them, but are not certain how much. Many are puzzled or annoyed by unsolicited junk mail coming through their letter boxes. And yet junk mail is just the visible tip of an information iceberg. The volume of personal data in both commercial and government databases has grown by leaps and bounds in recent years along with advances in computer technology. The United States, perhaps the most computerized society in the world, is leading the way, but other countries are not far behind.

Advances in computing are having a twin effect. They are not only making it possible to collect information that once went largely unrecorded, but are also making it relatively easy to store, analyze and retrieve this information in ways which, until quite recently, were impossible.

Just consider the amount of information already being collected as a matter of routine—any spending that involves a credit or

bank debit card, most financial transactions, telephone calls, all dealings with national or local government. Supermarkets record every item being bought by customers who use discount cards. Mobile-phone companies are busy installing equipment that allows them to track the location of anyone who has a phone switched on. Electronic tollbooths and traffic-monitoring systems can record the movement of individual vehicles. Pioneered in Britain, closed-circuit tv cameras now scan increasingly large swathes of urban landscapes in other countries too. The trade in consumer information has hugely expanded in the past ten years. One single company, Acxiom Corporation in Conway, Arkansas, has a database combining public and consumer information that covers 95% of American households. Is there anyone left on the planet who does not know that their use of the Internet is being recorded by somebody, somewhere?

Firms are as interested in their employees as in their customers. A 1997 survey by the American Management Association of 900 large companies found that nearly two-thirds admitted to some form of electronic surveillance of their own workers. Powerful new software makes it easy for bosses to monitor and record not only all telephone conversations, but every keystroke and e-mail message as well.

Information is power, so its hardly surprising that governments are as keen as companies to use data-processing technology. They do this for many entirely legitimate reasons—tracking benefit claimants, delivering better health care, fighting crime, pursuing terrorists. But it inevitable means more government surveillance.

A controversial law passed in 1994 to aid law enforcement requires telecoms firms operating in America to install equipment that allows the government to intercept and monitor all telephone and data communications, although disputes between the firms and the FBI have delayed its implementation. Intelligence agencies from America, Britain, Canada, Australia and New Zealand jointly monitor all international satellite-telecommunications traffic via a system called ''Echelon'' that can pick specific words or phrases from hundreds of thousands of messages.

America, Britain, Canada and Australia are also compiling national DNA databases of convicted criminals. Many other countries are considering following suit. The idea of DNA databases that cover entire populations is still highly controversial, but those databases would be such a powerful tool for fighting crime and disease that pressure for their creation seems inevitable. Iceland's parliament has agreed a plan to sell the DNA database of its population to a medical-research firm, a move bitterly opposed by some on privacy grounds.

To each a number

The general public may be only vaguely aware of the mushrooming growth of information-gathering, but when they are offered a glimpse, most people do not like what they see. A survey by America's Federal Trade Commission found that 80% of Americans are worried about what happens to information collected about them. Skirmishes between privacy advocates and those collecting information are occurring with increasing frequency.

This year both intel and Microsoft have run into a storm of criticism when it was revealed that their products—the chips and software at the heart of most personal computers—transmitted unique identification numbers whenever a personal-computer user logged on to the Internet. Both companies hastily offered software to allow users to turn the identifying numbers off, but their critics maintain that any software fix can be breached. In fact, a growing number of electronic devices and software packages contain identifying numbers to help them interact with each other.

In February an outcry greeted news that image Data, a small New Hampshire firm, had received finance and technical assistance from the American Secret Service to build a national database of photographs used on drivers' licenses. As a first step, the company had already bought the photographs of more than 22m drivers from state governments in South Carolina, Florida and Colorado. Image Data insists that the database, which would allow retailers or police across the country instantly to match a name and photograph, is primarily designed to fight cheque and credit-card fraud. But in response to more than 14,000 e-mail complaints, all three state moved quickly to cancel the sale.

It is always hard to predict the impact of new technology, but there are several developments already on the horizon which, if the recent past is anything to go by, are bound to be used for monitoring of one sort or another. The paraphernalia of snooping, whether legal or not, is becoming both frighteningly sophisticated and easily affordable. Already, tiny microphones are capable of recording whispered conversations from across the street. Conversations can even be monitored from the normally imperceptible vibrations of window glass. Some technologists think that the tiny battlefield reconnaissance drones being developed by the American armed forces will be easy to commercialize. Small video cameras the size of a large wasp may some day be able to fly into a room, attach themselves to a wall or ceiling and record everything that goes on there.

Overt monitoring is likely to grow as well. Intelligent software systems are already able to scan and identify individuals from video images. Combined with the plummeting price and size of cameras, such software should eventually make video surveillance possible almost anywhere, at any time. Street criminals might then be observed and traced with ease.

The burgeoning field of ''biometrics'' will make possible cheap and fool-proof systems that can identify people from their voices, eyeballs, thumbprints or any other measurable part of their anatomy. That could mean doing away with today's cumbersome array of security passes, tickets and even credit cards. Alternatively, pocket-sized ''smart' cards might soon be able to store all of a person's medical or credit history, among other things, together with physical data needed to verify his or her identity.

In a few years' time utilities might be able to monitor the performance of home appliances, sending repairmen or replacements even before they break down. Local supermarkets could check the contents of customers' refrigerators, compiling a shopping list as they run out of supplies of butter, cheese or milk. Or office workers might check up on the children at home from their desktop computers.

But all of these benefits, from better medical care and crime prevention to the more banal delights of the ''intelligent'' home, come with one obvious drawback—an ever-widening trail of electronic data. Because the cost of storing and analysing the data is also plummeting, almost any action will leave a near-permanent record. However ingeniously information-processing technology is used, what seems certain is that threats to traditional notions of privacy will proliferate.

This prospect provokes a range of responses, none of them entirely adequate. More laws. Brandeis's article was a plea for a right to sue for damages against intrusions of privacy. It spawned a burst of privacy statutes in America and elsewhere. And yet privacy lawsuits hardly ever succeed, except in France, and even there they are rare. Courts find it almost impossible to pin down a precise enough legal definition of privacy.

America's consumer-credit laws, passed in the 1970s, give individuals the right to example their credit records and to demand corrections. The European Union has recently gone a lot further. The EU Data Protection directive, which came into force last October, aims to give people control over their data, requiring ''unambiguous'' consent before a company or agency can process it, and barring the use of the data for any purpose other than that for which it was originally collected. Each EU country, is pledged to appoint a privacy commissioner to act on behalf of citizens whose rights have been violated. The directive also bars the export of data to countries that do not have comparably stringent protections.

Most EU countries have yet to pass the domestic laws needs to implement the directive, so it is difficult to say how it will work in practice. But the Americans view it as Draconian, and a trade row has blown up about the EU's threat to stop data exports to the United States. A compromise may be reached that enables American firms to follow voluntary guidelines; but that merely could create a big loophole. If, on the other hand, the EU insist on barring data exports, not only might a trade war be started but also the development of electronic commerce in Europe could come screeching to a complete halt, inflicting a huge cost on the EU's economy.

In any case, it is far from clear what effect the new law will have even in Europe. More products or services may have to be offered with the kind of legalistic bumf that is now attached to computer software. But, as with software, most consumers are likely to sign without reading it. The new law may give individuals a valuable tool to fight against some of the worst abuses, rather on the pattern of consumer-credit laws. But, also as with those laws—and indeed, with government freedom of information laws in general—individuals will have to be determined and persistent to exercise their rights. Corporate and government officials can often find ways to delay or evade individual requests for information. Policing the rising tide of data collection and trading is probably beyond the capability of any government without a crackdown so massive that it could stop the new information economy in its tracks.

Market solutions. The Americans generally prefer to rely on self-regulation and market pressures. Yet so far, self-regulation has failed abysmally. A Federal Trade Commission survey of 1,400 American Internet sites last year found that only 2% had posted a privacy policy in line with that advocated by the commission, although more have probably done so since, not least in response to increased concern over privacy. Studies of members of America's Direct Marketing Association by independence researchers have found that more than half did not abide even by the association's modest guidelines.

If consumers were to become more alarmed about privacy, however, market solutions could offer some protection. The Internet, the frontline of the privacy battle-field, has already spawned anonymous remailers, firms that forward e-mail stripped of any identifying information. One website (www.anonymizer.com) offers anonymous Internet browsing. Electronic digital cash, for use or off the Internet, may eventually provide some anonymity but, like today's physical cash, it will probably be used only for smaller purchases.

Enter the infomediary

John Hagel and Marc Singer of McKinsey, a management consulting firm, believe that from such services will emerge ''informediaries'', firms that become brokers of information between consumers and other companies, giving consumers privacy protection and also earning them some revenue for the information they are willing to release about themselves. If consumers were willing to pay for such brokerage, infomediaries might succeed on the Internet. Such firms would have the strongest possible stake in maintaining their reputation for privacy protection. But it is hard to imagine them thriving unless consumers are willing to funnel every transaction they make through a single infomediary. Even if this is possible—which is unclear—many consumers may not want to rely so much on a single firm. Most, for example, already have more than one credit card.

In the meantime, many companies already declare that they will not sell information they collect about customers. But many others find it possible profitable not to make—to—or keep—this pledge. Consumers who want privacy must be ever vigilant, which is more than most can manage. Even those companies which advertise that they will not sell information do not promise not to buy it. They almost certainly know more about their customers than their customers realize. And in any case, market solutions, including informediaries, are unlikely to be able to deal with growing government databases or increased surveillance in public areas.

Technology. The Internet has spawned a fierce war between fans of encryption and governments, especially America's, which argue that they must have access to the keys to software codes used on the web in the interests of the law enforcement. This quarrel has been rumbling on for years. But given the easy availability of increasingly complex codes, governments may just have to accept defeat, which would provide more privacy not just for innocent web users, but for criminals as well. Yet even encryption will only serve to restore to Internet users the level of privacy that most people have assumed they now enjoy in traditional (i.e., paper) mail.

Away from the web, the technological race between snoopers and anti-snoopers will also undoubtedly continue. But technology can only ever be a partial answer. Privacy will be reduced not only by government or private snooping, but by the constant recording of all sorts of information that individuals must provide to receive products or benefits—which is as true on as off the Internet.

Transparency. Despairing of efforts to protect privacy in the face of the approaching technological deluge, David Brin, an American physicist and science-fiction writer, proposes a radical alternative—its complete abolition. In his book ''The Transparent Society'' (Addision-Wesley, $25) he argues that in future the rich and powerful—and most ominously of all, governments—will derive the greatest benefit from privacy protection, rather than ordinary people. Instead, says Mr. Brin, a clear, simple rule should be adopted: everyone should have access to all information. Every citizen should be able to tap into any database, corporate or governmental, containing personal information. Images from the video-surveillance cameras on city streets should be accessible to everyone, not just the police.

The idea sounds disconcerting, he admits. But he argues that privacy is doomed in any case. Transparency would enable people to know who knows what about them, and for the ruled to keep any eye on their rulers. Video cameras would record not only criminals, but also abusive policemen. Corporate chiefs would know that information about themselves is as freely available as it is about their customers or workers. Simple deterrence would then encourage restraint in information gathering—and maybe even more courtesy.

Yet Mr. Brin does not explain what would happen to transparency violators or whether there would be any limits. What about national-security data or trade secrets? Police or medical files? Criminals might find these of great interest. What is more, transparency would be just as difficult to enforce legally as privacy protection is now. Indeed, the very idea of making privacy into a crime seems outlandish.

There is unlikely to be a single answer to the dilemma posed by the conflict between privacy and the growing power of information technology. But unless society collectively turns away from the benefits that technology can offer—surely the most unlikely outcome of all—privacy debates are likely to become very more intense. In the brave new world of the information age, the right to be left alone is certain to come under siege as never before.

NOSY PARKER LIVES

[William Safire, Washington]

A state sells its driver's license records to a stalker; he selects his victim—a Hollywood starlet—from the photos and murders her.

A telephone company sells a list of calls; an extortionist analyzes the pattern of calls and blackmails the owner of the phone.

A hospital transfers patient records to an insurance affiliate, which turns down a policy renewal.

A bank sells a financial disclosure statement to a borrower's employer, who fires the employee for profligacy.

An Internet browser sells the records of a nettie's searches to a lawyer's private investigator, who uses ''cookie''-generated evidence against the nettie in a lawsuit.

Such invasions of privacy are no longer far-out possibilities. The first listed above, the murder of Rebecca Schaeffer, led to the Driver's Privacy Protection Act. That Federal law enables motorists to ''opt out''—to direct that information about them not be sold for commercial purposes.

But even that opt out puts the burden of protection on the potential victim, and most people are too busy or lazy to initiate self-protection. Far more effective would be what privacy advocates call opt in—requiring the state or business to request permission of individual customers before selling their names to practioners of ''target marketing.''

In practical terms, the difference between opt in and opt out is the difference between a door locked with a bolt and a door left ajar. But in a divided appeals court—under the strained rubric of commercial free speech—the intrusive telecommunications giant US West won. Its private customers and the public are the losers.

Corporate mergers and technologies of E-commerce and electronic surveillance are pulverizing the walls of personal privacy. Belatedly, Americans are awakening to their new nakedness as targets of marketers.

Your bank account, you health record, your genetic code, your personal and shopping habits and sexual interests are your own business. That information has a value. If anybody wants to pay for an intimate look inside your life, let them make you an offer and you'll think about it. That's opt in. You may decide to trade the desired information about yourself for services like an E-mail box or stock quotes or other inducement. But require them to ask you first.

We are dealing here with a political sleeper issue. People are getting wise to being secretly examined and manipulated and it rubs them the wrong way.

Politicians sense that a strange dissonance is agitating their constituents. But most are leery of the issue because it cuts across ideologies and party lines—not just encrypted communication versus national security, but personal liberty versus the free market.

That's why there has been such Sturm und Drang around the Financial Services Act of 1999. Most pols think it is bogged down only because of a turf war between the Treasury and the Fed over who regulates the new bank-broker-insurance mergers. It goes deeper.

The House passed a bill 343 to 86 to make ''pretext calling'' by snoops pretending to be the customer a Federal crime, plus an ''opt out'' that puts the burden on bank customers to tell their banks not to disclose account information to marketers. The bank lobby went along with this.

The Senate passed a version without privacy protection because Banking Chairman Phil Gramm said so. But in Senate-House conference, Republican Richard Shelby of Alabama (who already toughened drivers' protection at the behest of Phyllis Schlafly's Eagle Forum and the A.C.L.U.) is pressing for the House version. '' 'Opt out' is weak,'' Shelby tells me, ''but it's a start.''

The groundswelling resentment is in search of a public champion. The start will gain momentum when some Presidential candidate seizes the sleeper issue of the too-targeted consumer. Laws need not always be the answer: to avert regulation, smart businesses will complete to assure customers' right to decide.

The libertarian principle is plain: excepting legitimate needs of law enforcement and public interest, control of information about an individual must rest with the person himself. When the required permission is asked, he or she can sell it or trade it—or tell the bank, the search engine and the Motor Vehicle Bureau to keep their mouths shut.

PRIVATELY HELD CONCERNS

[Oct. 22, 1999—Wall Street Journal]

Congress has been paddling 20 years to get a financial-service overhaul bill, and now the canoe threatens to run aground on one of those imaginary concerns that only sounds good in press release—''consumer privacy.'' In the column alongside, Paul Gigot describes the hardball politics behind the financial reform bill's other sticking point—the Community Reinvestment Act. Our subject here is Senator Richard Shelby's strange idea of what, precisely, should constitute ''consumer privacy'' in the new world. ''It's our responsibility to identify what is out of bounds,'' declared the identity confused Republican as he surfaced this phantom last spring.

Privacy concerns are a proper discussion point for the information age, but financial reform would actually end to alleviate some of them. If a single company were allowed to sell insurance, portfolio advice and checking accounts, there would be less incentive to peddle information to third parties. Legislative reform and mergers in the financial industry were all supposed to be aimed at the same goal, using information efficiently within a single company to serve customers. Yet to Mr. Shelby, this is a predatorial act.

He's demanding language that would mean a Citigroup banker, say, couldn't tell a Citigroup insurance agent that Mr. Jones is a hot insurance prospect—unless Mr. Jones gives his permission in writing first. Mr. Shelby threatens to withhold his crucial

unless this deal-breaker is written into the law.

To inflict this inconvenience on Mr. Jones is weird enough: He has already volunteered to have a relationship with Citigroup. But even weirder is the urge to cripple a law whose whole purpose is to modernize an industry structure that forces consumers today to chase six different companies around to get a full mix of financial services. In essence, financial products all do the same thing: shift income in time. You want to go to college now based on your future earnings, so you take out a loan. You want to retire in 20 years based on your present earnings, so you get an IRA. And if a single cry goes up from modern man, it's ''Simplify my life.''

A vote last Friday seemed, to put Mr. Shelby's peeve to rest. Under the current language, consumers would have an ''opt out'' if they don't want their information shared. But Mr. Shelby won't let go, and joining his chorus are Ralph Nader on the left, Phyllis Schlafly on the right and various gnats buzzing around the interest-group honeypot.

He claims to be responding to constituent complaints about telemarketing, not to mention a poll showing that 90% of consumers respond favorably to the word ''privacy.'' Well, duh. Consumers don't want their information made available indiscriminately to strangers. But putting up barriers to free exchange inside a company that a customer already has chosen to do business with is a farfetched application of a sensible idea.

Mr. Shelby was a key supporter of language that would push banks to set up their insurance and securities operations as affiliates under a holding company. Now he wants to stop these affiliates from talking to each other. Maybe he's just confused, but it sounds more like a favor to Alabama bankers and insurance agents who want to make life a lot harder for their New York competitors trying to open up local markets.

GROWING COMPATIBILITY ISSUE: COMPUTERS AND USER PRIVACY

[By John Markoff, New York Times, March 3, 1999]

San Francisco, March 2—The Intel Corporation recently blinked in a confrontation with privacy advocates protesting the company's plans to ship its newest generation of microprocessors with an embedded serial number that could be used to identify a computer—and by extension its user.

But those on each side of the dispute acknowledge that it was only an initial skirmish in a wider struggle. From computers to cellular phones to digital video players, everyday devices and software programs increasingly embed telltale identifying numbers that let them interact.

Whether such digital fingerprints constitute an imminent privacy threat or are simply part of the foundation of advanced computer systems and networks is the subject of a growing debate between the computer industry and privacy groups. At its heart is a fundamental disagreement over the role of electronic anonymity in a democratic society.

Privacy groups argue fiercely that the merger of computers and the Internet has brought the specter of a new surveillance society in which it will be difficult to find any device that cannot be traced to the user when it is used. But a growing alliance of computer industry executives, engineers, law enforcement officials and scholars contend that absolute anonymity is not only increasingly difficult to obtain technically, but is also a potential threat to democratic order because of the possibility of electronic crime and terrorism.

''You already have zero privacy—get over it,'' Scott McNealy, chairman and chief executive of Sun Microsystems, said at a recent news conference held to introduce the company's newest software, known as Jini, intended to interconnect virtually all types of electronic devices from computer to cameras. Privacy advocates contend that software like Jini, which assigns an identification number to each device each time it connects to a network, could be misused as networks envelop almost everyone in society in a dense web of devices that see, hear, and monitor behavior and location.

''Once information becomes available for one purpose there is always pressure from other organizations to use it for their purposes,'' said, Lauren Weinstein, editor of Privacy Forum, an on-line journal.

This week, a programmer in Massachusetts found that identifying numbers can easily be found in word processing and spreadsheet files created with Microsoft's popular Word and Excel programs and in the Windows 95 and 98 operating systems.

Moreover, unlike the Intel serial number, which the computer user can conceal, the numbers used by the Microsoft programs—found in millions of personal computers—cannot be controlled by the user.

The programmer, Richard M. Smith, president of Phar Lap Software, a developer of computer programming tools in Cambridge, Mass., noticed that the Windows operating system contains a unique registration number stored on each personal computer in a small data base known as the Windows registry.

His curiosity aroused, Mr. Smith investigated further and found that the number that uniquely identifies his computer to the network used in most office computing systems, known as the Ethernet, was routinely copied to, each Microsoft Word or Excel document he created.

The number is used to create a longer number, known as a globally unique identifier. It is there, he said, to enable computer users to create sophisticated documents comprising work processing, spreadsheet, presentation and data base information.

Each of those components in a document needs a separate identity, and computer designers have found the Ethernet number a convenient and widely available identifier, he said. But such universal identifiers are of particular concern to privacy advocated because they could be used to compile information on individuals from many data bases.

''The infrastructure relies a lot on serial numbers,'' Mr. Smith said. ''We've let the genie out of the bottle.''

Jeff Ressler, a Microsoft product manager, said that if a computer did not have an Ethernet adapter then another identifying number was generated that was likely to be unique. ''We need a big number, which is a unique identifier,'' he said. ''If we didn't have, it would be impossible to make our software programs work together across networks.''

Indeed, an increasing range of technologies have provisions for identifying their users for either technical reasons (such as connecting to a network) or commercial ones (such as determining which ads to show to Web surfers). But engineers and network designers argue that identify information is a vital aspect of modern security design because it is necessary to authenticate an individual in a network, thereby preventing fraud or intrusion.

Last month at the introduction of Intel's powerful Pentium III chip, Intel executives showed more than a dozen data security uses for the serial number contained electronically in each of the chips, ranging from limiting access to protecting documents or software against piracy.

Intel, the largest chip maker, had recently backed down somewhat after it was challenged by privacy advocates over the identity feature, agreeing that at least some processors for the consumer market would be made in a way that requires the user to activate the feature.

Far from scaling back its vision, however, Intel said it was planning an even wider range of features in its chips to help companies protect copyrighted materials. It also pointed to software applications that would use the embedded number to identify participants in electronic chat rooms on the Internet and thereby, for example, protect children from Internet stalkers.

But in achieving those goals, it would also create a universal identifier, which could be used by software applications to track computer users wherever they surfed on the World Wide Web. And that, despite the chip maker's assertions that it is working to enhance security and privacy, has led some privacy advocates to taunt Intel and accused it of a ''Big Brother Inside'' strategy.

They contend that by uniquely identifying each computer it will make it possible for marketers or Government and law enforcement officials to track the activities of anyone connected to a computer network more closely. They also say that such a permanent identifier could be used in a similar fashion to the data, known as ''cookies,'' that are placed on a computer's hard drive by Web site to track the comings and goings of Internet users.

PUTTING PRIVACY ON THE DEFENSIVE

Intel's decision to forge ahead with identity features in its chip technology may signal a turning point in the battle over privacy in the electronic age. Until now, privacy concerns have generally put industry's executives on the defensive. Now questions are being raised about whether there should be limits to privacy in an Inernet era.

''Judge Brandeis's definition of privacy was 'the right to be left alone,' not the right to operate in absolute secrecy,'' said Paul Saffo, a researcher at the Institute for the Future in Menlo Park, Calif.

Some Silicon Valley engineers and executives say that the Intel critics are being naive and have failed to understand that all devices connected to computer networks require identification features simply to function correctly.

Moreover, they note that identifying numbers have for more than two decades been a requirement for any computer connected to an Ethernet network. (Although still found most widely in office settings, Ethernet connections are increasingly being used for high-speed Internet Service in the home via digital telephone lines and cable modems.)

All of Apple Computer's popular iMac machines come with an Ethernet connection that has a unique permanent number installed in the factory. The number is used to identify the computer to the local network.

While the Ethernet number is not broadcast over the Internet at large, it could easily be discovered by a software application like a Web browser and transmitted to a remote Web site tracking the identities of its users, a number of computer engineers said.

Moreover, they say that other kinds of networks require identify numbers to protect against fraud. Each cellular telephone currently has two numbers: the telephone number, which can easily be changed, and an electronic serial number, which is permanently put in place at the factory to protect against theft or fraud.

The serial number is accessible to the cellular telephone network, and as cellular telephones add Internet browsing and E-mail capabilities, it will potentially have the same

identity capability as the Intel processor serial number.

Other examples include DIVX DVD disks, which come with a serial number that permits tracking the use of each movie by a centralized network-recording system managed by the companies that sell the disks.

FEARING THE MISUSE OF ALL THOSE NUMBERS

Industry executives say that as the line between communications and computing becomes increasingly blurred, every electronic device will require some kind of identification to attach to the network

Making those numbers available to networks that need to pass information or to find a mobile user while at the same time denying the information to those who wish to gather information into vast data bases may be an impossible task.

Privacy advocates argue that even if isolated numbers look harmless, they are actually harbingers of a trend toward ever more invasive surveillance networks.

''Whatever we can do to actually minimize the collection of personal data is good,' said March Rotenberg, director of the Electronic Privacy Information Center, one of three groups trying to organize a boycott of Intel's chips.

The groups are concerned that the Government will require ever more invasive hardware modifications to keep track of individuals. Already they point to the 1994 Communications Assistance for Law Enforcement Act, which requires that telephone companies modify their network switches to make it easier for Government wiretappers.

Also, the Federal Communications Commission is developing regulations that will require every cellular telephone to be able to report its precise location for ''911'' emergency calls. Privacy groups are worried that this feature will be used as a tracking technology by law enforcement officials.

''The ultimate danger is that the Government will mandate that each chip have special logic added'' to track identifies in cyberspace, said Vernor Vinge, a computer scientist at San Diego State University. ''We're on a slide in that direction.''

Mr. Vinge is the author of ''True Names'' (Tor Books, 1984), a widely cited science fiction novel in the early 1980's, that forecast a world in which anonymity in computer networks is illegal.

Intel executives insist that their chip is being misconstrued by privacy groups.

''We're going to start building security architecture into our chips, and this is the first step,'' said Pat Gelsinger, Intel vice president and general manager of desktop products. ''The discouraging part of this is our objective is to accomplish privacy.

That quandry—that it is almost impossible to compartmentalize information for one purpose so that it cannot be misused—lies at the heart of the argument. Moreover providing security while at the same time offering anonymity has long been a technical and a political challenge.

''We need to find ways to distinguish between security and identity,'' said James X. Dempsey, a privacy expert at the Center for Democracy and Technology, a Washington lobbying organization.

So far the prospects are not encouraging. One technical solution developed by a cryptographer, David Chaum, made it possible for individuals to make electronic cash payments anonymously in a network.

In the system Mr. Chaum designed, a user employs a different number with each organization, thereby insuring that there is no universal tracking capability.

But while Mr. Chaum's solution has been widely considered ingenious, it has failed in the marketplace. Last year, his company, Digicash Inc. based in Palo Alto, Calif., filed for bankruptcy protection.

''Privacy never seems to sell,'' said Bruce Schneier, a cryptographer and a computer industry consultant. ''Those who are interested in privacy don't want to pay for it.''

PRIVACY ISN'T DEAD YET

[By Amitai Etzioni]

It seems self-evident that information about your shoe size does not need to be as well guarded as information about tests ordered by your doctor. But with the Federal and state governments' piecemeal approach to privacy protection, if we release information about one facet of our lives, we inadvertently expose much about the others.

During Senate hearings in 1987 about Robert Bork's fitness to serve as a Supreme Court justice, a reporter found out which videotapes Mr. Bork rented. The response was the enactment of the Video Privacy Protection Act. Another law prohibits the Social Security Administration (but hardly anybody else) from releasing our Social Security numbers. Still other laws limit what states can do with information that we provide to motor vehicle departments.

Congress is now seeking to add some more panels to this crazy quilt of narrowly drawn privacy laws. The House recently endorsed a bill to prohibit banks and securities and insurance companies owned by the same parent corporation from sharing personal medical information. And Congress is grappling with laws to prevent some information about our mutual-fund holdings from being sold and bought as freely as hot dogs.

But with superpowerful computers and vast databases in the private sector, personal information can't be segmented in this manner. For example, in 1996, a man in Los Angeles got himself a store card, which gave him discounts and allowed the store to trace what he purchased. After injuring his knee in the store, he sued for damages. He was then told that if he proceeded with his suit the store would use the fact that he bought a lot of liquor to show that he must have fallen because he was a drunkard.

Some health insurers try to ''cherry pick'' their clients, seeking to cover only those who are least likely to have genetic problems or contract costly diseases like AIDS. Some laws prohibit insurers from asking people directly about their sexual orientation. But companies sometimes refuse to insure those whose vocation (designer?), place of residence (Greenwich Village?) and marital status (single at 40-plus?) suggest that they might pose high risks.

Especially comprehensive privacy invaders are ''cookies''—surveillance files that many marketers implant in the personal computers of people who visit their Web sites to allow the marketers to track users' preferences and transactions. Cookies, we are assured, merely inform marketers about our wishes so that advertising can be better directed, sparing us from a flood of junk mail.

Actually, by tracing the steps we take once we gain a new piece of information, cookies reveal not only what we buy (a thong from Victoria's Secret? Antidepressants?) but also how we think. Nineteen eighty-four is here courtesy of Intel, Microsoft and quite a few other corporations.

All this has led Scott McNealy, the chairman and chief executive of Sun Microsystems, to state, ''You already have zero privacy—get over it.'' This pronouncement of the death of privacy is premature, but we will be able to keep it alive only if we introduce general, all-encompassing protections over segmented ones.

Some cyberspace anonymity can be provided by new technologies like anti-cookie programs and encryption software that allow us to encrypt all of our data. Corporate self-regulation can also help. I.B.M., for example, said last week that it would pull its advertising from Web sites that don't have clear privacy policies. Other companies like Disney and Kellogg have voluntarily agreed not to collect information about children 12 or younger without the consent of their parents. And some new Government regulation of Internet commerce may soon be required, if only because the European Union is insisting that any personal information about the citizens of its member countries cannot be used without the citizen's consent.

Especially sensitive information should get extra protection. But such selective security can work only if all the other information about a person is not freely accessible elsewhere.

A MIDDLE GROUND IN THE PRIVACY WAR?

[By John Schwartz—March 29, 1999]

Jim Hightower, the former agriculture commissioner of Texas, is fond of saying that ''there's nothing in the middle of the road but yellow stripes and dead armadillos.''

It's punchy, and has become a rallying cry of sorts for activists on all sides. But is it right? Amitai Etzioni, a professor at George Washington University, thinks not. He thinks he has found a workable middle ground between the combatants in one of the fiercest fights in our high-tech society: the right of privacy.

Etzioni has carved out a place for himself over the decades as a leader in the ''communitarian'' movement. Communitarianism works toward a civil society that transcends both government regulation and commercial intrusion—a society where the golden rule is as important as the rule of law, and the notion that ''he who has the gold makes the rules'' does not apply.

What does all that have to do with privacy? Etzioni has written a new book, ''The Limits of Privacy,'' that applies communitarian principles to this thorny issue.

For the most part, the debate over privacy is carried out from two sides separated by a huge ideological gap—a gap so vast that they seem to feel a need to shout just to get their voices to carry across it. So Etzioni comes in with a theme not often heard, that middle of the road that Hightower hates so much.

What he wants to do is to forge a new privacy doctrine that protects the individual from snooping corporations and irresponsible government, but cedes individual privacy rights when public health and safety are at stake—''a balance between rights and the common good,'' he writes.

In the book, Etzioni tours a number of major privacy issues, passing judgment as he goes along. Pro-privacy decisions that prohibited mandatory testing infants for HIV, for example, take the concept too far and put children at risk, he says. Privacy advocates' campaigns against the government's attempts to wiretap and unscramble encrypted messages, he says, are misguided in the face of the evil that walks the planet.

The prospect of some kind of national ID system, which many privacy advocates view as anathema, he finds useful for catching criminals, reducing fraud and ending the crime of identity theft. The broad distribution of our medical records for commercial gain, however, takes too much away from us for little benefit to society.

I called Etzioni to ask about his book. He said civil libertarians talk about the threat of government intrusion into our lives, and government talks about the threat of criminals, but that the more he got into his research, the more it seemed that the two

sides were missing ''the number one enemy—it's a small group of corporations that have more information about us than the East German police ever had about the Germans.''

He's horrified, for example, by recent news that both Microsoft Corp. and Intel Corp. have included identifier codes in their products that could be used to track people's online habits: ''They not only track what we are doing,'' he says. ''They track what we think.''

His rethinking of privacy leads him to reject the notions that led to a constitutional right of privacy, best expressed in the landmark 1965 case *Griswold v. Connecticut.*

In that case, Justice William O. Douglas found a right of privacy in the ''penumbra,'' or shadow border, of rights granted by other constitutional amendments—such as freedom of speech, freedom from unreasonable search and seizure, freedom from having troops billeted in our homes.

Etzioni scoffs at this ''stretched interpretation of a curious amalgam of sundry pieces of various constitutional rights,'' and says we need only look to the simpler balancing act we've developed in Fourth Amendment cases governing search and seizure, which give us privacy protection by requiring proper warrants before government can tape a phone or search a home.

''We cannot say that we will not allow the FBI under any conditions, because of a cyberpunk dream of a world without government, to read any message.'' He finds such a view ''so ideological, so extreme, that somebody has to talk for a sense of balance.''

I was surprised to see, in the acknowledgements in his book, warm thanks to Marc Rotenberg, who heads the Electronic Privacy Information Center. Rotenberg is about as staunch a privacy advocate as I know, and I can't imagine him finding much common ground with Etzioni—but Etzioni told me that ''Marc is among all the people in this area the most reasonable. One can talk to him.''

So I called Rotenberg, too. He said he deeply respects Etzioni, but can't find much in the book to agree with. For all the talk of balance, he say, ''we have invariably found that when the rights of the individual are balanced against the claims of the community, that the individual loses out.''

We're in the midst of a ''privacy crisis'' in which ''we have been unable to come up with solutions to the privacy challenges that new business practices and new technologies are creating,'' Rotenberg told me.

The way to reach answers, he suggested, is not to seek middle ground but to draw the lines more clearly, the way judges do in deciding cases. When a criminal defendant challenges a policeman's pat-down search in court, Rotenberg explained, ''the guy with the small plastic bag of cocaine either gets to walk or he doesn't. . . . Making those lines fuzzier doesn't really take you any closer to finding answers.''

As you can see, this is one argument that isn't settled. But I'm glad that Etzioni has joined the conversation—both for the trademark civility he brings to it, and for the dialogue he will spark.

Mr. TORRICELLI. Mr. President, I rise today to introduce the Privacy Protection Study Commission Act of 1999 with my colleague, Senator KOHL. This legislation creates a Commission to comprehensively examine privacy concerns. This Commission will provide Congress with information to facilitate our decision making regarding how to best address individual privacy protections.

The rise in the use of information technology—particularly the Internet, has led to concerns regarding the security of personal information. As many as 40 million people around the world have the ability to access the Internet. The use of computers for personal and business transactions has resulted in the availability of vast amounts of financial, medical and other information in the public domain. Information about online users is also collected by Web sites through technology which tracks an individual's every interaction with the Internet.

Despite the ease of availability of personal information, the United States is one of the few countries in the world that does not have comprehensive legal protection for personal information. This is in part due to differences in opinion regarding the best way to address the problem. While some argue that the Internet's size and constantly changing technology demands government and industry self-regulation, others advocate for strong legislative and regulatory protections. And, still others note that such protections, although necessary, could lead to unconstitutional consequences if drafted without a comprehensive understanding of the issue. As a result, congressional efforts to address privacy concerns have been patchwork in nature.

This is why Senator KOHL and I are proposing the creation of a Commission with the purpose of thoughtfully considering the range of issues involved in the privacy debate and the implications of self-regulation, legislation, and federal regulation. The Commission will be comprised of experts in the fields of law, civil rights, business, and government. After 18 months, the Commission will deliver a report to Congress recommending the necessary legislative protections are needed. The Commission will have the authority to gather the necessary information to reach conclusions that are balanced and fair.

Americans are genuinely concerned about individual privacy. The Privacy Commission proposed by Senator KOHL and myself will enable Congress and the public to evaluate the extent to which we should be concerned and the proper way to address those concerns. The privacy debate is multifaceted and I encourage my colleagues to join Senator KOHL and myself in our efforts to gain a better understanding of it. Senator KOHL and I look forward to working with all those interested in furthering this debate and giving Americans a greater sense of confidence in the security of their personal information.

By Mrs. FEINSTEIN:

S. 1902. A bill to require disclosure under the Freedom of Information Act regarding certain persons and records of the Japanese Imperial Army in a manner that does not impair any investigation or prosecution conducted by the Department of Justice or certain intelligence matters, and for other purposes; to the Committee on the Judiciary.

JAPANESE IMPERIAL ARMY DISCLOSURE ACT OF 1999

Mrs. FEINSTEIN. Mr. President, I rise today to introduce the Japanese Imperial Army Disclosure Act of 1999.

This legislation will require the disclosure under the Freedom of Information Act classified records and documents in the possession of the U.S. Government regarding chemical and biological experiments carried out by Japan during the course of the Second World War.

Let me preface my statement by making clear that none of the remarks that I will make in discussing this legislation should be considered anti-Japanese. I was proud to serve as the President of the Japan Society of Northern California, and I have done everything I can to foster, promote, and develop positive relations between Japan, the United States, China, and other states of the region. The legislation I introduce today is eagerly sought by a large number of Californians who believe that there is an effort to keep information about possible atrocities and experiments with poisonous gas and germ warfare from the pubic record.

One of my most important goals in the Senate is to see the development of a Pacific Rim community that is peaceful and stable. I have worked towards this end for over twenty years. I introduce this legislation to try to heal wounds that still remain, particularly in California's Chinese-American community.

This legislation is needed because although the Second World War ended over fifty years ago—and with it Japan's chemical and biological weapons experimentation programs—many of the records and documents regarding Japan's wartime activities remain classified and hidden in U.S. Government archives and repositories. Even worse, according to some scholars, some of these records are now being inadvertently destroyed.

For the many U.S. Army veteran's who were subject to these experiments in POW camps, as well as the many Chinese and other Asian civilians who were subjected to these experiments, the time has long since passed for the full truth to come out.

According to information which was revealed at the International Military Tribunal for the Far East, starting in 1931, when the so-called ''Mukden incident'' provided Japan the pretext for the occupation of Manchuria, the Japanese Imperial Army conducted numerous biological and chemical warfare tests on Chinese civilians, Allied POWs, and possibly Japanese civilians as well.

Perhaps the most notorious of these experiments were carried out under General Ishii Shiro, a Japanese Army surgeon, who, by the late 1930's had built a large installation in China with germ breeding facilities, testing

grounds, prisons to hold the human test subjects, facilities to make germ weapons, and a crematorium for the final disposal of the human test victims. General Ishii's main factory operated under the code name Unit 731.

Based on the evidence revealed at the War Crimes trials, as well as subsequent work by numerous scholars, there is little doubt that Japan conducted these chemical and biological warfare experiments, and that the Japanese Imperial Army attempted to use chemical and biological weapons during the course of the war, included reports of use of plague on the cities of Ningbo and Changde.

And, as a 1980 article by John Powell in the Bulletin of Concerned Asia Scholars found,

> Once the fact had been established that Ishii had used Chinese and others as laboratory tests subjects, it seemed a fair assumption that he also might have used American prisoners, possibly British, and perhaps even Japanese.

Some of the records of these activities were revealed during the Tokyo War Crimes trials, and others have since come to light under Freedom of Information Act requests, but many other documents, which were transferred to the U.S. military during the occupation of Japan, have remained hidden for the past fifty years.

And it is precisely for this reason that this legislation is needed: The world is entitled to a full and compel record of what did transpire.

Sheldon Harris, Professor of History Emeritus at California State university Northridge wrote to me on October 7 of this year that:

> In my capacity as an academic Historian, I can testify to the difficulty researchers have in unearthing documents and personal testimony concerning these war crimes * * *. Here in the United States, despite the Freedom of Information Act, some archives remain closed to investigators * * *. Moreover, ''sensitive documents—as defined by archivists and FOIA officers—are at the moment being destroyed.

Professor Sheldon's letter goes on to discuss three examples of the destruction of documents relating to chemical and biological warfare experiments that he is aware of: At Dugway Proving Grounds in Utah, at Fort Detrick in Maryland, and at the Pentagon.

This legislation establishes, within 60 days after the enactment of the act, the Japanese Imperial Army Records Interagency Working Group, including representation by the Department of State and the Archivist of the United States, to locate, identify, and recommend for declassification all Japanese Imperial Army records of the United States.

This Interagency Work Group, which will remain in existence for three years, is to locate, identify, inventory, recommend for classification, and make available to the public all classified Imperial Army records of the United States. It is to do so in coordination with other agencies, and to submit a report to Congress describing its activities.

It is my belief that the establishment of such an Interagency Working Group is the best way to make sure that the documents which need to be declassified will be declassified, and that this process will occur in an orderly and expeditious manner.

This legislation also includes exceptions which would allow the Interagency Working Group to deny release of records on the basis of: 1. Records which may unfairly invade an individual's privacy; 2. Records which adversely affect the national security or intelligence capabilities of the United States; 3. Records which might ''seriously or demonstrably impair relations between the United States and a foreign government''; and, 4. Records which might contribute to the development of chemical or biological capabilities.

My purpose in introducing this legislation is to help those who were victimized by these experiments and, with the adage ''the truth shall set you free'' in mind, help build a more peaceful Asian-Pacific community for the twenty-first century.

First, the declassification and release of this material will help the victims of chemical and biological warfare experimentation carried out by the Japanese Army during the Second World War, as well as their families and descendants, gain information about what occurred to them fifty years ago. If old wounds are to heal, there must be a full accounting of what happened.

Second, and perhaps just as importantly, this legislation is intended to create an environment of honest dialogue and discussion in the Asia-Pacific region, so that the countries and people of the region can move beyond the problems that have plagued us for the past century, and work together to build a peaceful and prosperous Asian-Pacific community in the next century.

If the countries of Asia are to build a peaceful community it is necessary that we deal fully, fairly, and honestly with the past. It is only by doing so that we can avoid repeating the mistakes of the past and build a more just world for the future.

Indeed, as Rabbi Abraham Cooper has remarked, ''Since the end of World War II, professed neutral nations like Sweden and Switzerland have had the courage to take a painful look back at their World War II record; can Japan be allowed to do anything less?''

I hope that my colleagues will join me in support of this legislation.

Mr. President, I ask unanimous consent that the October 7 letter by Professor Harris and an article outlining some of the scholarly research on this issue: ''Japan's Biological Weapons: 1930–1945,'' by Robert Gromer, John Powell, and Burt Roling be printed in the RECORD.

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

GRANADA HILLS, CA,
October 7, 1999.

Hon. SENATOR DIANNE FEINSTEIN,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: Several Asian American activists organizations in California, and organizations representing former Prisoners of War and Internees of the Japanese Imperial Army, have indicated to me that you are proposing to introduce legislation into the United States Senate that calls for full disclosure by the United States Government of records it possesses concerning war crimes committed by members of the Japanese Imperial Army. I endorse such legislation enthusiastically.

My support for the full disclosure of American held records relating to the Japanese Imperial Army's wartime crimes against humanity is both personal and professional. I am aware of the terrible suffering members of the Imperial Japanese Army imposed upon innocent Asians, prisoners of war of various nationalists and civilian internees of Allied nations. These inhumane acts were condoned, if not ordered, by the highest authorities in both the civilian and military branches of the Japanese government. As a consequence, millions of persons were killed, maimed, tortured, or experienced acts of violence that included human experiments relating to biological and chemical warfare research. Many of these actions meet the definition of ''war crimes'' under both the Potsdam Declaration and the various Nuremberg War Crimes trials held in the post-war period.

I am the author of ''Factories of Death, Japanese Biological Warfare, 1932–45, and the American Cover-up'' (Routlege: London and New York; hard cover edition 1994; paperback printings, 1995, 1997, 1998, 1999). I discovered in the course of my research for this book, and scholarly articles that I published on the subject of Japanese biological and chemical warfare preparations, that members of the Japanese Imperial Army Medical Corps committed heinous war crimes. These included involuntary laboratory tests of various pathogens on humans—Chinese, Korean, other Asian nationalities, and Allied prisoners of war, including Americans. Barbarous acts encompassed live vivisections, amputations of body parts (frequently without the use of anesthesia), frost bite exposure to temperatures of 40–50 degrees Fahrenheit below zero, injection of horse blood and other animal blood into humans, as well as other horrific experiments. When a test was completed, the human experimented was ''sacrificed'', the euphemism used by Japanese scientists as a substitute term for ''killed.''

In my capacity as an academic Historian, I can testify to the difficulty researchers have in unearthing documents and personal testimony concerning these war crimes. I, and other researchers, have been denied access to military archives in Japan. These archives cover activities by the Imperial Japanese Army that occurred more than 50 years ago. The documents in question cannot conceivably contain information that would be considered of importance to ''National Security'' today. The various governments in Japan for the past half century have kept these archives firmly closed. The fear is that the information contained in the archives will embarrass previous governments.

Here in the United States, despite the Freedom of Information Act, some archives remain closed to investigators. At best, the archivists in charge, or the Freedom of Information Officer at the archive in question, select what documents they will allow to become public. This is an unconscionable act of arrogance and a betrayal of the trust they have been given by the Congress and the

President of the United States. Moreover, ''sensitive'' documents—as defined by archivists and FOIA officers—are at the moment being destroyed. Thus, historians and concerned citizens are being denied factual evidence that can shed some light on the terrible atrocities committed by Japanese militarists in the past.

Three examples of this wanton destruction should be sufficiently illustrative of the dangers that exist, and should reinforce the obvious necessity for prompt passage of legislation you propose to introduce into the Congress:

1. In 1991, the Librarian at Dugway Proving Grounds, Dugway, Utah, denied me access to the archives at the facility. It was only through the intervention of then U.S. Representative Wayne Owens, Dem., Utah, that I was given permission to visit the facility. I was not shown all the holdings relating to Japanese medical experiments, but the little I was permitted to examine revealed a great deal of information about medical war crimes. Sometimes after my visit, a person with intimate knowledge of Dugway's operations, informed me that ''sensitive'' documents were destroyed there as a direct result of my research in their library.

2. I conducted much of my American research at Fort Detrick in Frederick, Md. The Public Information Officer there was extremely helpful to me. Two weeks ago I telephoned Detrick, was informed that the PIO had retired last May. I spoke with the new PIO, who told me that Detrick no longer would discuss past research activities, but would disclose information only on current projects. Later that day I telephoned the retired PIO at his home. He informed me that upon retiring he was told to ''get rid of that stuff'', meaning incriminating documents relating to Japanese medical war crimes. Detrick no longer is a viable research center for historians.

3. Within the past 2 weeks, I was informed that the Pentagon, for ''space reasons'', decided to rid itself of all biological warfare documents in its holdings prior to 1949. The date is important, because all war crimes trials against accused Japanese war criminals were terminated by 1949. Thus, current Pentagon materials could not implicate alleged Japanese war criminals. Fortunately, a private research facility in Washington volunteered to retrieve the documents in question. This research facility now holds the documents, is currently cataloguing them (estimated completion time, at least twelve months), and is guarding the documents under ''tight security.''

Your proposed legislation must be acted upon promptly. Many of the victims of Japanese war crimes are elderly. Some of the victims pass away daily. Their suffering should receive recognition and some compensation. Moreover, History is being cheated. As documents disappear, the story of war crimes committed in the War In The Pacific becomes increasingly difficult to describe. The end result will be a distorted picture of reality. As an Historian, I cannot accept this inevitability without vigorous protest.

Please excuse the length of this letter. However, I do hope that some of the arguments I made in comments above will be of some assistance to you as you press for passage of the proposed legislation. I will be happy to be of any additional assistance to you, should you wish to call upon me for further information or documentation.

Sincerely yours,

SHELDON H. HARRIS,
Professor of History emeritus,
California State University, Northridge.

[From the Bulletin of the Atomic Scientists, Oct., 1981]

JAPAN'S BIOLOGICAL WEAPONS: 1930–1945—A HIDDEN CHAPTER IN HISTORY

(By Robert Gomer, John W. Powell and Bert V.A. Röling)

When this story first reached the Bulletin, our reaction was horrified disbelief. I think all of us hoped that it was not true. Unfortunately, subsequent research shows that it is all too true. In order to verify the facts set forth here we enlisted the help of a number of distinguished scientists and historians, who are hereby thanked. It seems unnecessary to mention them by name; suffice it that the allegations set forth in this article seem to be true and there is a substantial file of documents in the Bulletin offices to back them up.

What other comment need one really make? Any reader with a sense of justice and decency will be nauseated, not only by these atrocities, but equally so by the reaction of the U.S. Departments of War and State.

The psychological climate engendered by war is horrible. The Japanese tortured and killed helpless prisoners in search of ''a cheap and effective weapon.'' The Americans and British invented firestorms and the U.S. dropped two nuclear bombs on Hiroshima and Nagasaki. In such a climate it may have seemed reasonable not to bring the Japanese responsible for the biological ''experiments'' to justice, but it was and remains monstrous.

By acquiring ''at a fraction of the original cost'' the ''invaluable'' results of the Japanese experiments, have we not put ourselves on the same level as the Japanese experimenters? Some politicians and generals like to speak of the harsh realities of the world in order to act both bestially and stupidly. The world clearly does contain harsh realities but somehow there is a sort of potential divine justice basic decency generally would have been the smartest course in the long run. Unfortunately there are few instances where it was actually taken.

The spirit and psychological climate which made possible the horrors described in this article are not dead; in fact, they seem to be flourishing in the world. The torture chambers are busy in Latin America and elsewhere, and the United States provides economic and military aid to the torturers. The earth-and-people destroying was waged by the United States not long ago in Vietnam, the apparently similar war being waged by the Soviets in Afghanistan, the horrors of the Pol Pot regime in Cambodia, and the contemplation with some equanimity of ''limited'' nuclear war by strategists here and in the Soviet Union display the spirit of General Ishii. If we are to survive as human beings, or more accurately, if we are to become fully human, that spirit must have no place among men.—Robert Gomer (professor of chemistry at the University of Chicago, and member of the Board of Directors of the Bulletin.)

Long-secret documents, secured under the U.S. Freedom of Information Act, reveal details of one of the more gruesome chapters of the Pacific War; Japan's use of biological warfare against China and the Soviet Union. For years the Japanese and American governments succeeded in suppressing this story.

Japan's desire to hide its attempts at ''public health in reverse'' is understandable. The American government's participation in the cover-up, it is now disclosed, stemmed from Washington's desire to secure exclusive possession of Japan's expertise in using germs as lethal weapons. The United States granted immunity from war crimes prosecution to the Japanese participants, and they in turn handed over their laboratory records to U.S. representatives from Camp Detrick (now Fort Detrick).

The record shows that by the late 1930s Japan's biological warfare (BW) program was ready for testing. It was used with moderate success against Chinese troops and civilians and with unknown results against the Russians. By 1945 Japan had a huge stockpile of germs, vectors and delivery equipment unmatched by any other nation.

Japan had gained this undisputed lead primarily because its scientists used humans as guinea pigs. It is estimated that at least 3,000 people were killed at the main biological warfare experimental station, code named Unit 731 and located a few miles from Harbin. They either succumbed during the experiments or were executed when they had become physical wrecks and were no longer fit for further germ tests [1, pp. 19–21]. There is no estimate of total casualties but it is known that at least two other Japanese biological warfare installations—Unit 100 near Changchun and the Tama Detachment in Nanjing—engaged in similar human experimentation.

(End Notes at end of articles)

This much of the story has been available for some years. What has not been known until very recently is that among the human guinea pigs were an undetermined number of American soldiers, captured during the early part of the war and confined in prisoner-of-war camps in Manchuria. Official U.S. reports reveal that Washington was aware of these facts when the decision was made to forego prosecution of the Japanese participants. These declassified ''top secret'' documents disclose the details and raise disturbing questions about the role of numerous highly placed American officials at the time.

The first public indications that American prisoners of war were among the human victims appeared in the published summary of the Khabarovsk trial. A witness stated that a researcher was sent to the camps where U.S. prisoners were held to ''study the immunity of Anglo-Saxons to infectious diseases'' [1, p. 268]. The summary noted: ''As early as 1943, Minata, a researcher belonging to Detachment 731, was sent to prisoner of war camps to test the properties of the blood and immunity to contagious diseases of American soldiers'' [1, p. 415].

On June 7, 1947, Colonel Alva C. Carpenter, chief of General Douglas MacArthur's legal staff, in a top secret cable to Washington, expressed doubt about the reliability of early reports of Japanese biological warfare, including an allegation by the Japanese Communist Party that experiments had been performed ''on captured Americans in Mukden and that simultaneously research on similar lines was conducted in Tokyo and Kyoto.'' On June 27, Carpenter again cabled Washington, stating that further information strengthened the charges and ''warrants conclusion'' that the Ishii group had violated the ''rules of land warfare.'' He warned that the Soviets might bring up evidence of Japanese use of biological warfare against China and ''other evidence on this subject which may have resulted from their independent investigation in Manchuria and in Japan.'' He added that ''this expression of opinion'' was not a recommendation that Ishii's group be charged with war crimes.

Cecil F. Hubbert, a member of the State, War, Navy Coordinating Committee, in a July 15, 1947 memo, recommended that the story be covered up but warned that it might leak out if the Russian prosecutor brought the subject up during the Tokyo war crimes trials and added that the Soviets might have found out that ''American prisoners of war were used for experimental purposes of a BW nature and that they lost their lives as a result of these experiments.''

In his book, *The Pacific War* Professor Ienaga Saburo added a few new details about Unit 731 and described fatal vivisection experiments at Kyushu Imperial University on downed American fliers [2, pp. 188–90].

The biological warfare project began shortly after the Manchurian Incident in 1931, when Japan occupied China's Northeast provinces and when a Japanese Army surgeon, Ishii Shiro, persuaded his superiors that microbes could become an inexpensive weapon potentially capable of producing enormous casualties [1, pp. 105–107; 3]. Ishii, who finally rose to the rank of lieutenant-general, built a large, self-contained installation with sophisticated germ- and insect-breeding facilities, a prison for the human experimentees, testing grounds, an arsenal for makin germ bombs, an airfield, its own special planes and a crematorium for the human victims.

When Soviet tanks crossed the Siberian-Manchurian border at midnight on August 8, 1945, Japan was less than a week away from unconditional surrender. In those few days of grace the Japanese destroyed their biological warfare installations in China, killed the remaining human experimentees (''It took 30 hours to lay them in ashes [4]'') and ship out most of their personnel and some of the more valuable equipment to South Korea [1, pp. 43, 125, 130–31]. Reports that some equipment was slipped into Japan are confirmed by American documents which reveal that slides, laboratory records and case histories of experiments over many years were successfully transported to Japan [4].

A ''top secret'' cable from Tokyo to Washington on May 6, 1947, described some of the information being secured:

''Statements obtained from Japanese here confirm statements of USSR prisoners. . . Experiments on humans were . . . described by three Japanese and confirmed tacitly by Ishii; field trials against Chinese took place . . . scope of program indicated by report . . . that 400 kilograms [880 lbs.] of dried anthrax organisms destroyed in August 1945. . . . Reluctant statements by Ishii indicate he had superiors (possibly general staff) who . . . authorized the program. Ishii states that if guaranteed immunity from ''war crimes'' in documentary form for himself, superiors and subordinates, he can describe program in detail. Ishii claims to have extensive theoretical high-level knowledge including strategic and tactical use of BW on defense and offense, backed by some research on best agents to employ by geographical areas of Far East, and the use of BW in cold climates'' [5, 6].

A top secret Tokyo headquarters ''memorandum for the record'' (also dated May 6), gave more details: ''USSR interest in Japanese BW personnel arises from interrogations of two captured Japanese formerly associated with BW. Copies of these interrogations were given to U.S. Preliminary investigation[s] confirm authenticity of USSR interrogations and indicate Japanese activity in:

a. Human experiments
b. Field trials against Chinese
c. Large scale program
d. Research on BW by crop destruction
e. Possible that Japanese General Staff knew and authorized program
f. Thought and research devoted to strategic and tactical use of BW.

Data . . . on above topics are of great intelligence value to U.S. Dr. Fell, War Department representative, states that this new evidence was not known by U.S. [6].

Certain low echelon Japanese are now working to assemble most of the necessary technical data. . . . Information to the present have [sic] been obtained by persuasion, exploitation of Japanese fear of USSR and Japanese desire to cooperate with U.S. Additional information . . . probably can be obtained by informing Japanese involved that information will be kept in intelligence channels and not employed for 'war crimes' evidence.

Documentary immunity from ''war crimes'' given to higher echelon personnel involved will result in exploiting twenty years experience of the director, former General Ishii, who can assure complete cooperation of his former subordinates, indicate the connection of the Japanese General Staff and provide the tactical and strategic information'' [7].

A report on December 12, 1947, by Dr. Edwin V. Hill, chief, Basic Sciences, Camp Detrick, Maryland, described some of the technical data secured from the Japanese during an official visit to Tokyo by Hill and Dr. Joseph Victor [8]. Acknowledging the ''wholehearted cooperation of Brig. Gen. Charles A. Willoughby,'' MacArthur's intelligence chief, Hill wrote that the objectives were to obtain additional material clarifying reports already submitted by the Japanese, ''to examine human pathological material which had been transferred to Japan from BW installations,'' and ''to obtain protocols necessary for understanding the significance of the pathological material.''

Hill and Victor interviewed a number of Japanese experts who were already assembling biological warfare archival material and writing reports for the United States. They checked the results of experiments with various specific human, animal and plant diseases, and investigated Ishii's system for spreading disease via aerosol from planes. Dr. Ota Kiyoshi described his anthrax experiments, including the number of people infected and the number who died Ishii reported on his experiments with botulism and brucellosis. Drs. Hayakawa Kiyoshi and Yamanouchi Yujiro gave Hill and Victor the results of other brucellosis tests, including the number of human casualties.

Hill pointed out that the material was a financial bargain, was obtainable nowhere else, and concluded with a plea on behalf of Ishii and his colleagues:

''Specific protocols were obtained from individual investigators. Their descriptions of experiments are detailed in separate reports. These protocols . . . indicate the extent of experimentation with infectious diseases in human and plant species.

Evidence gathered . . . has greatly supplemented and amplified previous aspects of this field. It represents data which have been obtained by Japanese scientists at the expenditure of many millions of dollars and years of work. Information has accrued with respect to human susceptibility to those diseases as indicated by specific infectious doses of bacteria. Such information could not be obtained in our own laboratories because of scruples attached to human experimentation. These data were secured with a total outlay of Y [yen] 250,000 to date, a mere pittance by comparison with the actual cost of the studies.

Furthermore, the pathological material which has been collected constitutes the only material evidence of the nature of these experiments. It is hoped that individuals who voluntarily contributed this information will be spared embarrassment because of it and that every effort will be taken to prevent this information from falling into other hands.''

A memo by Dr. Edward Wetter and Mr. H.I. Stubblefield, dated July 1, 1947, for restricted circulation to military and State Department officials also described the nature and quantity of material which Ishii was beginning to supply, and noted some of the political issues involved [9]. They reported that Ishii and his colleagues were cooperating fully, were preparing voluminous reports, and had agreed to supply photographs of ''selected examples of 8,000 slides of tissues from autopsies of humans and animals subjected to BW experiments.'' Human experiments, they pointed out, were better than animal experiments:

''This Japanese information is the only known source of data from scientifically controlled experiments showing the direct effect of BW agents on man. In the past it has been necessary to evaluate the effects of BW agents on man from data obtained through animal experimentation. Such evaluation is inconclusive and far less complete than results obtained from certain types of human experimentation.''

Wetter and Stubblefield also stated that the Soviet Union was believed to be in possession of ''only a small portion of this technical information'' and that since ''any 'war crimes' trial would completely reveal such data to all nations, it is felt that such publicity must be avoided in the interests of defense and national security of the U.S.'' They emphasized that the knowledge gained by the Japanese from their human experiments ''will be of great value to the U.S. BW research program'' and added: ''The value to U.S. of Japanese BW data is of such importance to national security as to far outweigh the value accruing from war crimes prosecution.''

A July 15 response to the Wetter-Stubblefield memo by Cecil F. Hubbert, a member of the State, War, Navy Coordinating Committee, agreed with its recommendations but warned of potential complications because ''experiments on human beings . . . have been condemned as war crimes by the International Military Tribunal'' in Germany and that the United States ''is at present prosecuting leading German scientists and medical doctors at Nuremberg for offenses which included experiments on human beings which resulted in the suffering and death of most of those experimented upon'' [10].

Hubbert raised the possibility that the whole thing might leak out if the Soviets were to bring it up in cross-examining major Japanese war criminals at the Tokyo trial and cautioned:

''It should be kept in mind that there is a remote possibility that independent investigation conducted by the Soviets in the Mukden area may have disclosed evidence that American prisoners-of-war were used for experimental purposes of a BW nature and that they lost their lives as a result of these experiments.''

Despite these risks, Hubbert concurred with the Wetter-Stubblefield recommendation that the issue be kept secret and that the Japanese biological warfare personnel be given immunity in return for their cooperation. He suggested some changes for the final position paper, including the following casuistry: ''The data on hand . . . does not appear sufficient at this time to constitute a basis for sustaining a war crimes charge against Ishii and/or his associates.''

Hubbert returned to the subject in a memorandum written jointly with E.F. Lyons, Jr., a member of the Plans and Policy Section of the War Crimes Branch. This top secret document stated, in part:

''The Japanese BW group is the only known source of data from scientifically controlled experiments showing direct effects of BW agents on humans. In addition, considerable valuable data can be obtained from this group regarding BW experiments on animals and food crops. . . .

Because of the vital importance of the Japanese BW information . . . the Working Group, State-War-Navy Coordinating Sub-

committee for the Far East, are in agreement that the Japanese BW group should be informed that this Government would retain in intelligence channels all information given by the group on the subject of BW. This decision was made with full consideration of and in spite of the following:

(a) That its practical effect is that this Government will not prosecute any members of the Japanese BW group for War Crimes of a BW nature.

(b) That the Soviets may be independent investigation disclose evidence tending to establish or connect Japanese BW activities with a war crime, which evidence the Soviets may attempt to introduce at the International Military Trial now pending at Tokyo.

(c) That there is a remote possibility that the evidence which may be disclosed by the Soviets would include evidence that American prisoners of war were used for experimental purposes by the Japanese BW group'' [11].

In the intervening years the evidence that captured American soldiers were among the human guinea pigs used by Ishii in his lethal germ experiments remained ''closely held'' in the top echelons of the U.S. government. A ''confidential'' March 13, 1956, Federal Bureau of Investigation internal memorandum, addressed to the ''Director, FBI (105–12804)'' from ''SAC, WFO (105–1532)'' stated in part:

''Mr. James J. Kelleher, Jr., Office of Special Operations, DOD [Department of Defense], has volunteered further comments to the effect that American Military Forces after occupying Japan, determined that the Japanese actually did experiment with ''BW'' agents in Manchuria during 1943–44 using American prisoners as test victims. . . . Kelleher added that . . . information of the type in question is closely controlled and regarded as highly sensitive.''

It is perhaps not surprising that it has taken so long for the full story to be revealed. Over the years fragments have occasionally leaked out, but each time were met with denials, initially by the Japanese and later by the United States. During the Korean War when China accused the United States of employing updated versions of Japan's earlier biological warfare tactics, not only were the charges denied, but it was also claimed that there was no proof of the earlier Japanese actions.

At the time of the Khabarovsk trial, the United States was pressing the Soviet Union to return thousands of Japanese prisoners held in Siberian labor camps since the end of World War II. When news of the trial reached Tokyo, it was dismissed as ''propaganda.'' William J. Sebald, MacArthur's diplomatic chief, was quoted in a United Press story in the Nippon Times on December 29, 1949, as saying the story of the trial might just be fiction and that it obviously was a ''smoke screen'' to obscure the fact that the Soviets had refused to account for the missing Japanese prisoners.

It is possible that some of Ishii's attacks went undetected, either because they were failures or because the resulting outbreaks of disease were attributed to natural causes by the Chinese. However, some were recognized. Official archives of the People's Republic of China list 11 cities as subjected to biological warfare attacks, while the number of victims of artificially disseminated plague alone is placed at approximately 700 between 1940 and 1944 [12, p. 11].

A few of the Chinese allegations received international press coverage at the time. The Chinese Nationalists claimed that on October 27, 1940, plague was dropped on Ningbo, a city near Shanghai. The incident was not investigated in a scientific way, but the observed facts aroused suspicion. Something was seen to come out of a Japanese plane. Later, there was a heavy infestation of fleas and 99 people came down with bubonic plague, with all but one dying. Yet the rats in the city did not have plague, and traditionally, outbreaks of plague in the human population follow an epizootic in the rat population.

In the next few years a number of other Japanese biological warfare attacks were alleged by the Chinese. Generally, they were based on similar cause and effect observations. One incident, however, was investigated with more care.

On the morning of November 4, 1941, a Japanese plane circled low over Changde, a city in Hunan Province. Instead of the usual cargo of bombs, the plane dropped grains of wheat and rice, pieces of paper and cotton wadding, which fell in two streets in the city's East Gate District. During the next three weeks six people living on the two streets died, all with symptoms suggesting plague. Dr. Chen Wen-kwei, a former League of Nations plague expert in India, arrived with a medical team just as the last victim died. He performed the autopsy, found symptoms of plague which were confirmed by culture and animal tests. Again, there was no plague outbreak in the rat population [12, pp. 195–204].

On March 31, 1942, the Nationalist government stated that a follow-up investigation by Dr. Robert K.S. Lim, Director of the Chinese Red Cross, and Dr. R. Politzer, internationally known epidemiologist and former member of the League of Nations Anti-Epidemic Commission, who was then on a wartime assignment to the Chinese government, had confirmed Chen's findings.

Western reaction to the Chinese charges was mixed. Harrison Forman of the New York Times, and Dr. Thomas Parran, Jr., the U.S. Surgeon-General, thought the Chinese had made a case. But U.S. Ambassador Clarence E. Gauss was uncertain in an April 11, 1942, cable to the State Department, while Dr. Theodor Rosebury, the well-known American bacteriologist, felt that failure to produce plague bacilli from cultures of the material dropped at Changde weakened the Chinese claim [13, pp. 109–10]. Chen's full report, in which he suggested that it was fleas that were infected rather than the other material, was not made readily available by the Nationalist government.

Later disclosures of Japanese techniques would support Chen's reasoning: Fleas, after being fed on plague-infected rats, were swaddled in cotton and wrapped in paper, while grain was included in the mix in the hope that it would attract rats so that the fleas would find a new host to infect and thus start a ''natural'' epidemic.

At the December 1949 Soviet trial at Khabarovsk evidence was produced supporting the Nationalist Chinese biological warfare charges [14]. Witnesses testified that films had been made of some tests, including the 1940 attack on Ningbo. Japanese witnesses and defendants confirmed other biological warfare attacks, such as the 1941 Changde incident. Military orders, railroad waybills for shipment of biological warfare supplies, gendarmerie instructions for sending prisoners to the laboratories, and other incriminating Japanese documents were introduced in evidence [1, pp. 19–20, 23–24].

Describing the operation of Unit 731, the main biological warfare installation, located outside Harbin, the transcript summary stated: ''Experts have calculated . . . that it was capable of breeding, in the course of one production cycle, lasting only a few days, no less than 30,000,000 billion microbes. . . . That explains why . . . bacteria quantities [are given] in kilograms, thus referring to the weight of the thick, creamy bacteria mass skimmed directly from the surface of the culture medium [1, pp. 13–14].

Total bacteria production capacity at this one unit was eight tons per month [1, pp. 266–67].

Euphemistically called a ''water purification unit,'' General Ishii's organization also worked on medical projects not directly related to biological warfare. In the Asian countries it overran, the Japanese Army conscripted local young women to entertain the troops. The medical difficulties resulting from this practice became acute. In an effort to solve the problem, Chinese women confined in the detachment's prison ''were infected with syphillis with the object of investigating preventive means against this disease. [1, p. 357].

Another experiment disclosed at the Khabarovsk trial was the ''freezing project.'' During extremely cold winter weather prisoners were led outdoors:

''Their arms were bared and made to freeze with the help of an artificial current of air. This was done until their frozen arms, when struck with a short stick, emitted a sound resembling that which a board gives out when it is struck'' [1, pp. 289, 21–22, 357–58].

Once back inside, various procedures for thawing were tried. One account of Unit 731's prison, adjacent to the laboratories, described men and women with rotting hands from which the bones protruded—victims of the freezing tests. A documentary film was made of one of the experiments.

Simulated field tests were carried out at Unit 731's Anta Station Proving Ground. Witnesses described experiments in which various infecting agents were used. Nishi Toshihide, Chief of the Training Division, testified:

''In January 1945 . . . I saw experiments in inducing gas gangrene, conducted under the direction of the Chief of the 2nd Division, Col. Ikari, and researcher Futaki. Ten prisoners . . . were tied facing stakes, five to ten metres apart. . . . The prisoners' heads were covered with metal helmets, and their bodies with screens . . . only the naked buttocks being exposed. At about 100 metres away a fragmentation bomb was exploded by electricity. . . . All ten men were wounded . . . and sent back to the prison. . . . I later asked Ikari and research Futaki what the results had been. They told me that all ten men had . . . died of gas gangrene.'' [1, pp. 289–90].

Among the many wartime recollections published by Japanese exservicemen are a few by former members of Unit 731 [15]. Akiyama Hiroshi told his story in two magazine articles and Kimura Bumpei, a former captain, has published his memoirs [16]. Sakaki Ryohei, a former major, has described how plague was spread by air-dropping rats and voles and has given details of the flea ''nurseries'' developed by Ishii for rapid production of millions of fleas [17].

A more dramatic confirmation of Ishii's work was an hour-long Japanese television documentary produced by Yoshinaga Haruko and shown by the Tokyo Broadcasting System. A Washington Post dispatch on November 19, 1976, reported:

''In the little-publicized television documentary on the germ warfare unit, Yoshinaga laid bare secrets closely held in Japan during and since the war. . . . [She] traveled throughout Japan to trace down 20 former members of the wartime unit. . . . Four of the men finally agreed to help, and the reporter found their testimony dovetailed with reports of war crime trials held in the Soviet Union.''

Some of those interviewed by Yoshinaga claimed that they had told their stories to American authorities. Eguchi said that he ''was the second to be ordered to G.H.Q. [General Headquarters]'' and ''they took a

record'' of his testimony. Takahashi, an ex-surgeon and Army major, stated: ''I went to the G.H.Q. twice in 1947. Investigators made me write reports on the condition that they will protect me from the Soviets.'' Kumamoto, an ex-flight engineer, said that after the war General Ishii went to America and ''took his research data and begged for remission for us all'' [4].

Declassified position papers indicate a difference of opinion on how to deal with the question of immunity. The War Department favored acceding to Ishii's demands for immunity in documentary form. The State Department, however, cautioned against putting anything in writing which might later cause embarrassment, arguing that if the Japanese were told the information would be kept in classified intelligence channels that would be sufficient protection. In any event, a satisfactory arrangement apparently was worked out as none of the biological warfare personnel was subsequently charged with war crimes and the United States obtained full details of Japan's program.

The Japanese experts who, Dr. Hill hoped, would ''be spared embarrassment,'' not only used their human guinea pigs in experiments to determine lethal dosages but on occasion—in their pursuit of exact scientific information—made certain that the experimentees did not survive. A group would be brought down with a disease and, as the infection developed, individuals would be selected out of the group and killed. Autopsies were then performed, so that the progress of the disease could be ascertained at various time-frames.

General Kitano Masaji and Dr. Kasahara Shiro revealed this practice in a report prepared for U.S. officials describing their work on hemorrhagic fever:

''Subsequent cases were produced either by blood or blood-free extracts of liver, spleen or kidney derived from individuals sacrificed at various times during the course of the disease. Morphine was employed for this purpose'' [18].

Kitano and Dr. Kasahara Yukio described the ''sacrificing'' of a human experimentee when he apparently was recovering from an attack of tick encephalitis:

''Mouse brain suspension . . . was injected . . . and produced symptoms after an incubation period of 7 days. Highest temperature was 39.8° C. This subject was sacrificed when fever was subsiding, about the 12th day.''

Clearly, U.S. biological warfare experts learned a lot from their Japanese counterparts. While we do not yet know exactly how much this information advanced the American program, we have the Fort Detrick doctors' testimony that it was ''invaluable.'' And it is known that some of the biological weapons developed later were at least similar to ones that had been part of the Japanese project. Infecting feathers with spore diseases was one of Ishii's achievements and feather bombs later became a weapon in America's biological warfare arsenal [19].

Dr. Leroy D. Fothergill, long-time scientific advisor to the U.S. Army's Biological Laboratories at Fort Detrick, once speculated upon some of the possible spin-off effects of a biological warfare attack:

''Everything that breathes in the exposed area has an opportunity to be exposed to the agent. This will involve vast numbers of mammals, birds, reptiles, amphibians, and insects. . . . Surveys have indicated surprising numbers of wild life inhabiting each square mile of countryside. It is possible that many species would be exposed to an agent for the first time in their evolutionary history . . . Would it create the basis for possible genetic evolution of microorganisms in new directions with changes in virulence of some species? Would it establish public health and environmental problems that are unique and beyond our present experience?'' [20].

Perhaps President Richard Nixon had some of these things in mind when, on November 25, 1969, he renounced the use of biological warfare, declaring:

''Biological weapons have massive unpredictable and potentially uncontrollable consequences. They may produce global epidemics and impair the health of future generations. I have therefore decided that the U.S. shall renounce the use of lethal biological agents and weapons, and all other methods of biological warfare'' [21].

Some research on defensive aspects was permitted by the ban. The line between defense and offense is admittedly a thin one. Nearly a year after the Nixon renunciation of biological warfare, Seymour Hersh wrote that the programs the Army wanted to continue ''under defensive research included a significant effort to develop and produce virulent strains of new biological agents, then develop defenses against them. 'This sounds very much like what we were doing before,' one official noted caustically'' [22].

There is a difference of opinion among observers as to whether the United States and other major powers have indeed given up on biological warfare. Some believe the issue is a matter of the past. However, its history has been so replete with deception that one cannot be sure. One thing seems certain: The story did not end with Japan's use of biological war fare against China; there are additional chapters to be written.

Available documents do not reveal whether anyone knows the names of any of the thousands of Chinese Mongolians, Russians, ''half-breeds'' and Americans whose lives were prematurely ended by massive doses of plague, typhus, dysenteries, gas gangrene, typhoid, hemorrhagic fever, cholera, anthax, tularemia, smallpox, tsutsugamushi and glanders; or by such grotesqueries as being pumped full of horse blood; having their livers destroyed by prolonged exposure to X-rays or being subjected to vivisection.

It is known, however, that because of the ''national security'' interests of the United States, General Ishii and many of the top members of Unit 731 lived out their full lives, suffering only the natural afflictions of old age. A few, General Kitano among them, enjoyed exceptional good health and at the time of writing were living in quiet retirement.

GENERAL HEADQUARTERS, SUPREME COMMANDER FOR THE ALLIED POWERS,

Mar 27, 47.

BRIEF FOR THE CHIEF OF STAFF

1. This has to do with Russian requests for transfer of the former Japanese expert in Bacteriological Warfare.

2. The United States has primary interest, has already interrogated this man and his information is held by the U.S. Chemical Corps classified as TOP SECRET.

3. The Russian has made several attempts to get at this man. We have stalled. He now hopes to make his point by suddenly claiming the Japanese expert as a war criminal.

4. Joint Chiefs of Staff direct that this not be done but concur in a SCAP controlled interrogation requiring expert assistance not available in FEC.

5. This memorandum recommends:

a. Radio to WD for two experts.

b. Letter to USSR refusing to turn over Japanese expert.

c. Check Note to International Prosecution Section initiating action on the JCS approved interrogations.

WAR DEPARTMENT,
CLASSIFIED MESSAGE CENTER,
CFE Tokyo Japan (Carpenter Legal Section).

Reurad WAR 80671, 22nd June 47, held another conference with Tavenner of IPS who reports following.

One on 27th October 1940 Japanese planes scattered quantities of wheat grain over Ningpo. Epidemic of bubonic plague broke out 29th October 40. Karazawai affidavit in para 3 below confirms this as Ishii Detachment experiment. 97 plague fatalities.

2. Strong circumstantial evidence exists of use of bacteria warfare at Chuhsien, Kinghwa and Changteh. At Chuhsien Japanese planes scattered rice and wheat grains mixed with fleas on 4th October 1940. Bubonic plague appeared in same area on 12th November. Plague never occurred in Chuhsien before occurrence. Fleas were not properly examined to determine whether plague infected. At Kinghwa, located between Ningpo and Chupuien, 3 Japanese planes dropped a large quantity of small granules on 28th November 1940. Microscopic examination revealed presence of numerous gram-negative bacilli possessing * * *.

* * * * *

A JUDGE'S VIEW

(By Bert V.A. Röling)

As one of the judges in the International Military Tribunal for the Far East, it is a bitter experience for me to be informed now that centrally ordered Japanese war criminality of the most disgusting kind was kept secret from the Court by the U.S. government. This Japanese war criminality consisted, in part, of using human beings, prisoners of war, Chinese as well as American, as ''guinea pigs'' in an endeavor to test the impact of specific biological warfare weapons. Research on and production of these weapons was not forbidden at that time. The Protocol of Geneva, 1925, forbade their use only in battle. But to use human beings for biological experiments, causing the death of at least 3,000 prisoners of war, was among the gravest war crimes.

The first information about these Japanese atrocities became known through the trial at Khabarovsk, December 25 to 30, 1949. I remember reading about it [1], and not believing its contents. I could not imagine that these things had happened, without the Court in Tokyo being informed. According to the book about the trial all the facts were transmitted to the chief prosecutor, Joseph B. Keenan. But some of the information was incorrect. The book mentions that the Military Tribunal was informed of the wicked experiements done by the Tama division in Nanking, and that it requested the American prosecution to submit more detailed proof [1, p. 443]. Such Court procedures would not have been in conformity with Anglo-Saxon practice. It is more likely that the information was given to the chief prosecutor.

A further feature of the Khabarovsk book is the strange character of the confessions made by the accused. Some are quoted as saying that they acted upon the special secret orders of the Japanese emperor [1, pp. 10, 519]. This was bound to cause doubts about its credibility. The emperor does not give orders to perform specific military acts. Everything that is ordered by the government and its officials is ''in the name of the emperor.'' But his role is remarkable in that he may not make decisions; he has only to confirm decisions of the government. The ''imperial will is decisive, but it derives wholly from the government and the small circle around the throne. Titus stresses the

''ratification function'' of the reached consensus [2, p. 321]. It is clear that this imperial confirmation gives a decision an exceptional authority: the command of the emperor is obeyed. In fact, however, the emperor has a kind of loud-speaker function. He is heard, and obeyed, but he speaks only on the recommendation of the government.

Very seldom does the emperor act in a personal manner. One such occasion was his criticism of the behavior of the Japanese army in Manchuria (the so-called Manchurian Incident). Another related to his role in connection with the capitulation at the end of World War II. Despite the atomic bombs and the entry of the Soviet Union into the war, the cabinet was divided and could not come to a decision because the military members refused to surrender. Their motivation: the existence of the imperial system was not sufficiently guaranteed. In a very exceptional move, the emperor was brought in to make the decision. He took the risk, and decided for immediate capitulation.

Thus the emphasis on the personal secret involvement of the emperor in the Khabarovsk trial account make it appear untrustworthy. The whole setup could be perceived as a source of arguments in favor of indicting the emperor. I remember at that time, writing to show the danger of national postwar judgments which could easily be misused for political purposes, and giving the Khabarovsk trial as an example. I must state now that the Japanese misbehavior as described in the judgment, has been confirmed by the recently disclosed American documents.

Immunity from prosecution was granted in exchange for Japanese scientific findings concerning biological weapons, based on disgusting criminal research on human beings. We learn from these documents that it was considered a bargain: almost for nothing, information was obtained that had cost millions of dollars and thousands of human lives. The American authorities were worrying only about the prospect of the human outcry in the United States, which surely would have taken place if the American people had been informed about this ''deal.''

The security that surrounds the military makes it possible for military behavior to deviate considerably from the prevailing public standard, but it is a danger to society when such deviation takes place. It leads gradually to contempt for the military, as witness the public attitude in connection with military behavior in the Vietnam war. The kind of military behavior that occurred in connection with the Japanese biological weapon atrocities can only contribute further to this attitude.

Respect for what the Nuremberg judgment called ''the honorable profession of arms'' is needed. Military power is still indispensable in our present world to provide for peace and security, so it is desirable for it to be held in high esteem. Power which is despised may become dangerous. Moreover, only if the military is regarded with respect, will it attract the personnel it should have.

The same is true of diplomatic service, which needs national and international respect. This respect will disappear if the service indulges in subversive activities, as the U.S. diplomatic mission did in Iran. That diplomatic misbehavior in Iran led to developments—the hostage crisis—which were disastrous for the whole world.

The documents which have come to light inform us also of the use of biological weapons in the war against the Chinese people. The criminal warfare was not mentioned in the Tokyo indictment, and not discussed before the Military Tribunal. It was kept secret from the world. The immunity granted to the Japanese war criminals covered not only deadly research on living persons, but also the use of biological weapons against the Chinese. And all this so that the United States could obtain exclusive access to the information, gained at the cost of thousands of human lives.

Knowledge about what kind of bargain was being struck in the biological weapons area may strengthen the perception of the repulsiveness of war. It may also show the danger of moral depravity, in peacetime, within the circles that have the instruments of military power in their hands.

END NOTES

1. Materials on the Trial of Former Servicemen of the Japanese Army Charged with Manufacturing and Employing Bacteriological Weapons (Moscow: Foreign Languages Publishing House, 1950), pp. 19–21. This volume is a summary of the transcript of the Soviet trial in Khabarovsk, Siberia, Dec. 20–25, 1949, of 12 captured Japanese Army personnel charged with participation in the biological warfare program. For a later reference to the program see Outline History of Science and Technology in Japan, (''Nihon Kagaku Gijutsu-shi Taikei''), Vol. 25 (Medicine 2, 1967), pp. 309–10. This account states that the biological warfare program was organized in 1933 and that ''for special research on bacteria, members of the epidemic-prevention section shall be sent to Manchuria.'' It also stated that little was known about the program after the war since all records were said to have been destroyed and that the only evidence was that produced at the Khabarovsk trial. It did add, however, that there were reports that General Ishii had avoided prosecution by turning over his materials to U.S. authorities. I have not seen this volume and am indebted to John Dower, of the University of Wisconsin, who supplied the citation.

2. Ienaga Saburo, The Pacific War (New York: Pantheon, 1978).

3. Although most U.S. documents and the Soviet trial summary give Ishii credit for originating the biological warfare program, it is possible that he was only the chosen instrument. There are references indicating interest in the program at higher levels. The ''staff officer'' of Ishii's Operations Division was Lieutenant Colonel Miyata, who in real life was Prince Takeda [1, p. 40]. Ishii's friend at court was Gen. Nagata Tetsuzan, long Japan's top military man [1, pp. 106, 295], while the orders establishing the two original units were reputedly issued by the Emperor [1, pp. 10, 104, 413].

4. ''A Bruise—Terror of the 731 Corps,'' Tokyo Broadcasting System television documentary, produced by Yoshinaga Haruko, shown Nov. 2, 1976. It has also been screened in Europe but not in the United States. However, the Washington Post (Nov. 19, 1976) carried a lengthy news story describing the film. In an interview with Post reporter John Saar, Yoshinaga said five former members of the biological warfare unit told her they were promised complete protection in return for cooperation with U.S. authorities. ''All the important documents were given to the United States,'' she said.

5. This ''top secret'' cable [C–52423] also reveals that the first of the biological warfare experts to be sent from Washington to Japan had already arrived, referring to ''Dr. Norbert H. Fell's letters via air courier to General Alden C. Waitt,'' who was then chief of the U.S. Army Chemical Corps.

6. Cable from Washington to Tokyo on April 2, 1947, stating that Fell would leave for Japan on April 5. A cable from Tokyo to the War Department on June 30, 1947, warns that an ''aggressive prosecution will adversely affect U.S. interests'' and urges that Fell (presumably now returned to Washington) be shown recent cables because he is an expert and can appreciate the value of the Japanese BW material.

7. Top secret Memorandum for the Record (May 6, 1947) indicated it was in response to ''War Department Radio W–94446 & SWNCC 351/1 and was signed ''RPM 26–6166''.

8. ''Summary Report on B.W. Investigations.'' Dated Dec. 12, 1947, and addressed to General Alden C. Waitt.

9. Dated july 1, 1947, and titled, ''Interrogation of Certain Japanese by Russian Prosecutor,'' this memo also lists some of the material already obtained, including a ''60 page report'' covering experiments on humans and notes that other data confirms, supplements and complements U.S. research and ''may suggest new fields for future research.'' Record Group No. 153, National Archives.

10. This July 15, 1947, memo is addressed to Commander J.B. Cresap and signed ''Cecil F. Hubbert, member working party (SWNCC 351/2/D).''

11. Undated and titled ''SFE 182/2,'' it was part of National Archives Record Group No. 153.

12. ''Report of the International Scientific Commission for the Investigation of the Facts Concerning Bacterial Warfare in Korea and China,'' Peking, 1952.

13. Theodor Rosebury, Peace or Pestilence (New York: McGraw-Hill, 1949).

14. In order to ascertain the Nationalist position on this issue after the passage of some 40 years, I checked with Taipei and am grateful to Lieutenant General Teng Shu-wei, of the Nationalist Defense Ministry's Medical Bureau, who searched the Taiwan archives. His report is in substantial agreement with the records of the People's Republic in Beijing, although less complete.

15. Bungei Shunjū, Aug. 1955; Jimbutsu Ōhrai (July 10, 1956).

16. ''Terrible Modern Strategic War'' by Kimura Bumpei. I have not seen this book and am relying upon a brief description of it contained in a March 31, 1959, letter from Tokyo attorney Morikawa Kinju to A.L. Wirin, chief counsel of the American Civil Liberties Union in Los Angeles.

17. Sunday Mainichi, No. 1628 (Jan. 27, 1952).

18. ''Songo-Epidemic Hemorrhagic Fever,'' report dated Nov. 13, 1947, based on interview with General Kitano Masaji and Dr. Kasahara Shiro.

19. ''Feathers as Carriers of Biological Warfare Agents,'' Biological Department, Chemical Corps So and C Divisions (Dec. 15, 1950).

20. Leroy D. Fothergill, M.D., ''Biological Warfare: Nature & Consequences,'' Texas State Journal of Medicine (Jan. 1964).

21. New York Times (Nov. 26, 1969).

22. Washington Post (Sept. 20, 1970).

This article is based, in part, on an article by the author in Bulletin of Concerned Asian Scholars (P.O. Box W, Charlemont, MA 01339), 12:4, pp. 2–15.

By Mr. SHELBY (for himself and Mr. BRYAN):

S. 1903. A bill to amend the privacy provisions of the Gramm-Leach-Bliley Act; to the Committee on Banking, Housing, and Urban Affairs.

CONSUMER'S RIGHT TO FINANCIAL PRIVACY ACT

Mr. SHELBY. Mr. President, I rise today to offer the ''Consumer's Right to Financial Privacy Act'' for myself and Senator BRYAN. This bill would address the significant deficiencies in the Financial Services Modernization Act passed by this very body last week.

Our bill would provide that consumers have (1) notice of the categories

of nonpublic personal information that institutions collect, as well as the practices and policies of that institution with respect to disclosing nonpublic information; (2) access to the nonpublic personal information collected and shared; (3) affirmative consent, that is that the financial institution must receive the affirmative consent of the consumer, also referred to as an opt-in, in order to share such information with third parties and affiliates. Lastly, my provision would require that this federal law not preempt stronger state privacy laws. This bill is drafted largely after the amendment Senator BRYAN and I offered in the Conference on Financial Services Modernization, but failed to get adopted due to the Conference's rush to pass a financial modernization bill, no matter what the cost.

I know some think that opt-in is extreme, but I have to tell you that is what the American people want. Over the past year I have learned a great deal about the activities of institutions sharing sensitive personal information. Many may not be aware, but it had become a common practice for state department of motor vehicles to sell the drivers license information, including name, height, weight, social security number, vehicle identification number, motor vehicle record and more. Some states even sold the digital photo image of each driver's license.

I was not aware of this practice going on. When I learned about it and studied it a little closer, I found several groups who were outraged by this practice. One such group was Eagle Forum. Another such group was the ACLU. Still another group was the Free Congress Foundation. Before I knew it, there was an ad hoc coalition of groups not only supporting the issue of driver's license privacy, but demanding it.

Thanks to the hard work of these groups, I was able to include an opt-in provision for people applying for drivers licenses at their state department of motor vehicles. That provision sailed through the Senate and then the House. That bill was signed into law by President Clinton. Despite significant lobbying by the direct marketing industry, not one member of the House or Senate took to the floor and said, ''I believe we should not allow consumers to choose whether or not their drivers license information, including their picture, should be sold or traded away like an old suit.'' No, no one objected to the opt-in. As a result, I believe very strongly that Congress has already set the bar on this issue. Opt-in is not just reasonable, it is the right thing to do.

Meanwhile, the ad hoc coalition, which is continuing to grow and includes every ideology from conservative to liberal, has signed on to four basic principles with regard to financial privacy. The principles include notice, access and consent, but also a requirement that weak federal laws not preempt stronger state laws. Our amendment incorporates those four basic principles.

Now my basic question is this, why would anyone oppose this bill? Only if you believe the financial services industry cannot make money by doing business above the table and on the level for everyone to see in the ''sunshine'' if you will. If you believe that financial institutions make money only by deceiving their customers or leaving those customers in the dark, then maybe you should oppose this bill. I do not subscribe to such a belief.

Industry will tell you that if they are required to include an opt-in, consumers will not, and therefore business will shut down. What does that tell you that consumers won't choose to opt-in? It means people don't want their information shared. If that is such a problem, it seems to me the business would spend more time educating the consumer as to the benefits of information sharing. That is where the burden to convince the consumer to buy the product should be—on the business.

During the financial modernization debate, the financial industry, along with Citigroup communicated to Congress that they would not be able to operate or function appropriately with an opt-in requirement. I find that very difficult to comprehend, seeing as Citibank signed an agreement with their German affiliates in 1995 affording German citizens the opportunity to tell Citibank ''no,'' they did not want their personal data shared with third parties. I have a copy of the contract to prove it.

Entitled, Agreement on ''Interterritorial Data Protection'' one can see this is an agreement on the sharing of customer information between Citibank (South Dakota), referred in the document as CNA, and its German affiliates. On page two paragraph 4, entitled, Use of Subcontractors, Transmission of Data to Third Parties, number 2 reads:

For marketing purposes, the transfer of personal data to third parties provided by the Card Service Companies (that is Citicorp of Germany and Citicorp Card Operations of Germany) is prohibited, except in those cases where such personal data is transferred to affiliated companies engaged in banking business in order to market financial services; the transfer of such data beyond the aforementioned scope to third parties, shall require the Card Service Companies' express approval. Such approval is limited to the scope of the Card Customers' consent as obtained on the application form.

That ladies and gentlemen, is an opt-in to operate in Germany, by none other than Citigroup, the number one proponent of financial modernization. Now if they can offer financial privacy to individuals in Germany, why on God's green earth can't they agree to an opt-in here in America? Do Germans have special rights over Americans? I should hope not.

Mr. President, simply put, this bill is what Americans want. This bill is workable as proven in the Citicorp agreement. The truth is that the American people do not understand the intricacies of banking law or securities regulation. They probably do not know or care much about affiliates or operating subsidiaries. What I do know, is that if you walked outside and polled people from New York City to Los Angeles, CA, and everywhere in between, they would not only understand financial privacy, 90 percent of them would demand financial privacy and the ability to tell an institution ''no.''

Mr. President, in passing the financial modernization bill, Congress gave mammoth financial services companies significant expanded powers and unprecedented ability to collect, share, buy and sell a consumers nonpublic personal financial information. During the debate, many members promised they would address privacy, but only in a separate bill at a later time. Well, Mr. President, the time is now and the bill is the ''Consumer's Right to Financial Privacy Act.''

The financial industry may have won the battle by keeping stronger financial privacy provisions out of the financial modernization bill. But I assure you they have not won the war. They cannot win the war on financial privacy because the American people just won't allow it.

Mr. President, I ask unanimous consent that the agreement on ''International Data Protection'' be printed in the RECORD.

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

AGREEMENT ON INTERTERRITORIAL DATA PROTECTION

BY AND BETWEEN

1. Citicorp Kartenservice GmbH, Wilhelm-Leuschner-Str. 32, 60329 Frankfurt/M, Germany (CKS)
2. Citicorp Card Operations GmbH, Bentheimer Straβe 118, 48529 Nordhorn, Germany (CCO)

(CKS and CCO hereinafter collectively referred to as: Card Service Companies)

3. Citibank (South Dakota), N.A., Attn.: Office of the President, 701 E. 60th Street North, Sioux Falls, South Dakota 57117 (CNA)
4. Citibank Privatkunden AG, Kasernenstraβe 10, 40213 Düsseldorf, Germany (CIP)

RECITAL

1. CIP has unrestricted authority to engage in banking transactions. As a license of VISA International, CIP issues the Citibank Visa Card''. Additionally, since July 1st, 1995, CIP has been cooperating with the Deutsche Bahn AG in issuing the ''DB/Citibank BahnCard'' with a cash-free payment function—hereinafter referred to as ''DB/Citibank-BahnCard''—on the basis of a Co-Branding Agreement concluded between Deutsche Bahn AG and CIP on November 18th, 1994. After the conclusion of the Agreement, the co-branding business was extended to include the issuance of the DB/Citibank BahnCard without a cash-free payment function, known as BahnCard ''pure''.

2. CIP transferred to CKS the operations of the Citibank Visa credit card business, including accounting and electronic data processing, on the basis of the terms of a Service Agreement (non-gratuitous contract for services) dated March 24, 1998, supplemented as of June 1, 1989 and November 30, 1989. Details are contained in the ''CKS Service

Agreement'', according to which CKS performs for CIP all services pertaining to the Citibank Visa card business. Concurrent with the application for a Citibank Visa Card, the Citibank Visa Card customers agree to the transfer of their personal data to CKS and to those companies entrusted by CKS with such data processing.

3. In the Co-Branding Agreement with the Deutsche Bahn AG dated November 18, 1994, CIP assumed responsibility for the issuance of the DB/Citibank BahnCard as well as for the entire management and operations associated with this business.

4. On the basis of a Service Agreement dated April 1, 1995, CIP transferred the entire operations of the DB/Citibank-BahnCard business, including data processing and accounting, to the Card Service Companies. Details are contained in the ''BahnCard Service Agreement''. Concurrent with the application for issuing a DB/Citibank BahnCard, the BahnCard customers agree to the transfer of their personal data to CCO and to those companies entrusted by CCO with such data processing.

5. Due to reasons of efficiency, service and centralization, the Card Service Companies have entrusted CNA with the processing of the Citibank Visa card business and of the DB/Citibank BahnCard business as of July 1, 1995. In light of such considerations, the Card Service Companies—as principals—and CNA—as contractors—concluded the ''CNA Service Agreement'', to which CIP expressly consented.

6. The performance of the CNA Service Agreement requires the Card Service Companies to transfer the personal data of the Citibank Visa card customers and the DB/Citibank BahnCard customers—hereinafter collectively referred to as ''Card Customers''—to CNA and further requires CNA to process and use these data.

In order to protect the Card Customers' rights with respect to both the data protection law, as well as the banking secrecy, and in order to comply with the banking supervisory and data protection requirements.

The contractual parties agree and covenant as follows:

§1 BASIC PRINCIPLES

The parties hereto undertake to safeguard the Card Customers' right to protection against unauthorized capture, storage and use of their personal data and their right to informational self-determination. The scope of such protection shall be governed by the standards as laid down in the German Federal Data Protection Law (Bundesdatenschutzgesetz, abbreviated to ''BDSG''). The parties hereto additionally agree to comply with the banking secrecy regulations.

§2 INSTRUCTIONS OF THE CARD SERVICE COMPANIES

1. CNA shall process the data provided by the Card Service Companies solely in accordance with the Card Service Companies' instructions and rules, and the provisions contained in this Agreement. CNA undertakes to process and use the data only for the purpose for which the data have been provided by the Card Service Companies to CNA, said purposes including those as described in the CNA Service Agreement. The use of such data for purposes other than described above requires the Card Service Companies' express written consent.

2. At any time, the Card Service Companies may make inquiries to CNA about the personal data transferred by the Card Service Companies and stored at CNA, and the Card Service Companies may require CNA to perform corrections, deletions or blockings of such personal data transferred by the Card Service Companies to CNA.

§3 INSPECTION RIGHTS OF THE CARD SERVICE COMPANIES

At regular intervals, an (joint) agent appointed by the Card Service Companies shall verify whether CNA complies with the terms and conditions of this Agreement, and in particular with the data protection law as well as the banking secrecy regulations. CNA shall grant the Card Service Companies' agent supervised unimpeded access to the extent necessary to accomplish the inspection and review of all data processing facilities, data files and other documentation needed for processing and utilizing the personal data transferred by the Card Service Companies in a fashion which is consistent with the CNA Operational Policies. CNA shall provide the agent with all such information as deemed necessary to perform this inspection function.

§4 USE OF SUBCONTRACTORS, TRANSMISSION OF DATA TO THIRD PARTIES

1. CNA may not appoint non-affiliated third parties, in particular subcontractors, to perform and fulfill CNA's commitments and obligations under this Agreement.

2. For marketing purposes, the transfer of personal data to third parties provided by the Card Service Companies is prohibited, except in those cases where such personal data is transferred to affiliated companies engaged in the banking business in order to market financial services; the transfer of such data beyond the aforementioned scope to third parties shall require the Card Service Companies' express approval. Such approval is limited to the scope of the Card Customers' consent as obtained on the application form. The personal data of customers having obtained a BahnCard ''pure'' may only be used or transferred for BahnCard marketing purposes.

CNA and the Card Service Companies undertake to institute and maintain the following data protection measures:

1. Access control of persons

CNA shall implement suitable measures in order to prevent unauthorized persons from gaining access to the data processing equipment where the data transferred by the Card Service Companies are processed.

This shall be accomplished by:

a. Establishing security areas;

b. Protection and restriction of access paths;

c. Securing the decentralized data processing equipment and personal computers;

d. Establishing access authorizations for employees and third parties, including the respective documentation;

e. Identification of the persons having access authority;

f. Regulations on key-codes;

g. Restriction on keys;

h. Code card passes;

i. Visitors books;

j. Time recording equipment;

k. Security alarm system or other appropriate security measures.

2. Data media control

CNA undertake to implement suitable measures to prevent the unauthorized reading, copying, alteration or removal of the data media used by CNA and containing personal data of the Card Customers.

This shall be accomplished by:

a. Designating the areas in which data media may/must be located;

b. Designating the persons in such areas who are authorized to remove data media;

c. Controlling the removal of data media;

d. Securing the areas in which data media are located;

e. Release of data media to only authorized persons;

f. Control of files, controlled and documented destruction of data media;

g. Policies controlling the production of back-up copies.

3. Data memory control

CNA undertakes to implement suitable measures to prevent unauthorized input into the data memory and the unauthorized reading, alteration or deletion of the stored data on Card Customers.

This shall be accomplished by:

a. An authorization policy for the input of data into memory, as well as for the reading, alteration and deletion of stored data;

b. Authentication of the authorized personnel;

c. Protective measures for the data input into memory, as well as for the reading, alteration and deletion of stored data,

d. Utilization of user codes (passwords);

e. Use of encryption for critical security files.

f. Specific access rules for procedures, control cards, process control methods, program cataloging authorization;

g. Guidelines for data file organization;

h. Keeping records of data file use;

i. Separation of production and test environment for libraries and data files

j. Providing that entries to data processing facilities (the rooms housing the computer hardware and related equipment) are capable of being locked,

k. Automatic log-off of user ID's that have not been used for a substantial period of time.

4. User control

CNA shall implement suitable measures to prevent its data processing systems from being used by unauthorized persons by means of data transmission equipment.

This shall be accomplished by:

a. Identification of the terminal and/or the terminal user to the DP system;

b. Automatic turn-off of the user ID when several erroneous passwords are entered, log file of events, (monitoring of break-in-attempts);

c. Issuing and safeguarding of identification codes;

d. Dedication of individual terminals and/or terminal users, identification characteristics exclusive to specific functions;

e. Evaluation of records.

5 Personnel control

Upon request, CNA shall provide the Card Service Companies with a list of the CNA employees entrusted with processing the personal data transferred by the Card Service Companies, together with a description of their access rights.

6. Access control to data

CNA commits that the persons entitled to use CNA's data processing system are only able to access the data within the scope and to the extent covered by the irrespective access permission (authorization).

This shall be accomplished by:

a. Allocation of individual terminals and/or terminal user, and identification characteristics exclusive to specific functions;

b. Functional and/or time-restricted use of terminals and/or terminal users, and identification characteristics;

c. Persons with function authorization codes (direct access, batch processing) access to work areas;

d. Electronic verification of authorization;

e. Evaluation of records.

7. Transmission control

CNA shall be obligated to enable the verification and tracing of the locations/destinations to which the Card Customers' data are transferred by utilization of CNA's data communication equipment/devices.

This shall be accomplished by:

a. Documentation of the retrieval and transmission programs;

b. Documentation of the remote locations/destinations to which a transmission paths (logical paths).

8. Input control

CNA shall provide for the retrospective ability to review and determine the time and the point of the Card Customers' data entry into CNA's data processing system.

This shall be accomplished by:

a. Proof established within CNA's organization of the input authorization;

b. Electronic recording of entries.

9. Instructional control

The Card Customers' data transferred by the Card Service Companies to CNA may only be processed in accordance with instructions of the Card Service Companies.

This shall be accomplished by:

a. Binding policies and procedures for CNA employees, subject to the Card Service Companies' prior approval of such procedures and policies,

b. Upon request, access will be granted to those Card Service Companies' employees and agents who are responsible for monitoring CNA's compliance with this Agreement (c.f. §3 hereof.)

10. Transport control

CNA and the Card Service Companies shall implement suitable measures to prevent the Card Customers' personal data from being read, copied, altered or deleted by unauthorized parties during the transmission thereof or during the transport of the data media.

This shall be accomplished by:

a. Encryption of the data for on-line transmission, or transport by means of data carriers, (tapes and cartridges);

b. Monitoring of the completeness and correctness of the transfer of data (end-to-end check).

II. Organization control

CNA shall maintain its internal organization in a matter that meets the requirements of this Agreement.

This shall be accomplished by:

a. Internal CNA policies and procedures, guidelines, work instructions, process descriptions, and regulations for programming, testing, and release, insofar as they relate to data transferred by Card Service Companies;

b. Formulation of a data security concept whose content has been reconciled with the Card Service Companies;

c. Industry standard system and program examination;

d. Formulation of an emergency plan (back-up contingency plan).

§6 DATA PROTECTION SUPERVISOR

1. CNA undertakes to appoint a Data Protection Supervisor and to notify the Card Service Companies of the appointee(s). CNA shall only select an employee with adequate expertise and reliability necessary to perform such a duty, and provide the Card Service Companies with appropriate evidence thereof.

2. The Data Protection Supervisor shall be directly subordinate/accountable to CNA's General Management. He shall not be bound by instructions which obstruct or hinder the performance of his duty in the field of data protection. He shall cooperate with the Card Service Companies' agent—as indicated in §3 hereof—in monitoring the performance of this Agreement and adhering to the data protection requirements in conjunction with the data in question. In the event that CNA chooses to change the person who serves as a Data Protection Supervisor, CNA shall give timely notice to the Card Service Companies of such change. The Data Protection Supervisor shall be bound by confidentiality obligations.

3. The Data Protection Supervisor shall be available as the on-site contact for the Card Service Companies.

§7 CONFIDENTIALITY OBLIGATION

CNA shall impose a confidentiality obligation on those employees entrusted with processing the personal data transferred by the Card Service Companies. CNA shall furthermore obligate its employees to adhere to the banking and data secrecy regulations and document such employees' obligation in writing. Upon request, CNA shall provide the Card Service Companies with satisfactory evidence of compliance with this provision.

§8 RIGHTS OF CONCERNED PERSONS

1. At any time, Card Customers whose data are transferred by CIP to the Card Service Companies, and thereafter further transferred by the Card Service Companies to CNA, shall be entitled to make inquiries to CNA (who are required to respond) as to: the stored personal data, including the origin and the recipient of the data; the purpose of storage; and the persons and locations/destinations to which such data are transferred on a regular basis.

The requested information shall generally be provided in writing.

2. The Card Service Companies shall honour the concerned person's request to correct his personal data at any time, provided that the stored data are incorrect. The same shall apply to data stored at CNA.

3. The concerned person may claim from the responsible Card Service Companies the deletion or blocking of any data stored at the Card Service Companies or CNA, in the event that: such storage is prohibited by law; the data in question relate to information about health criminal actions, violations of the public order, or religious or political opinions, and its truth/correctness cannot be proved by the Card Service Companies; and such data are processed to serve Card Service Companies' own purposes, and such data are no longer necessary to serve the purpose of the data storage under the agreement with the respective Card Customers.

Notwithstanding the foregoing, the parties hereto submit to the provisions of §35 of the German Federal Data Protection Law (BDSG), and agree to be familiar with such provisions.

4. The concerned person may demand that the responsible Card Service Companies block his or her personal data, if he or she contests the correct nature thereof and if it is not possible to determine whether such data is correct or incorrect. This shall also apply to such data stored by CNA.

5. If CIP. the Card Service Companies or CNA should violate the data protection or banking secrecy regulations, the person concerned shall be entitled to claim damages caused and incurred thereby as provided in the German Federal Data Protection Law (BDSG). CIP's and the Card Service Companies' liability shall moreover extend to those claims arising from breach of this Agreement and asserted against CNA and/or its employees in performance of this Agreement.

6. CNA acknowledges the obligation assumed by CIP and the Card Service Companies towards the concerned person, and undertakes to comply with all Card Service Companies' instructions concerning such person. The concerned person may also directly assert claims against CNA and file an action at CNA's applicable place of jurisdiction.

§9 NOTIFICATION TO THE CONCERNED PERSON

The Card Service Companies undertake to appropriately notify the concerned Card Customers of the transfer of their data to CNA.

§10 DATA PROTECTION SUPERVISION

1. According to the German Federal Data Protection Law (BDSG), the Card Service Companies and CIP are subject to public control exercised by the respective responsible supervisory authorities.

2. Upon request of CIP or either of the Card Service Companies, CNA shall provide the respective supervisory authorities with the desired information and grant them the opportunity of auditing to the same extent as they would be entitled to conduct audits at the Card Service Companies and CIP; this includes the entitlement to inspections at CNA's premises by the supervisory authorities or their nominated agents, unless barred by binding instructions of the appropriate U.S. authorities.

§11 BANKING SUPERVISION

1. Any vouchers, commercial books of accounting, and work instructions needed for the comprehension of such documents, as well as other organizational documents shall physically remain at the Card Service Companies, unless electronically archived by scanning devices in a legally permissible fashion.

2. The Card Service Companies and CNA undertake to adhere to the principles of proper accounting practice applicable in Germany for computer-aided processes and the auditing thereof, in particular FAMA 1/1987.

3. The Card Service Companies undertake to submit a data processing concept and a data security concept to the German Federal Authority for the Supervision of Banks (Bundesaufsichtsamt fur das Kreditwesen) prior to commencing transfer of data to CNA.

4. The remote processing of the data shall be subject to the internal audit department of CIP and the Card Service Companies. CNA agrees to cooperate with the internal auditors of CIP and the Card Service Companies, who shall have the right to inspect the files of CNA's internal auditors, insofar as they relate to the data files transferred by the Card Service Companies to CNA. The internal auditors of the Card Service Companies and of CIP shall conduct audits of CNA as required by due diligence.

5. In a joint declaration to the Federal Banking Supervisory Authority; CIP, the Card Service Companies and CNA shall undertake to allow the inclusion of CNA in audits in accordance with the provisions of §44 of the Banking Law (Kreditwesengesetz abbreviated to KWG) at any time and not to impede or obstruct such audits, provided that legal requirements and/or instructions of U.S. authorities bind CNA to the contrary.

6. CNA shall request the US banking supervisory authorities' confirmation in writing to the effect that no objections will be raised against the intended remote data processing concept. In the event that CNA cannot procure such written confirmation upon the Card Service Companies' request, the Card Service Companies and CIP may withdraw from this Agreement and the underlying CNA Service Agreement.

7. CIP, the Card Service Companies and CNA undertake to abide by the requirements for interterritorial remote data processing in bank accounting as set forth in the letter of the Federal Authority for the Supervision of Banks dated October 16, 1992. This letter is appended as a Schedule hereto and forms an integral part of this Agreement.

§12 INDEMNIFICATION CLAIM

1. CNA shall indemnify the Card Service Companies within the scope of their internal and contractual relationship from any claims of damages asserted by the Card Customers, and resulting from CNA's incompliance with the terms and conditions of this Agreement.

2. The Card Service Companies shall indemnify CNA within the scope of their internal and contractual relationship from any claims of damages asserted by the Card Customer, and resulting from one or both of the

Card Service Companies' incompliance with the terms and conditions of this Agreement.

§13 TERM OF THE AGREEMENT

1. This Agreement is effective as of July 1st, 1995, until terminated. It may be terminated by any party hereto at the end of each calendar year upon 12 months notice prior to the expiration date, subject to each party's right of termination of the Agreement for material, unremedied breach hereof. The termination of this Agreement by any one of the parties shall result in the termination of the entire Agreement with respect to the other parties.

2. CNA commits to return and delete all personal data stored at the time of termination hereof in accordance with the Card Service Companies' instructions.

§14 CONFIDENTIALITY

The parties hereto commit to treat strictly confidential any trade, business and operating secrets or other sensitive information of the other parties involved. This obligation shall survive termination of this Agreement.

§15 DATA PROTECTION AGREEMENT WITH DEUTSCHE BAHN AG (DB AG)

1. The Deutsche Bahn AG captures personal data at its counters and appears as a joint issuer of the DB/Citibank BahnCard. The parties hereto agree that the Deutsche Bahn AG therefore bears responsibility for such data.

2. The Deutsche Bahn AG and CIP concluded a Data Protection Agreement as of February 13, 1996, defining the scope of data protection obligations and commitments between the parties. The parties hereto are familiar with said Data Protection Agreement and acknowledge the obligations arising for CIP thereunder.

3. The parties hereto authorize CIP to provide DB AG with written notification of this Agreement on Interterritorial Data Protection.

§16 GENERAL PROVISIONS

1. This Agreement sets forth the entire understanding between the parties hereto in conjunction with the subject matter as laid down herein and none of the parties hereto has entered into this Agreement in reliance upon any representation, warranty or undertaking of any other party which is not contained in this Agreement or incorporated by reference herein. Any subsequent amendments to this Agreement shall be in writing duly signed by authorized representatives of the parties hereto.

2. If one or more provisions of this Agreement becomes invalid, or the Agreement is proven to be incomplete, the validity and legality of the remaining provisions hereof shall not be affected or impaired thereby. The parties hereto agree to substitute the invalid part of this Agreement by such a legally valid provision which constitutes the closest representation of the parties' intention and the economical purpose of the invalid term, and the parties hereto further agree to be bound by such a valid term. An incompleteness of this Agreement shall be bridged in a similar fashion.

3. The Parties hereto submit to the jurisdiction and venue of the courts of Frankfurt/M.

4. This Agreement shall be governed by, interpreted and construed in accordance with German law.

What are the main features of the International Agreement?

1. The parties on both sides of the Atlantic agree to apply German Data Protectional Law to their handling of cardholders' data (§1).

2. Customer data may only be processed in the United States for the purpose of producing the cards (§2).

3. Citibank in the United States and in Europe is not allowed to transfer personal data to third parties for marketing purposes except in two cases:

(a) Data of applicants for a RailwayCard with payment function may be transferred to other Citibank companies in order to market financial services; (b) Data of applicants for a pure RailwayCard may only be used or transferred for BahnCard marketing purposes, i.e., to try to convince the cardholder that he should upgrade his RailwayCard to have a ''better BahnCard'' with credit card function (§4 II).

4. The technical requirements on data security according to German law are spelt out in detail in §5.

5. The American Citibank subsidiary has to appoint data protection supervisors again following the German legal requirements (§6).

6. The German card customers have all individual rights against the American Citibank subsidiary which they have under German law. They can ask for inspection, claim deletion, correction or blocking of their data and they can bring an action for compensation under the strict liability rules of German law either against German Railway, the German Citibank subsidiary or directly against the American Citibank subsidiary (§8).

7. The Citibank subsidiaries in the United States accept on-site audits by the German data protection supervisory authority, i.e., the Berlin Data Protection Commissioner, or his nominated agents, e.g. an American consulting or auditing firm acting on his behalf (§10 II).

This very important provision contains a restriction in case US authorities instruct Citibank in their country not to allow foreign auditors in. However, this restriction is not very likely to become practical. On the contrary, US authorities have already declared by way of a diplomatic note sent to the German side that they will accept these audits. This follows an agreement between German and United States banking supervisory authorities on auditing the trans-border processing of accounting data (cf. §11). Indeed this previous agreement very much facilitated the acceptance of German data protection audits by Citibank in the United States. As far as data security concepts are concerned the Federal Banking Supervisory Authority and the Berlin Data Protection Commissioner will be working hand in glove.

8. Finally—and this is not reproduced in the version of the Agreement which you have received—German Railway has been linked to this agreement between Citibank subsidiaries in a specific provision.

By Mr. THOMAS (for himself and Mr. ENZI):

S. 1904. A bill to amend the Internal Revenue Code of 1986 to provide for an election for special tax treatment of certain S corporation conversions; to the Committee on Finance.

ELECTION FOR SPECIAL TAX TREATMENT OF CERTAIN S CORPORATION CONVERSIONS

● Mr. THOMAS. Mr. President, today I join Senator ENZI in introducing legislation that will give small businesses more flexibility in how they choose to operate.

One of the most important decisions for the founder of a business is ''choice of entity,'' whether to operate the business through a corporation, partnership, limited liability company or other form of business. This choice is plainly important for reaching business goals, and may be critical to the survival of the business. For the family business, the choice also is inseparable from the owner's preferences as to how the owner wants to relate to family co-owners. Choice of entity is therefore potentially one of the most important decisions for an owner.

The law concerning choice of entity has changed enormously in the last decade, particularly with the widespread adoption of laws authorizing the limited liability company (LLC). As a result, business owners have more flexibility in this area than ever before. Even so, older family businesses operated as S corporations may be ''locked'' into the corporate form, simply because of the tax cost of changing to another form. These businesses are thus unable to take advantages of the recent advancements in choice of entity.

In order to help these older businesses remain competitive with their younger rivals, the bill Senator ENZI and I introduce today will allow a one-time election for an S corporation to change to another form of business without incurring the normal tax cost of doing so.

Thousands of corporations have elected subchapter S status since President Eisenhower signed into law the Technical Amendments Act of 1958, which added subchapter S to the code. The legislative history makes clear that the purpose of subchapter S was to offer simplified tax rules for the small and family-owned business operating in the corporate form.

Until the rise of the LLC in the mid 1990's, the S corporation remained, for all practical purposes, the sole means for a small or family business to obtain the benefits of limited liability without the complex corporate tax. For many years, a change to another form of business was relatively easy. But by the time an alternative to the S corporation became widely available, this avenue had been foreclosed by changes to the tax code. Thus thousands of S corporations are saddled with the cumbersome and inflexible rules of the corporate form.

The Internal Revenue Code itself reflects a policy of respecting economic reality over form in the conduct of a trade or business. For example, Section 1031, which existed even in 1939, allows nonrecognition of gain or loss in the exchange of property used in a trade or business, or for investment, on the theory that the taxpayer has not cashed out his investment. Code Sections 351 and 721 allow nonrecognition on the contribution of property to a corporation or a partnership, on the rationale that the taxpayer is only changing the form of his investment.

The S election itself was a giant stride in removing tax considerations in choice of entity. More recently, the Internal Revenue Service has done much to remove tax considerations from the choice of business form through the check the box regulations.

The Service should be commended for taking this step.

The next step in the process is allowing those S corporations that can more efficiently function as an LLC the one-time chance to make the conversion, without tax cost being the controlling factor. Until these conversions can be accomplished, the task of reducing the role of taxes in choosing a business form will remain unfinished.

I look forward to working with Senator ROTH and the other members of the Senate Finance Committee so we may take action on this measure as soon as possible.●

By Mr. SANTORUM (for himself, Mr. DODD, Mr. TORRICELLI, Mr. LIEBERMAN, Mr. SCHUMER, and Mr. LAUTENBERG):

S. 1905. A bill to establish a program to provide for a reduction in the incidence and prevalence of Lyme disease; to the Committee on Health, Education, Labor, and Pensions.

THE LYME DISEASE INITIATIVE OF 1999

● Mr. SANTORUM. Mr. President, it is with great enthusiasm that I rise today to join my friend and colleague, the senior Senator from Connecticut, CHRISTOPHER DODD, in introducing the Lyme Disease Initiative of 1999. This legislation is aimed at waging a comprehensive fight against Lyme disease—America's most common tick-borne illness.

I know that Mr. DODD shares my sentiments in believing that this legislation could not be more timely or necessary. Lyme remains the 2nd fastest growing infectious disease in this country after AIDS. The number of annually reported cases of Lyme disease in the United States has increased about 25-fold since national surveillance began in 1982, and an average of approximately 12,500 cases annually were reported by states to the Centers for Disease Control and Prevention (CDC) from 1993–1997.

Every summer, tens of thousands of Americans enjoying or working in the outdoors are bitten by ticks. While most will experience no medical problems, others are not so lucky—including the 16,801 Americans who contracted Lyme disease last year.

According to some estimates, Lyme disease costs our nation $1 billion to $2 billion in medical costs annually. The number of confirmed cases of Lyme disease in 1998 increased 31.2 percent from the previous year—and that is only the tip of the iceberg. Many experts believe the official statistics understate the true number of Lyme disease cases by as much as ten or twelvefold, because Lyme disease can be so difficult to diagnose.

And Lyme is a disease that does not discriminate. Persons of all ages and both genders are equally susceptible, although among the highest attack rates are in children aged 0–14 years.

The Lyme Disease Initiative is a five year, $125 million blueprint for attacking the disease on all fronts. In addition to authorizing the necessary resources to wage this war, this legislation outlines a public health management plan to make the most of our efforts on all fronts to combat Lyme disease:

The Lyme Disease Initiative makes the development of better detection tests for Lyme disease the highest research priority;

The Lyme Disease Initiative sets goals for public health agencies, including a 33 percent reduction in Lyme disease within five years of enactment in the ten states with the highest rates;

The Lyme Disease Initiative fosters better coordination between the scattered Lyme disease programs within the federal government through a five year, joint-agency plan of action;

The Lyme Disease Initiative helps protect workers and visitors at federally-owned lands in endemic areas through a system of periodic, standardized, and publicly accessible Lyme disease risk assessments;

The Lyme Disease Initiative requires a review of current Lyme disease prevention and surveillance efforts to search for areas of improvement;

The Lyme Disease Initiative fosters additional research into other related tick-borne illnesses so that the problem of co-infection can be addressed;

The Lyme Disease Initiative initiates a plan to boost public and physician understanding about Lyme disease;

The Lyme Disease Initiative creates a Lyme Disease Task Force to provide Americans with the opportunity to hold our public health officials accountable as they accomplish these tasks.

This legislation is the product of countless meetings that Senator DODD and I have had with patients and families struggling to cope with this debilitating disease. Although Lyme disease can be treated successfully in the early stages with antibiotics, sadly, the lack of physician knowledge about Lyme disease and the inadequacies of existing laboratory detection tests compound the physical suffering, which can include damage to the nervous system, skin, and joints and other significant health complications where patients go undetected, and hence untreated. Patients relate heart breaking stories about visiting multiple doctors without getting an accurate diagnosis, undergoing unnecessary tests while getting progressively weaker and sicker —and racking massive medical bills in the process.

Although Lyme disease poses many challenges, they are challenges the medical research community is well equipped to meet. This legislation will enhance efforts to discover new information on and establish treatment protocols for Lyme disease. Thanks to the scientific research being conducted here in the United States and around the world, new and promising research is already accumulating at a rapid pace. We have a unique opportunity to help re-build the shattered lives of Lyme victims and their families, and I look forward to working with Senator DODD, my colleagues, and the administration to accomplish this worthy public health goal.●

● Mr. DODD. Mr. President, I rise today to join Senator SANTORUM in introducing The Lyme Disease Initiative of 1999, companion legislation to a bill introduced by Representative CHRISTOPHER SMITH of New Jersey. The objective of this bill is simple—to put us on the path toward eradicating Lyme disease—a disease that is still unfamiliar to some Americans, but one that those of us from Connecticut and the Northeast know all too well.

Last Congress I was pleased to introduce similar legislation, The Lyme Disease Initiative of 1998, and to see a critical component of that legislation enacted into law. Through an amendment that I offered to the FY 1999 Department of Defense (DoD) appropriations bill, an additional $3 million was directed toward the DoD's Lyme disease research efforts. This was an important step in the fight to increase our understanding of this condition, but clearly much more remains to be done.

Almost every resident of my state has witnessed firsthand the devastating impact that this disease can have on its victims. As most of my constituents know, Lyme disease is a ''home-grown'' illness—it first achieved prominence in the 1980s in the state of Connecticut and got its name from the town of Lyme, CT. And today, Connecticut residents have the dubious distinction of being 10 times more likely to contract Lyme disease than the rest of the nation.

To begin to address this crisis, this legislation would establish a five-year, $125 million blueprint for attacking the disease on all fronts by bolstering funding for better detection, prevention, surveillance, and public and physician education. Additionally, this legislation would require the primary federal agencies involved in Lyme disease research and education to substantially improve the coordination of their efforts, in an effort to minimize duplication and to enhance federal leadership.

In my opinion, money to fund Lyme disease research and public education is money well spent. Studies indicate that long-term treatment of infected individuals often exceeds $100,000 per person—a phenomenal cost to society. Health problems experienced by those infected can include facial paralysis, joint swelling, loss of coordination, irregular heart-beat, liver malfunction, depression, and memory loss. Because Lyme disease mimics other conditions, patients often must visit multiple doctors before a proper diagnosis is made. This results in prolonged pain and suffering, unnecessary tests, costly and futile treatments, and devastating emotional consequences for victims and their families.

Tragically, the number of Lyme disease cases reported to the CDC has sky-

rocketed—from 500 in 1982 to 17,000 in 1998. In the last year alone, the number of infected individuals rose 25%. And these cases represent only the tip of the iceberg. Several new reports have found that the actual incidence of the disease may be ten times greater than current figures suggest.

While continuing to fight for additional funding for research into this disease, it is also critical that we ensure that current and future federal resources for Lyme disease are used wisely and in the best interest of the individuals and families affected by this condition. To that end, I intend to ask the General Accounting Office to review current federal funding priorities for Lyme disease.

I truly look forward to the day when Lyme disease no longer plagues our nation and view The Lyme Disease Initiative of 1999 as a critical step toward that goal. I urge my colleagues to support this legislation.●

By Mr. BINGAMAN (for himself, Mr. ALLARD, and Mr. CRAIG):

S. 1906. A bill to amend Public Law 104–307 to extend the expiration date of the authority to sell certain aircraft for use in wildfire suppression, and for other purposes; to the Committee on Armed Services.

WILDFIRE SUPPRESSION AIRCRAFT TRANSFER ACT OF 1996 EXTENSION LEGISLATION

Mr. BINGAMAN. Mr. President, Airplanes, known as airtankers, play a critical role in fighting wildfires. They are used in the initial attack of wildfires in support of firefighters on the ground and, on large wildfires, to aid in the protection of lives and structures from rapidly advancing fires.

Today, Senators ALLARD, CRAIG and I are introducing legislation that will help ensure that Federal firefighters continue to have access to airtanker services. This technical amendment will extend the expiration date of the Wildfire Suppression Aircraft Transfer Act of 1996 from September 30, 2000 to September 30, 2005. The regulations under the act are still being finalized, so no aircraft have yet been transferred. Extending the 1996 act is critical to help facilitate the sale of former military aircraft to contractors who provide firefighting services to the Forest Service and the Department of the Interior. The existing fleet of available airtankers is aging rapidly, and fleet modernization is critical to the continued success of the firefighting program.

This bill will extend legislative authority to transfer or sell excess turbine-powered military aircraft suitable for conversion to airtankers. If we fail to pass this extension, airtanker operators will not have access to the planes they need to update the aging airtanker fleet. The Wildfire Suppression Aircraft Transfer Act of 1996 required that the aircraft be used only for firefighting activities.

I urge my colleagues to support our efforts to ensure that Federal firefighters have the resources they need to protect the public and their property from the threat of wildfires.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1900

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

SECTION 1. TECHNICAL AMENDMENTS.

Section 2 of the Wildlife Suppression Aircraft Transfer Act of 1996 (Public Law No. 104–307) is amended—

(1) in subsection (a)(1) by striking ''September 30, 2000'' and inserting ''September 30, 2005'';

(2) in subsection (d)(2)(C), by striking ''and'' at the end;

(3) in subsection (d)(2)(D), by striking the period at the end and inserting ''; and'';

(4) in subsection (d)(2), by adding at the end the following:

''(E) be in effect until September 30, 2005''; and

(5) in subsection (f), by striking ''March 31, 2000'' and inserting ''March 31, 2005''.

By Mr. DODD (for himself and Mr. KENNEDY) (by request):

S. 1907. A bill to prohibit employment discrimination against parents and those with parental responsibilities, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

ENDING DISCRIMINATION AGAINST PARENTS ACT OF 1999

Mr. DODD. Mr. President, I rise today to introduce ''the Ending Discrimination Against Parents Act of 1999,'' on behalf of President Clinton, to prohibit employment discrimination against private and public employees because they are parents. I am pleased to be joined by Senator KENNEDY in this effort.

Mr. President, today more than ever parents work. One may argue whether it is right or wrong—but the facts are clear. In 1998, 38 percent of all U.S. workers had children under the age of 18. Nearly one in five working parents is a single parent; moreover, a fifth of these are single fathers. Labor force participation has also increased in two parent families, with both parents often holding down jobs.

Clearly, this has revolutionized our culture. Child care is a constant personal as well as public policy issue. Grocery stores and other retailers are open later—many catalogues offer round the clock service via the telephone or Internet. Take out meals and delivered pizza, which in the past were often reserved as a special weekend treat, are now commonplace on week nights. Cellular telephone companies even offer special family plans with unlimited calling among family members, for those families entirely on the go.

Workplaces too have changed. Women and men work side by side in nearly every occupation. Many employers attract workers with on-site day care, flexible work arrangements and generous family leave. Take Your Daughter to work day has introduced millions of girls and boys to the world of work.

But not all change has come easy. Many parents have made agonizing choices about work and family. Some have chosen to scale back their careers, move to less demanding jobs, pursue part-time work, or take a few years off. Others have continued in their careers without interruption relying on committed child care or the support of a partner. Each working parent has come to their own decision about how to move forward in their jobs and in their role as parents. And most employers are supportive of these decisions. They recognize that good employees are good employees regardless of their status as parents.

Mr. President, this legislation is not about these employers. Frankly, it is not even about encouraging, much less requiring, work place accommodations of parents and their family obligations—as much as I support those efforts. It is, instead, about those hopefully rare cases where employers discriminate in their employment practices against parents. It is about eliminating bias not about guaranteeing accommodation.

Specifically, the proposed statute would include parental status as a protected class with respect to employment discrimination. Parental status would cover parents of children under 18 years of age and children who remain under parental supervision because of a mental or physical disability, as well as those seeking legal custody of children and those who stand ''in loco parentis.'' The legislation would bar discrimination against parents in all aspects of employment, including recruitment, referral, hiring, promotions, discharge, training and other terms and conditions of employment.

For example, this legislation would make illegal policies against hiring single parents. Employers would be prohibited from taking a mother or a father off a career-advancing path out of a belief that parents uniformly cannot meet the requirements of these jobs. Neither could employers hire less qualified non-parents over parents because of unfounded concerns about parents. Basic discrimination against parents would be barred.

I want to be very clear, Mr. President, this legislation does not release working parents from any job performance requirements. Employers are free to make decisions based on an employee's job performance or ability to meet job requirements or qualifications—no matter what that employee's parental status is. Thus, an employer may discipline an employee who is late because of childcare issues. Similarly, an employer may reject an applicant for a job that requires extensive travel if that applicant is unwilling to travel because of his or her parental responsibilities. What the bill would prohibit

is rejection of an applicant who is willing to travel based simply on the assumption that he or she, as a parent, will be unable to fulfill that commitment.

Mr. President, this is unfortunately not a new problem for parents. Several states, including Alaska, Nebraska, New Hampshire, New Jersey, and South Dakota, and the District of Columbia have enacted laws that prohibit discrimination based on parental or familial status. There have also been several federal cases filed under gender discrimination statutes that have found discrimination based on parental status. In one case, an employer transferred a new mother recently back to work from maternity leave into a lower paying job, not based on her request or her performance, but because the employer simply felt it better suited a new mother. Beyond anecdotes and a few court cases, it is difficult to gauge the extent of this problem—rare or common—given the extremely limited avenues of redress open to parents currently.

But no matter how rare—if it happens just once it is wrong. And working parents deserve better. This legislation makes sure they get it. I urge my colleagues to join me in support of this legislation.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 1907

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ending Discrimination Against Parents Act of 1999.''

SEC. 2. FINDINGS.

(a) In 1998, thirty-eight percent of all United States workers had children under 18.

(b) The vast majority of Americans with children under 18 are employed.

(c) Federal law protects working parents from employment discrimination in a number of important areas. For instance, title VII of the Civil Rights Act of 1964 prohibits discrimination against workers on the basis of sex; the Americans with Disabilities Act of 1990 prohibits discrimination against workers on the basis of disability; and the Pregnancy Discrimination Act of 1978 prohibits discrimination against workers on the basis of pregnancy. Also, the Family and Medical Leave Act of 1993 provides covered workers with job protection when they take time off for certain family responsibilities.

(d) However, no existing Federal statute protects all workers from employment discrimination on the basis of their status as parents.

(e) Such discrimination against parents occurs where, for example, employers refuse to hire or promote both men and women who are parents based on unwarranted stereotypes or overbroad assumptions about their level of commitment to the work force.

(f) Such discrimination has occurred in the workplace and has been largely unremedied.

(g) Such discrimination occurs in both the private and the public sectors.

(h) Such discrimination—

(1) reduces the income earned by families who rely on the wages of working parents to make ends meet;

(2) prevents the best use of available labor resources;

(3) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of several States;

(4) burdens commerce and the free flow of goods in commerce;

(5) constitutes an unfair method of competition in commerce; and

(6) leads to labor disputes burdening an obstructing commerce and the free flow of goods in commerce.

(i) Elimination of such discrimination would have positive effects, including—

(1) solving problems in the economy created by unfair discrimination against parents;

(2) promoting stable families by enabling working parents to work free from discrimination against parents; and

(3) remedying the effects of past discrimination against parents.

SEC. 3. PURPOSES.

The purposes of this Act are—

(a) to prohibit employers, employment agencies, and labor organizations from discriminating against parents and persons with parental responsibilities based on the assumption that they cannot satisfy the requirements of a particular position; and

(b) to provide meaningful and effective remedies for employment discrimination against parents and persons with parental responsibilities.

SEC. 4. DEFINITIONS.

In this Act:

(a) ''Commission'' means the Equal Employment Opportunity Commission.

(b) ''Complaining party'' means the Commission, the Attorney General, or any other person who may bring an action or proceeding under this Act.

(c) ''Covered entity'' means an employer, employment agency, labor organization, or joint labor-management committee.

(d) ''Demonstrates'' means meet the burden of production and persuasion.

(e)(1) The term ''employee'' means:

(i) an individual to whom section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f)) applies;

(ii) an individual to whom section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies;

(iii) an individual to whom section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies;

(iv) a covered employee as defined in section 101(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(3)); and

(v) a covered employee as defined in section 411(c)(1) of title 3, United States Code.

(2) The term ''employee'' includes applicants for employment and former employees.

(f)(1) The term ''employer'' means:

(i) a person engaged in an industry affecting commerce (as defined in section 701(h) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(h))) who has fifteen or more employees (as defined in section 701(f) of such Act (42 U.S.C. 2000e(f))) for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person;

(ii) an entity to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies;

(iii) an employing authority to which section 302(a)(1) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)(1)) applies;

(iv) an employing office, as defined in section 101(9) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(9)); and

(v) an employing office as defined in section 411(c)(2) of title 3, United States Code.

(2) The term ''employer'' does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26, United States Code.

(g) ''Employment agency'' has the meaning given that term in section 701(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(c)).

(h) ''Incapable of self-care'' means that the individual needs active assistance or supervision to provide daily self-care in three or more of the ''activities of daily living'' or ''instrumental activities of daily living.'' Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, and similar activities.

(i) ''Labor organization'' has the meaning given that term in sections 701(d) and (e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d), (e)).

(j) ''Office of Compliance'' has the meaning given that term in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.).

(k) ''Parent'' means a person who, with regard to an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability—

(l) has the status of—

(i) a biological parent;

(ii) an adoptive parent;

(iii) a foster parent;

(iv) a stepparent; or

(v) a custodian of a legal ward;

(2) is actively seeking legal custody or adoption; or

(3) stands in loco parentis to such an individual.

(l) ''Person'' has the meaning given that term in section 701(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(a)).

(m) ''Physical or mental disability'' means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

(n) ''State'' has the meaning given that term in section 701(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(i)).

SEC. 5. DISCRIMINATION PROHIBITED.

(a) EMPLOYER PRACTICES.—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire, or to discharge, any individual, or otherwise to discriminate against any individual with regard to the compensation, terms, conditions, or privileges of employment of the individual, because such individual is a parent; or

(2) to limit, segregate, or classify employees in any way that would deprive, or

(2) to limit, segregate, or classify employees in any way that would deprive, or tend to deprive, any individual of employment opportunities or otherwise adversely affect the status of the individual as an employee, because such individual is a parent.

(b) EMPLOYMENT AGENCY PRACTICES.—It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because such individual is a parent or to classify or refer for employment any individual because such individual is a parent.

(c) LABOR ORGANIZATION PRACTICES.—It shall be an unlawful employment practice for a labor organization—

(1) to exclude or expel from its membership, or otherwise to discriminate against, any individual because such individual is a parent;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect the status of the individual as an employee, because such individual is a parent; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this Act.

(d) TRAINING PROGRAMS.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because such individual is a parent in admission to, or employment in, any program established to provide apprenticeship or other training.

SEC. 6. RETALIATION AND COERCION PROHIBITED.

(a) RETALIATION.—A covered entity shall not discriminate against an employee because the employee has opposed any act or practice prohibited by this Act or because the employee made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) INTERFERENCE, COERCION, OR INTIMIDATION.—A covered entity shall not coerce, intimidate, threaten, or interfere with any employee in the exercise or enjoyment of, or on account of the employee's having exercised or enjoyed, or on account of the employee's having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

SEC. 7. OTHER PROHIBITIONS.

(a) COLLECTION OF STATISTICS.—Notwithstanding any other provision of this Act, the Commission shall not collect statistics from covered entities on their employment of parents, or compel the collection of such statistics by covered entities, unless such statistics are to be used in investigation, litigation, or resolution of a claim of discrimination under this Act.

(b) QUOTAS.—A covered entity shall not adopt or implement a quota with respect to its employment of parents.

SEC. 8. MIXED MOTIVE DISCRIMINATION.

(a) An unlawful employment practice is established under this Act when the complaining party demonstrates that—

(1) an individual's status as a parent; or

(2) retaliation, coercion, or threats against, intimidation of, or interference with an individual as described in section 6 of this Act

was a motivating factor for any employment practice, even though other factors also motivated the practice.

(b) When an individual proves a violation under this section, and a respondent demonstrates that the respondent would have taken the same action in the absence of the prohibited motivating factor, a court or any other entity authorized in section 11(a) of this Act to award relief—

(1) may grant declaratory relief, injunctive relief (except as provided in clause (2) below), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under this section; and

(2) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.

SEC. 9. DISPARATE IMPACT.

Notwithstanding any other provision of this Act, the fact that an employment practice has a disparate impact on parents, as the term ''disparate impact'' is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2(k)), shall not establish a violation of this Act.

SEC. 10. DEFENSES WHERE ACTIONS TAKEN IN A FOREIGN COUNTRY.

(a) It shall not be unlawful under this Act for a covered entity to take any action otherwise prohibited under this Act with respect to an employee in a workplace in a foreign country if compliance with this Act would cause such entity to violate the law of the foreign country in which such workplace is located.

(b) (1) If a covered entity controls a corporation whose place of incorporation is a foreign country, any practice prohibited by this Act engaged in by such corporation shall be presumed to be engaged in by such covered entity.

(2) This Act shall not apply with respect to the foreign operations of a corporation that is a foreign person not controlled by an American covered entity.

(3) For purposes of this subsection, the determination of whether a covered entity controls a corporation shall be based on the factors set forth in section 702(c)(3) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1(c)(3)).

(c) This Act shall not apply to a covered entity with respect to the employment of aliens outside any State.

SEC. 11. ENFORCEMENT AND REMEDIES.

(a) INCORPORATION OF POWERS, REMEDIES, AND PROCEDURES IN OTHER CIVIL RIGHTS STATUTES.—With respect to the administration and enforcement of this Act in the case of a claim alleged by an individual for a violation of this Act, the following statutory provisions are hereby incorporated, and shall, along with the provisions in subsection 11(b), establish the powers, remedies, procedures, and jurisdiction that this Act provides to the Equal Employment Opportunity Commission, the Attorney General, the Librarian of Congress, the Office of Compliance and its Board of Directors, the Merit Systems Protection Board, the President, the courts of the United States, and/or any other person alleging a violation of any provision of this Act—

(1) for individuals who are covered under title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.), sections 705, 706, 707, 709, 710, 711, and 717 of that Act (42 U.S.C. 2000e–4, 2000e–5, 2000e–6, 2000e–8, 2000e–9, 2000e–10, and 2000e–16), and sections 7121, 7701, 7702, and 7703 of title 5, United States Code, as applicable;

(2) for individuals who are covered under section 302(a) of the Government Employee Rights Act of 1991 (2 U.S.C. 1202(a)), sections 302(b)(1) and 304(b)–(e) of that Act (2 U.S.C. 1202(b)(1), 1220(b)–(e));

(3) for individuals who are covered under section 101(3) of the Congressional Accountability Act of 1995 (2 U.S.C. 1301(3)), sections 201(b)(1), 225, and 401–416 of that Act (2 U.S.C. 1311(b)(1), 1361, 1401–1416); and

(4) for individuals who are covered under section 411(c)(1) of title 3, United States Code, sections 411(b)(1), 435, and 451–456 of that title:

(b) ADDITIONAL REMEDIES.—

(1) Notwithstanding any express or implied limitation on the remedies incorporated by reference in subsection 11(a), and except as provided in subsection (b)(2) of this section, section 8, or section 12 of this Act, any covered entity that violates this Act shall be liable for such compensatory damages as may be appropriate and for punitive damages if the covered entity engaged in a discriminatory practice or practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

(2) Notwithstanding subsection 11(b)(1),

(i) absent its consent to a monetary remedy, a State may be liable for monetary relief only in an action brought by the Attorney General in a court of the United States; and

(ii) a State shall not be liable for punitive damages.

(3) Notwithstanding any express or implied limitation on the remedies incorporated by reference in subsection 11(a) or included in subsection 11(b)(2) above,

(i) an individual may bring an action in a district court of the United States for declaratory or injunctive relief against any appropriate State official for a violation of this Act; and

(ii) the Attorney General may bring an action in a district court of the United States for declaratory or injunctive relief against any appropriate State official or State for a violation of this Act.

SEC. 12. FEDERAL IMMUNITY.

Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States for a violation of this Act, remedies (including remedies at law and in equity, and interest) are available for a violation to the same extent as the remedies are available against a private entity, except that punitive damages are not available.

SEC. 13. POSTING NOTICES.

A covered entity shall post notices for individuals to whom this Act applies that describe the applicable provisions of this Act in the manner prescribed by, and subject to the penalty provided under, section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–10).

SEC. 14. REGULATIONS.

(a) IN GENERAL.—Except as provided in subsections 14(b), (c), (d), and (e) below, the Commission shall have authority to issue regulations to carry out this Act.

(b) LIBRARIAN OF CONGRESS.—The Librarian of Congress shall have authority to issue regulations to carry out this Act with respect to employees of the Library of Congress.

(c) BOARD.—The Board of the Office of Compliance shall have authority to issue regulations to carry out this Act, in accordance with sections 303 and 304 of the Congressional Accountability Act of 1995 (2 U.S.C. 1383, 1384), with respect to covered employees as defined in section 101(3) of such Act (2 U.S.C. 1301(3)).

(d) PRESIDENT.—The President shall have authority to issue regulations to carry out this Act with respect to covered employees as defined in section 411(c)(1) of title 3, United States Code.

(e) COMMISSION AND MERIT SYSTEMS PROTECTION BOARD.—The Commission and the Merit Systems Protection Board shall each have authority to issue regulations to carry out this Act with respect to individuals covered by sections 7121, 7701, 7702, and 7703 of title 5, United States Code.

SEC. 15. RELATIONSHIP TO OTHER LAWS.

Nothing in this Act shall affect the interpretation or application of, and this Act shall not invalidate or limit the rights, remedies, or procedures available to an individual claiming discrimination prohibited under, any other Federal law or any law of a State or political subdivision of a State.

SEC. 16. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstances, is held to be invalid, the remainder of this Act and the application of such provision to other persons and circumstances shall not be affected.

SEC. 17. APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

SEC. 18. EFFECTIVE DATE.

This Act shall take effect 180 days after enactment and shall not apply to conduct occurring before the effective date.

By Mr. DODD:

S. 1908. A bill to protect students from commercial exploitation; to the Committee on Health, Education, Labor, and Pensions.

STUDENT PRIVACY PROTECTION ACT

Mr. DODD. Mr. President, I rise today to offer legislation, ''the Student Privacy Protection Act,'' to provide parents and their children with modest, but appropriate, privacy protection from questionable marketing research in the schools.

There are few images as enduring as those we experienced as school-children: the teachers and chalkboards, the principal's office, children at play during recess, school libraries, and desks organized around a room. All define a school in our memories and continue to define schools today. Clearly, there have been changes and many of those for the good. Computers have become more common and are now in a majority of classrooms. Students with disabilities are routinely included in regular classes rather than segregated in separate classrooms or schools.

However, some changes in my view have not been for the best. More and more schools and their classrooms are becoming commercialized. Schools, teachers and their students are daily barraged with commercial messages aimed at influencing the buying habits of children and their parents. A 1997 study from Texas A&M, estimated that children, aged 4–12 years, spent more than $24 billion themselves and influenced their parents to spend $187 billion. Marketing to children and youth is particularly powerful however, because students are not just current consumers, they will be consumers for decades to come. And just as we hope that what students learn in schools stays with them, marketers know their messages stick—be it drinking Coke or Pepsi, or wearing Nikes or Reeboks, these habits continue into adulthood.

There is no question that advertising is everywhere in our society from billboards to bathroom stalls. But what is amazing is how prevalent it has become in our schools. Companies no longer just finance the local school's scoreboard or sponsor a little league team, major national companies advertise in school hallways, in classrooms, on the fields and, even, in curriculum which they have developed specifically to get their messages into classrooms. One major spaghetti sauce firm has encouraged science teachers to have their student test different sauces for thickness as part of their science classes. Film makers and television studios promote new releases with special curriculum tied to their movies or shows. In one school, a student was suspended for wearing a Pepsi T-shirt on the school's Coke Day. In another, credit card applications were sent home with elementary school students for their parents and the school collected a fee for every family that signed up.

Mr. President, this is not to say that companies cannot and should not be active partners in our schools. Indeed, business leaders have been some of the strongest advocates for school improvement. Many corporations partner with schools to contribute to the educational mission of the schools, be it through mentoring programs or through donations of technology. Other businesses have become well-known for their scholarship support of promising students. And one cannot imagine a successful, relevant vocational education program without the participation of business.

Each of these activities meets the central test of contributing to student learning. Unfortunately, too much commercial activity in our schools does not. These issues are not black and white. Channel One which is in many, many of our nation's secondary schools offers high quality programming on the news of the day and issues of importance. They provide televisions, VCR's, and satellite dishes along with other significant educational programming. But Channel One is a business; in exchange for all that is good comes advertising.

Teachers, principals and parents are on the front lines of this issue; each day making decisions on what goes in and what stays out of classrooms. In my view, too often these decisions are made in the face of very limited resources. I believe most educators recognize the potential down-sides of exposing children to commercial messages—but too often they have no choice. They are faced with two poor choices: provide computers, current events or other activities with corporate advertising or not at all.

The legislation I offer today does not second guess these hard decisions. This bill, which is a companion to legislation introduced in the other body by Congressman GEORGE MILLER, would prohibit schools from letting students participate in various forms of market research without their parents' written permission. This bill would also provide for a study of the extent and effect of commercialism in our schools.

This is, I believe, a modest proposal that deals with one of the most disturbing commercial trends in our schools. Existing school privacy laws protect official records and educational research. Current law leaves a loophole for companies to go into classroom and get information directly from children—information about family income, buying habits, preferences, etc. —without the consent of their parents. Marketers and advertisers use this information to target and better hone their message to reach youngsters and their families.

This is not some scenario from a science fiction novel. Elementary school students in New Jersey filled out a 27-page booklet called ''My All About Me Journal'' as part of a marketing survey for a cable television channel. A technology firm provides schools with free computers and Internet access, but monitors students' web activity by age, gender and ZIP code. Children in a Massachusetts school did a cereal taste test and answered an opinion poll. This legislation does not presume that these activities are bad or unrelated to learning—it simply requires parents give their permission before their children participate.

Mr. President, public education is not a new topic for discussion here on the Senate floor. But we rarely think about the actual words we use—''Public education''—and what they mean. These are schools that belong to us, to the public as a whole: schools that serve all children, schools that are the central element in their communities, and that are financed by all of us through our taxes—local, state and federal. This bill helps ensure that they remain true to their name.

I ask unanimous consent that a copy of this legislation be printed in the RECORD.

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

S. 1908

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Student Privacy Protection Act''.

SEC. 2. PRIVACY FOR STUDENTS.

Part E of title XIV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8891 et seq.) is amended by adding at the end the following:

''SEC. 14515. PRIVACY FOR STUDENTS.

''(a) IN GENERAL.—None of the funds authorized under this Act may be used by an applicable program to allow a third party to monitor, receive, gather, or obtain information intended for commercial purposes from any student under 18 years of age without prior, written, informed consent of the parent of the student.

''(b) INTENTION OF THIRD PARTY.—Before a school, local educational agency, or State, as the case may be, enters into a contract with a third party, the school, agency, or State shall inquire whether the third party intends to gather, collect, or store information on students, the nature of the information to be gathered, how the information will be used, whether the information will be sold, distributed, or transferred to other parties and the amount of class time, if any, that will be consumed by such activity.

''(c) CONSENT FORM.—The consent form referred to in subsection (a) shall indicate the dollar amount and nature of the contract between a school, local educational agency, or State, as the case may be, and a third party, including the nature of the information to be gathered, how the information will be used, if the information will be sold, distributed, or transferred to other parties, and the amount of class time, if any, that will be consumed by such activity.''.

SEC. 3. GAO STUDY.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study in accordance with subsection (b) regarding the prevalence and effect of commercialism in elementary and secondary education.

(b) CONTENTS.—The study shall—

(1) document the nature, extent, demographics, and trends of commercialism (commercial advertising, sponsorships of programs and activities, exclusive agreements, incentive programs, appropriation of space,

sponsored educational materials, electronic marketing, market research, and privatization of management) in elementary and secondary schools receiving funds under the Elementary and Secondary Education Act of 1965;

(2) consider the range of benefits and costs, educational, public health, financial and social, of such commercial arrangements in classrooms; and

(3) consider how commercial arrangements in schools affect student privacy, particularly in regards to new technologies such as the Internet, including the type of information that is collected on students, how it is used, and the manner in which schools inform parents before information is collected.

By Mr. TORRICELLI:

S. 1909. A bill to provide for the preparation of a Governmental report detailing injustices suffered by Italian Americans during World War II, and a formal acknowledgment of such injustices by the President; to the Committee on the Judiciary.

WARTIME VIOLATION OF ITALIAN AMERICAN CIVIL LIBERTIES ACT

Mr. TORRICELLI. Mr. President, I rise today to introduce a bill that is important not only to every American of Italian descent, but to any American citizen who values our Constitutional freedoms. This legislation draws attention to the plight of Italian Americans during World War II. Their story has received little attention until now, and I am pleased to be able to heighten public awareness about the injustices they suffered.

Hours after the Japanese bombed Pearl Harbor on December 7, 1941, the Federal Bureau of Investigation arrested 250 Italian Americans and shipped them to internment camps in Montana and Ellis Island. These men had done nothing wrong. Their only crime was their Italian heritage and the suspicion that they could be dangerous during war time. By 1942, all Italian immigrants, approximately 600,000 people, were labeled ''enemy aliens'' and given photo IDs which they had to carry at all times. They could travel no further than five miles from their homes and were required to turn in all cameras, flashlights and weapons.

These violations did not discriminate against class or social status. In San Francisco, Joe DiMaggio's parents were forbidden to go further than five miles from their home without a permit. Even Enrico Fermi, a leading Italian physicist who was instrumental in America's development of the atomic bomb, could not travel freely along the East Coast. Yet, while these activities persisted in the United States, Italian Americans comprised the largest ethnic group in the Armed Forces. During the war, Italian Americans fought valiantly to defend the freedoms that their loved ones were being denied at home.

These are the stories we know about and the facts which have come to light. Yet more than fifty years after the end of World War II, the American people still do not know the details of the Italian American internment, and the American government has yet to acknowledge that these events ever took place. Through this legislation, the Administration will be required to report on the extent to which civil liberties were violated. The Justice Department would conduct a comprehensive review of the Italian American internment, and report its findings, including the name of every person taken into custody, interned, or arrested. The specific injustices they suffered in camps and jail cells would also be detailed in the report. Moreover, federal agencies, from the Department of Education to the National Endowment for the Humanities, would be encouraged to support projects like ''Una Storia Segreta'' that draw attention to this episode of American history.

The United States has rightfully admitted its error in interning Japanese Americans. However, Americans of Italian descent suffered equal hardships and this same recognition has been denied to them. I look forward to working with my colleagues to secure passage of this legislation so that the United States government will begin to release the facts about this era. Only then can Italian Americans begin to come to terms with the treatment they received during World War II.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1909

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Wartime Violation of Italian American Civil Liberties Act''.

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) The freedom of more than 600,000 Italian-born immigrants in the United States and their families was restricted during World War II by Government measures that branded them ''enemy aliens'' and included carrying identification cards, travel restrictions, and seizure of personal property.

(2) During World War II more than 10,000 Italian Americans living on the West Coast were forced to leave their homes and prohibited from entering coastal zones. More than 50,000 were subjected to curfews.

(3) During World War II thousands of Italian American immigrants were arrested, and hundreds were interned in military camps.

(4) Hundreds of thousands of Italian Americans performed exemplary service and thousands sacrificed their lives in defense of the United States.

(5) At the time, Italians were the largest foreign-born group in the United States, and today are the fifth largest immigrant group in the United States, numbering approximately 15,000,000.

(6) The impact of the wartime experience was devastating to Italian American communities in the United States, and its effects are still being felt.

(7) A deliberate policy kept these measures from the public during the war. Even 50 years later much information is still classified, the full story remains unknown to the public, and it has never been acknowledged in any official capacity by the United States Government.

SEC. 3. REPORT.

The Inspector General of the Department of Justice shall conduct a comprehensive review of the treatment by the United States Government of Italian Americans during World War II, and not later than 1 year after the date of enactment of this Act shall submit to the Congress a report that documents the findings of such review. The report shall cover the period between September 1, 1939, and December 31, 1945, and shall include the following:

(1) The names of all Italian Americans who were taken into custody in the initial roundup following the attack on Pearl Harbor, and prior to the United States declaration of war against Italy.

(2) The names of all Italian Americans who were taken into custody.

(3) The names of all Italian Americans who were interned and the location where they were interned.

(4) The names of all Italian Americans who were ordered to move out of designated areas under the United States Army's ''Individual Exclusion Program''.

(5) The names of all Italian Americans who were arrested for curfew, contraband, or other violations under the authority of Executive Order 9066.

(6) Documentation of Federal Bureau of Investigation raids on the homes of Italian Americans.

(7) A list of ports from which Italian American fishermen were restricted.

(8) The names of Italian American fishermen who were prevented from fishing in prohibited zones and therefore unable to pursue their livelihoods.

(9) The names of Italian Americans whose boats were confiscated.

(10) The names of Italian American railroad workers who were prevented from working in prohibited zones.

(11) A list of all civil liberties infringements suffered by Italian Americans during World War II, as a result of Executive Order 9066, including internment, hearings without benefit of counsel, illegal searches and seizures, travel restrictions, enemy alien registration requirements, employment restrictions, confiscation of property, and forced evacuation from homes.

(12) An explanation of why some Italian Americans were subjected to civil liberties infringements, as a result of Executive Order 9066, while other Italian Americans were not.

(13) A review of the wartime restrictions on Italian Americans to determine how civil liberties can be better protected during national emergencies.

SEC. 4. SENSE OF THE CONGRESS.

It is the sense of the Congress that—

(1) the story of the treatment of Italian Americans during World War II needs to be told in order to acknowledge that these events happened, to remember those whose lives were unjustly disrupted and whose freedoms were violated, to help repair the damage to the Italian American community, and to discourage the occurrence of similar injustices and violations of civil liberties in the future;

(2) Federal agencies, including the Department of Education and the National Endowment for the Humanities, should support projects such as—

(A) conferences, seminars, and lectures to heighten awareness of this unfortunate chapter in our Nation's history;

(B) the refurbishment of and payment of all expenses associated with the traveling exhibit ''Una Storia Segreta'', exhibited at

major cultural and educational institutions throughout the United States; and

(C) documentaries to allow this issue to be presented to the American public to raise its awareness;

(3) an independent, volunteer advisory committee should be established comprised of representatives of Italian American organizations, historians, and other interested individuals to assist in the compilation, research, and dissemination of information concerning the treatment of Italian Americans; and

(4) after completion of the report required by this Act, financial support should be provided for the education of the American public through the production of a documentary film suited for public broadcast.

SEC. 5. FORMAL ACKNOWLEDGEMENT.

The United States Government formally acknowledges that these events during World War II represented a fundamental injustice against Italian Americans.

By Mr. MOYNIHAN (for himself and Mr. SCHUMER):

S. 1910. A bill to amend the Act establishing Women's Rights National Historical Park to permit the Secretary of the Interior to acquire title in fee simple to the Hunt House located in Waterloo, New York; to the Committee on Energy and Natural Resources.

HUNT HOUSE PURCHASE AUTHORIZATION LEGISLATION

● Mr. MOYNIHAN. Mr. President, I rise to introduce a bill that would authorize the Secretary of the Interior to purchase the Hunt House in Seneca Falls, New York. This summer the owners of the Hunt House put it on the market for $135,000. Of four historic buildings in Seneca Falls that should be part of the Women's Rights National Historical Park, the Hunt House is the only one that is not. It was the site of the gathering of five women (the founding mothers, you might say) who decided to hold the Nation's first women's rights convention. That convention took place in Seneca Falls in July, 1848. The Women's Rights Park is a monument to the idea they espoused that summer, that women should have equal rights with men; one of the most influential ideas of the last 150 years.

Adding the Hunt House to the Park would complete it. The problem is that the Department was not given the authorization to purchase the Hunt House in the bill I offered 20 years ago so that speculation would not drive up the price of the house when it eventually went on the market. That worked. But now the lack of an authorization should not keep us from being able to acquire the house at all. This bill simply removes the restriction against a fee simple purchase by the Park Service. I hope my colleagues will offer their support, and I ask that the text of the bill be printed in the RECORD.

The bill follows:

S. 1910

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

SECTION 1. ACQUISITION OF HUNT HOUSE.

(a) IN GENERAL.—Section 1601(d) of Public Law 97–607 (94 Stat. 3547; 16 U.S.C. 410*ll*(d)) is amended—

(1) in the first sentence—

(A) by inserting a period after ''park''; and

(B) by striking the remainder of the sentence; and

(2) by striking the last sentence.

(b) TECHNICAL CORRECTIONS.—Section 1601(c)(8) of Public Law 97–607 (94 Stat. 3547; 16 U.S.C. 410*ll*(c)(8)) is amended by striking ''Williams'' and inserting ''Main''.●

By Mr. BREAUX (for himself, Ms. SNOWE, Mr. HOLLINGS, Mr. SHELBY, Mr. KERRY, Mr. SESSIONS, and Ms. LANDRIEU):

S. 1911. A bill to conserve Atlantic highly migratory species of fish, and for other purposes; to the Committee on Commerce, Science, and Transportation.

ATLANTIC HIGHLY MIGRATORY SPECIES ACT

● Mr. BREAUX. Mr. President, I rise today to send to the desk a bill that is called the Atlantic Highly Migratory Species Act of 1999. The legislation cosponsored by Senators SNOWE, HOLLINGS, SHELBY, KERRY, SESSIONS and LANDRIEU results from a far reaching conservation agreement among four key recreational and commercial fishing organizations. These organizations include the Billfish Foundation, the Coastal Conservation Association, the American Sportfishing Association and the Blue Water Fishermen's Association.

The legislation will prohibit pelagic long line fishing for designated months each year in U.S. waters determined to be swordfish nursery and billfish bycatch areas based on extensive analyses of the best available science. Based upon the effectiveness of this type of management strategy in other U.S. fisheries, I am optimistic about the benefits that can come from the legislation.

Mr. President, the legislation has three major components that I would like to briefly outline.

First, the bill would prohibit pelagic longline fishing for certain months each year in U.S. waters where swordfish and billfish are caught with other fish. Essentially, more than 160,000 square nautical miles in the Atlantic Ocean and Gulf of Mexico would become a conservation area to rebuild populations of swordfish, sailfish, tuna, marlin and sharks.

Recognizing the economic impact on commercial fishermen, the legislation provides a fair and equitable program for longline vessel owners who are adversely impacted by the fishing prohibition. Funding of the permit buyback program would come through a partnership of the recreational and commercial fishing industries and federal funds.

The bill also directs the National Marine Fisheries Service to conduct a comprehensive research program in cooperation with the U.S. longline fleet to identify and test a variety of longline gear configurations to determine which are the most effective at reducing billfish bycatch in the Atlantic and Gulf of Mexico.

I believe that a true solution to the bycatch issue will require international cooperation. Ironically, next week the U.S. Commissioners to the International Commission for the Conservation of Atlantic Tunas (ICCAT) will be meeting in Brazil to consider many challenging issues, including a rebuilding plan for the north Atlantic stock of swordfish.

Under the bill we introduce today, we are taking a bold first step to address the problems in our own coastal waters. I am confident that this first step will serve as an example to the international community on focusing much needed attention to this important issue.●

● Mr. HOLLINGS. Mr. President, I rise today to join my colleague, Senator BREAUX, in introducing the Atlantic Highly Migratory Species Conservation Act of 1999. I am pleased to co-sponsor this legislative effort to promote conservation and bycatch reduction of small swordfish, billfish, and other highly migratory species.

The Atlantic Highly Migratory Species Conservation Act would create time-area closures for pelagic longline fishing along 160,000 miles of the Atlantic and the Gulf of Mexico coasts. These closures include the three major spawning areas where a significant portion of juvenile swordfish and billfish bycatch mortality occurs. I am particularly pleased to see that these closures encompass the coastal waters of my home state of South Carolina and particularly a highly productive swordfish spawning and nursery ground, the Charleston Bump. In conjunction with the closures, the bill would reduce fishing capacity by retiring approximately 68 longline vessels from the commercial fishery through a fair and equitable program funded by the federal government and the recreational and commercial fishing industries. In addition, the Act would establish a research program, in conjunction with the National Marine Fisheries Service, to study longline gear and potential gear improvements. All too frequently we are forced to make fisheries management decisions with too little information; these research provisions will provide data crucial for management of highly migratory species.

The current proposal results from arduous work and negotiation among commercial and recreational fishing groups including the Coastal Conservation Association, the American Sportsfishing Association, the Billfish Foundation, and the Blue Water Fisherman's Association. I commend these groups for their cooperation in developing this truly constructive conservation plan based on extensive analyses of the best available science. I also approve of their effort to make this bill consistent with the principles governing capacity reduction established in the Magnuson-Stevens Fishery Conservation and Management Act.

The introduction of the Atlantic Highly Migratory Species Conservation Act of 1999 couldn't come at a better time. Many of the highly migratory

species, including North Atlantic swordfish, are currently overfished. The National Marine Fisheries Service reports that billfish and some shark and tuna species are at all-time lows in abundance as a result of longline fishing bycatch and widespread disregard for international rules by commercial fishermen of other nations. The international management body for highly migratory species, the International Commission for the Conservation of Atlantic Tunas (ICCAT), recently expressed concern about the high catches and discards of small swordfish and emphasized that future gains in yield could accrue if fishing mortality on small fish could be reduced. Further, ICCAT encouraged member nations to consider alternative methods such as time/area closures to aid rebuilding of highly migratory stocks. I commend Senator BREAUX for attempting to establish such areas domestically, and hope that we can serve as a model for other nations.

While this legislation can result in important conservation achievements, we must also employ other means to protect and rebuild our highly migratory species such as swordfish. Next week, ICCAT will convene in Rio de Janero, Brazil to determine new international management measures for Atlantic swordfish. The United States must supplement Senator BREAUX's proposal by securing an agreement at ICCAT that will reduce catches by all member nations sufficient to allow the North Atlantic swordfish population to recover within ten years or less—a goal that scientists tell us can only be achieved if we count discarded dead swordfish against the catch quotas. In addition, I am certain that Senator BREAUX's effort to reduce bycatch and establish time-area closures will serve as a powerful example to the international community of a responsible method for sustaining and restoring highly migratory species.

I applaud my colleague and the other architects of this ambitious conservation effort and look forward to working with Senator BREAUX and other cosponsors to ensure that this legislation is part of an effective national plan that ensures recovery of the North Atlantic swordfish stock within 10 years in a manner consistent with the goals of the Magnuson-Stevens Act.●

● Mr. KERRY. Mr. President, I rise today to co-sponsor a bill introduced by Mr. BREAUX, that is called the Atlantic Highly Migratory Species Act of 1999.

This legislation closes large areas to longline gear, including the important spawning areas where juvenile bycatch of swordfish and other billfish species are the highest. This legislation will also provide a fair and equitable program for longline vessel owners who are adversely impacted by the fishing prohibition. Funding of the permit buyback program would come through a partnership of the recreational and commercial fishing industries and federal funds. Lastly, this legislation directs the National Marine Fisheries Service to conduct a comprehensive research program in cooperation with the U.S. longline fleet to identify and test a variety of longline gear configurations to determine which are the most effective at reducing billfish bycatch in the Atlantic and Gulf of Mexico.

We are introducing this legislation at an important time. It will serve as an example to show the international community at next week's negotiations in Brazil, at the International Commission for the Conservation of Atlantic Tunas (ICCAT), that the U.S. embraces use of time-area closures to help swordfish recover.

I believe that this legislation will serve as one prong, of a two-prong U.S. strategy in international negotiations on swordfish quotas that ensures the total mortality of swordfish, including discards, is limited to levels that will allow the stock to recover in 10 years.

I look forward to working with Mr. BREAUX and other cosponsors of the bill to ensure that this legislation is both consistent with the principles of the Magnuson-Stevens Act and part of an effective national plan to ensure recovery of the North Atlantic swordfish stock within 10 years.●

By Mr. FRIST (for himself, Mr. MCCAIN, and Mr. BINGAMAN):

S. 1912. A bill to facilitate the growth of electronic commerce and enable the electronic commerce market to continue its current growth rate and realize its full potential, to signal strong support of the electronic commerce market by promoting its use within Federal government agencies and small and medium-sized businesses, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE ELECTRONIC COMMERCE TECHNOLOGY PROMOTION ACT

● Mr. FRIST. Mr. President, I rise today to introduce the Electronic Commerce Technology Promotion Act. I am very pleased to be joined by Senators MCCAIN and BINGAMAN.

Electronic commerce has fundamentally changed the way we do business, promising increased efficiency and improved quality at lower cost. It has been widely embraced by industry, both in the United States and abroad. This is evident in the growth of the electronic commerce market, which though almost non-existent just a few years ago, is expected to top a staggering $1 trillion by 2003, according to market research reports.

The basis for the growth of electronic commerce is the potential that electronic transactions can be completed seamlessly and simultaneously, regardless of geographical boundaries. Inherent in this is the ability of different systems to communicate and exchange data, commonly referred to as ''system interoperability''. The continued growth of global electronic commerce depends on a fundamental set of technical standards that enable essential technologies to interoperate, and on a policy and legal framework that supports the development that the market demands in a timely manner.

The United States is leading this global revolution. Our industries are at the forefront in every sector, continually evolving their businesses and developing new technologies to adapt to changing market needs. Continued growth of the overall electronic commerce market is vital to our economy as well as the global market.

For the electronic commerce market to sustain its current phenomenal growth rate, companies must be allowed to be agile and flexible in responding to market needs, their activities unfettered by cumbersome and static regulations. The federal government must allow the private sector to continue to take the lead in developing this dynamic global market, and refrain from undue regulatory measures wherever possible.

At the same time, the federal government must unambiguously signal its strong desire to promote and facilitate the growth of the electronic commerce market by adopting and deploying relevant electronic commerce technologies within the federal agencies, as well as widely promoting their use by small and medium-sized enterprises.

Usage of these technologies in the federal agencies enables us to share in the benefits of the electronic commerce revolution and participate more effectively as an active contributor in the private sector efforts to develop the frameworks and specifications necessary for systems and components to interoperate. This has the added advantage of allowing the government to intercede in a timely manner, either in failure conditions or to remove barriers erected by foreign governments. Furthermore, we would be strengthening our global leadership position, while at the same time establishing a model for other governments and enabling the growth of the global electronic commerce market.

Small and medium-sized businesses have traditionally been the fastest growing segment of our economy, contributing more than 50 percent of the private sector output in the United States. Electronic commerce has the potential to enable these enterprises to enter the market with lower entry costs, yet extend their reach to a much larger market. The federal government has an inherent interest in helping them to maintain their global competitiveness.

It is in response to these needs that I introduce today the Electronic Commerce Technology Promotion Act. The legislation establishes a Center of Excellence for Electronic Commerce at the National Institute of Standards and Technologies (NIST) that will act as a centralized resource of information for federal agencies and small and medium-sized businesses in electronic commerce technologies and issues. My

intention is not to create yet another program at NIST which will require substantial appropriations, but to create an office that focuses solely on electronic commerce by building upon existing expertise and resources. We have proposed that the Center be organized as a matrix organization that will coordinate existing as well as future activities at the Institute on electronic commerce.

The Center will also coordinate its activities with the Department of Commerce's Manufacturing Extension Program (MEP) and the Small Business Administration to provide assistance to small and medium-sized enterprises on issues related to the deployment and use of electronic commerce technologies, including developing training modules and software toolkits. In working jointly, the Center can build upon the existing MEP infrastructure to reach out to these businesses. It is important to note that my intention is not to enlarge or modify the charter of the MEP program.

Mr. President, I believe that the growth of the electronic commerce market is vital to our economic growth. It is our responsibility to facilitate this growth as well as do our best to enable the market to sustain its current phenomenal growth rate. Therefore, I urge my colleagues to support timely passage of this legislation so that we can give our unambiguous support for the development of electronic commerce as a market-driven phenomenon, and signal our strong desire to promote and facilitate the growth of the electronic commerce market.●

Mr. BINGAMAN. Mr. President, I am very pleased to join Senators FRIST and MCCAIN today in introducing the ''Electronic Commerce Technology Promotion Act.'' This bill, which sets up a center of Excellence in Electronic Commerce at the National Institutes of Standards and Technology, or NIST, is a solid step towards adapting an important federal agency to the digital economy we see blooming around us.

NIST was established in 1901 as the National Bureau of Standards during a time of tremendous industrial development, when technology became a key driver of our economic growth. Making those technologies literally fit together reliably through standards became crucial, and Congress realized that one key to sustaining our industrial growth and the quality of our products would be a federal laboratory devoted to developing standards. The Bureau of Standards is a classic example of how the federal government can support technical progress that undergirds economic growth and enables the competitive marketplace to work.

Around ten years ago, Congress modified the Bureau's charter in response to the problems of the 1980's, increasing its focus on competitiveness, adding efforts like the highly regarded Manufacturing Extension Program (MEP), and changing the name to NIST. Turning to the challenges of today's growing digital economy, this bill makes NIST a focal point in the federal government for promoting electronic commerce throughout our economy by establishing a Center of Excellence in Electronic Commerce there. While the challenges of making things fit together in a digital economy are different—and now go under the un-melodic term ''interoperability''—they are just as crucial as they were in the industrial economy of 1901. And, NIST remains an excellent place to lead the work.

I'm particularly pleased that this bill includes the fundamental idea behind my bill S. 1494, the Electronic Commerce Extension Establishment Act of 1999. That is, NIST ought to lead an electronic commerce extension program or service to provide small businesses with low cost, impartial technical advice on how to enter and succeed in e-commerce. This service will help ensure that small businesses in every part of the nation fully participate in the unfolding e-commerce revolution through a well-proven policy tool—a service analogous to the Department of Agriculture's Cooperative Extension Service and NIST's own MEP. I believe such a service would help both small businesses and our entire economy as the productivity enhancements from e-commerce are spread more rapidly, and I recently asked Secretary Daley for a report on how such a service should work. So, I thank Senator FRIST for including my basic policy idea in his bill and look forward to working with him to flesh it out, particularly in light of the report we should get from the Commerce Department.

Mr. President, I urge my colleagues to join Senators FRIST, MCCAIN, and myself in supporting this bill, as one step the Congress can take to make sure an important federal agency, NIST, continues its strong tradition of helping our economy—our growing digital economy—to be the most competitive in the world.

By Mr. LOTT (for Mr. MCCAIN (for himself and Mr. KYL)):

S. 1913. A bill to amend the Act entitled ''An act relating to the water rights of the Ak-Chin Indian Community'' to clarify certain provisions concerning the leasing of such water rights, and for other purposes; to the Committee on Indian Affairs.

THE AK-CHIN WATER RIGHTS SETTLEMENT ACT AMENDMENTS OF 1999

● Mr. MCCAIN. Mr. President, I rise on behalf of myself and my colleague, Senator KYL, to offer legislation that will make an important clarification to the Ak-Chin Water Rights Settlement Act of 1984. Similar legislation has been introduced in the House by Representative Shadegg.

Let me explain why this legislation is necessary.

In 1992, Congress amended the Ak-Chin Water Rights Settlement Act to allow the Ak-Chin Indian Community to enter into leases of the Community's water for a term not to exceed 100 years. On December 15, 1994, the Ak-Chin Indian Community entered into an agreement with the Del Webb Corporation to allow the company the option to lease up to 10,000 acre-feet of water for a period of 100 years from the date the option was exercised. Del Webb exercised the option on December 6, 1996, with a principal objective of providing a water supply for its development of a master-planned community in the Phoenix area.

However, since 1995, the State of Arizona, through its Department of Water Resources, has required certificates of assured water supply for 100 years for developments within the Phoenix Active Management Area. The 100-year assured water supply requirement is one of the key tenets of Arizona's water resource management. A certificate cannot be obtained unless a developer demonstrates that sufficient groundwater, surface water or adequate quality effluent will be continuously available to satisfy the proposed use of the development for at least 100 years.

Unfortunately, the lease as signed in 1996 has now matured for three years without the actual application to the Arizona Department of Water Resources for a certificate of assured water supply. The Arizona Department of Water Resources advised the company that it interprets its regulations to require Del Webb to demonstrate that water leased under the agreement with the Community will be available for a period of 100 years from the date each certificate issued. Under ADWR's interpretation, if Del Webb applies for a certificate of assured water supply on December 6, 1999, it must show that water will be available under the lease agreement until December 6, 2099. However, because Del Webb exercised its option in 1996, the lease agreement between Del Webb and the Community will expire on December 6, 2096, and will not meet the State's test of continuing legal and physical availability of water supply. Moreover, the Community does not have statutory authority to grant leases with terms in excess of 100 years.

To resolve this unanticipated conflict, the affected parties have agreed that what is required is a simple modification to the Ak-Chin Water Rights Settlement Act of 1984 to allow the extension of leasing authority to include options to lease and renew or extend existing leases. This change will allow the Ak-Chin Indian Community to extend or renew the existing lease to Del Webb for a cumulative term that would expire more than 100 years from today.

Mr. President, this legislation will make a technical change to the Ak-Chin Water Rights Settlement Act in order for the Ak-Chin/Del Webb agreement to be in compliance with State law. All parties and interests directly impacted by this lease agreement are

supportive of this amendment. Therefore, it is our hope that we can move this legislation quickly.

I ask to include a complete text of the legislation in the RECORD.

The bill follows:

S. 1913

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

SECTION 1. CONSTITUTIONAL AUTHORITY.

The Constitutional authority for this Act rests in article I, section 8, authorizing Congress to ''regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes''.

SEC. 2. TECHNICAL AMENDMENTS TO AK-CHIN WATER USE ACT OF 1984.

(a) SHORT TITLE.—This section may be cited as the ''Ak-Chin Water Use Amendments Act of 1999''.

(b) AUTHORIZATION OF USE OF WATER.—Section 2(j) of the Act of October 19, 1984 (Public Law 98–530; 98 Stat. 2698) is amended to read as follows:

''(j)(1) The Ak-Chin Indian Community (hereafter in this subsection referred to as the 'Community') shall have the right to devote the permanent water supply provided for by this Act to any use, including agricultural, municipal, industrial, commercial, mining, recreational, or other beneficial use, in the areas initially designated as the Pinal, Phoenix, and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1. The Community is authorized to lease or enter into options to lease, to renew options to lease, to extend the initial terms of leases for the same or a lesser term as the initial term of the lease, to renew leases for the same or a lesser term as the initial term of the lease, to exchange or temporarily dispose of water to which it is entitled for the beneficial use in the areas initially designated as the Pinal, Phoenix, and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

''(2) Notwithstanding paragraph (1), the initial term of any lease entered into under this subsection shall not exceed 100 years and the Community may not permanently alienate any water right. In the event the Community leases, enters into an option to lease, renews an option to lease, extends a lease, renews a lease, or exchanges or temporarily disposes of water, such action shall only be valid pursuant to a contract that has been accepted and ratified by a resolution of the Ak-Chin Indian Community Council and approved and executed by the Secretary.''.

(c) APPROVAL OF LEASE AND AMENDMENT OF LEASE.—The option and lease agreement among the Ak-Chin Indian Community, the United States, and Del Webb Corporation, dated as of December 14, 1996, and the Amendment Number One thereto among the Ak-Chin Indian Community, the United States, and Del Webb Corporation, dated as of January 7, 1999, are hereby ratified and approved. The Secretary of the Interior is hereby authorized and directed to execute Amendment Number One, and the restated agreement as provided for in Amendment Number One, not later than 60 days after the date of the enactment of this Act.●

By Mr. MACK (for himself and Mrs. HUTCHISON):

S. 1914. A bill to amend the Internal Revenue Code of 1986 to provide for the creation of disaster protection funds by property and casualty insurance companies for the payment of policyholders' claims arising from future catastrophic events; to the Committee on Finance.

POLICYHOLDER DISASTER PROTECTION ACT

● Mr. MACK. Mr. President, I rise today to address a problem that ought to be a concern to all of us: natural disasters and the exposure of the private insurance industry to catastrophic risks. In my state of Florida, we have a particular concern about hurricane risk, but many areas of the country are exposed to the risks of other major catastrophes—whether they be volcanoes, earthquakes or tornadoes. Increasingly, I am concerned about the state of the private insurance industry and its ability to withstand a major catastrophe—a catastrophe of Hurricane Andrew size ($15 billion in insured losses) or greater.

Today, I am introducing legislation to help address this problem and strengthen disaster protection for homeowners and businesses while protecting the interests of the taxpayer. I am pleased my friend from Texas, Senator HUTCHISON, has joined me in this effort. I believe our approach is an innovative, private-sector solution to the problem of catastrophic risk and I encourage my colleagues to review this proposal carefully.

Consumers of property and casualty insurance must be able to rely on their insurers for protection against the risk of catastrophic loss. However, protection for policyholders in today's system is weak; a major future catastrophe could leave consumers without protection and—if past experience is any indication—the government would intervene to ensure the people in the disaster areas receive timely compensation. It is important to note that current law actually poses a disincentive for insurers to set aside special reserves for catastrophic events. Any money set aside to cover potential risk is considered taxable income. To fix this flaw in America's insurance system, we need to provide incentives for insurers to set aside a portion of their policy premiums in secure reserve funds that will be available to meet policyholder needs in the event of future catastrophes. Our bill does just that.

The typical property and casualty insurance company in the United States is exposed to multiple forms of catastrophic risk. This risk can take the form of major disasters that occur only once in a decade or once in several decades (e.g., severe earthquakes, major hurricanes). These can also be in the form of localized natural disasters (e.g., tornadoes, wildfires, floods, winter storms) that cause unusually large policyholder losses in a region and imperil the ability of smaller insurance companies to help their policyholders in the area.

The nation's exposure to these large natural disasters is staggering. While millions of families and small businesses rely on insurance payments to recover from natural disasters, it is important to remember that—under our current insurance tax and regulatory systems—many private insurers may not be able to pay all claims arising from a major disaster. Hurricane Andrew and the Northridge Earthquake opened our eyes to the country's massive exposure to catastrophic losses. Insured losses in my state from Hurricane Andrew exceeded $15 billion. But if this storm had passed over Miami, rather than Homestead just 40 miles south, insured losses could have reached $50 billion, leaving the Florida economy crippled and more than a third of all insurers in that market insolvent.

There is always the potential for a major disaster in any given year in the United States. Estimates of insured losses from highly probable events range from about $75 billion in California and Florida to $100 billion or more in areas of the Midwest. The Gulf, Intermountain West, and Atlantic states all face exposures of approximately $20 billion or more.

Unfortunately, our current system of tax laws and accounting rules work against consumers and taxpayers because they discourage private market preparation for future major disasters. Present tax laws do not permit portions of consumers' insurance policy payments to be set aside and tax deferred in order to provide for the risk of truly catastrophic loss events. Ironically, our tax system allows insurers to set aside funds on a tax-deductible basis to address disasters that have already happened but it gives them no incentive to prepare for those major disasters that have not yet happened.

Policyholder premiums needed to fund policyholders' catastrophic losses in future years are subject to current tax if not used in a particular year. This diminishes the power of insurers to protect policyholders against future losses. This structure is inadequate for assuring that property-casualty policies will protect consumers from future major catastrophic losses.

The tax law should be revised in order to make accommodation for disaster protection reserves and bring about a more practical, and sensible, system for insurance companies and consumers.

Under the Policyholder Disaster Protection Act, insurers could set aside portions of policyholder payments in a tax-deferred disaster protection fund. Amounts from this fund used to pay for losses from a major disaster would be subject to taxation. This concept is similar to programs presently in place in many other developed countries.

I believe this legislation would result in greater stability for insurers providing catastrophic coverage and fewer insolvencies after a major disaster. A recent study by a major U.S. accounting firm determined that approximately $21 billion in pre-funded reserves would be accumulated within the first ten years of the program.

Also, the tax incentive in the bill will encourage insurers to serve disaster-prone areas in a responsible manner by setting aside funds to pay for major losses.

The treatment of the fund by insurers would be closely regulated. Following is a general description of the provisions of the bill:

Insurers would be able to set aside special tax-deferred reserves to cover potential catastrophic events.

The maximum amount any insurer could set aside in a given year would be determined by reference to each insurance company's exposure to the risk of catastrophic loss events.

Deductible contributions to disaster protection funds would be voluntary, but would be irrevocable once made (except to the extent of ''drawdowns'' for actual catastrophic loss events, or drawdowns otherwise required by state insurance regulators). No company could use these funds to shelter income from taxation.

The maximum allowable reserve for any given company will increase or decrease as they enter or exit lines of business that pose catastrophic risk.

Insurers would only be allowed to drawdown the disaster reserves if the loss event in question is declared an emergency or disaster by certain recognized bodies or government officials (for example, a disaster declared by the President under the Stafford Act) and that losses in a year exceed the specified high level. The amounts distributed from the fund are added to company's taxable income for the year in which the drawdown occurred.

Insurance companies would pay taxes on income generated when funds in the disaster reserve are invested. This income would be distributed out of the fund to the insurance company and taxed to the company on a current basis.

The maximum reserve (or ''cap'') would be phased in at the rate of five percent per year over 20 years. Industry estimates indicate private reserves of $40 billion would be built up over this time.

Various concepts to address the problem of catastrophic losses have been proposed over the years. I look forward to working with all of my colleagues to craft a comprehensive solution to both the short-term and long-term problems presented by the risk of catastrophic disasters. In my view, the private-sector focus of this bill, which puts a strengthened private insurance market for consumers in the forefront of disaster protection, is an approach designed to ensure disaster relief is efficient and cost-effective for taxpayers. While the federal government may still need to provide last-resort safety net for disaster victims, it is important to do what we can to ensure private insurance is available, affordable and secure for those citizens in those areas of the country at risk to a catastrophic disaster. This bill will help to bring precisely that availability, affordability and security to insurance policyholders throughout the country, and I believe it is worthy of support and consideration.

The bill we're introducing today mirrors a bill introduced by Congressman FOLEY and MATSUI in the House of Representatives. It is also supported by taxpayer, homeowner, consumer, business and emergency service organizations, as well as local and state policy makers and insurance organizations. I believe it is a sensible approach and I hope my colleagues will join me in this effort.●

By Mr. JEFFORDS (for himself, Mr. CRAPO, Mr. MURKOWSKI, Mr. SCHUMER, Mr. HARKIN, Mr. BRYAN, Mr. BURNS, and Mr. REID):

S. 1915. A bill to enhance the services provided by the Environmental Protection Agency to small communities that are attempting to comply with national, State, and local environmental regulations; to the Committee on Environment and Public Works.

SMALL COMMITTEE ASSISTANCE ACT OF 1999

Mr. JEFFORDS. Mr. President, for years small communities across the United States have labored to meet environmental regulations written for major cities. They have struggled unduly with complicated regulations designed for Chicago or Los Angeles. Today I am introducing legislation designed to end this problem: the Small Community Assistance Act of 1999.

We who live in small towns such as my home town of Shrewsbury, Vermont are proud of our community and our environment. We want to comply with reasonable health and environmental standards in order to leave a healthy legacy for our children. But we do not have the staff or financial capacity of larger communities to respond to far-reaching regulations. We are concerned about standards written without consideration for the special circumstances small towns in America face. While we recognize the importance of environmental regulations in safeguarding our air and water, we need the ability to respond intelligently to local priorities and needs. We want to comply with environmental regulations, but we need some flexibility in order to comply in a reasonable manner. We do not want preferential treatment, we want treatment that recognizes our unique size and fiscal situation.

In 1991, I authored the Small Town Environmental Planning Act. This act passed overwhelmingly in the House and Senate and was signed into law by President Bush in 1992. This act mandated that the Environmental Protection Agency give more assistance to small towns. It created a task force comprised of representatives from small communities across the nation. These small town representatives developed a list of ways in which the EPA can better help small towns enjoy and maintain a healthy environment.

It is now time to take their advice. The Small Community Assistance Act of 1999 will give much needed assistance to small towns and communities in Vermont and across the nation. This bill will give small communities more input into the regulatory review process, clearer and simpler environmental guidelines, and more assistance in meeting environmental obligations.

This legislation acts on the recommendations of people from small communities throughout the United Stats. Small community members provided the impetus for this bill, helped write the bill itself, and provided numerous helpful comments. To these small community members I offer my sincere appreciation. I would especially like to thank the members of EPA's Small Community Advisory Subcommittee for all of their help, and I thank the committee for its unanimous endorsement of this bill.

I would like to thank the original cosponsors of this bill, Senators CRAPO, MURKOWSKI, SCHUMER, HARKIN, BRYAN, BURNS, and REID. Their leadership on this bill underscores their dedication to helping people in our small towns. I urge every one of my colleagues to cosponsor this bill. Together, we can improve the quality of life and further environmental protections in our small communities nationwide.

Mr. REID. Mr. President, I am pleased to join today with a geographically and politically diverse group of Senators to introduce the Small Community Assistance Act of 1999. I commend Senator JEFFORDS for investing his time and energy in developing this important legislation. This Small Community Assistance Act will help ensure that small towns all across America are included in a combined local, state, and national effort to protect the environment.

This bill would help increase communications and cooperation between the U.S. Environmental Protection Agency and smaller communities. By establishing a Small Town Ombudsman Office in each of EPA's regions, this bill will ensure that communities with less than 7500 residents have improved access to the technical expertise and information that are necessary for small towns to cost effectively protect the quality of their air and water and their citizens' health.

By incorporating the perspectives of a Small Community Advisory Committee early in the development of EPA's environmental policies, this bill will improve the working relationship between small towns and EPA and ultimately strengthen environmental protection.

The Small Community Advisory Committee will build on the valuable work already done by EPA's Small Community Task Force, which includes representatives of towns, governmental agencies, and public interest groups from across the country. Cherie Aiazzi of Carlin, a town of about 2800 people in northern Nevada, contributed

her time, insight and creativity to this task force and I know that perspectives of rural towns across the country are better understood as a result of her efforts.

By coincidence of history and geography Nevada is a state with more small towns than big cities. In our efforts to enhance the quality of life for all Nevadans, it is crucial that small communities play an important role in the development and achievement of our environmental goals. The Small Community Assistance Act of 1999 provides an valuable opportunity for small towns to contribute to and benefit from this important effort.

By Mr. FEINGOLD:

S. 1917. A bill to abolish the death penalty under Federal law; to the Committee on the Judiciary.

THE FEDERAL DEATH PENALTY ABOLITION ACT OF 1999

• Mr. FEINGOLD. Mr. President, I rise today to introduce the Federal Death Penalty Abolition Act of 1999. This bill will abolish the death penalty at the federal level. It will put an immediate halt to executions and forbid the imposition of the death penalty as a sentence for violations of federal law.

Since the beginning of this year, this Chamber has echoed with debate on violence in America. We've heard about violence in our schools and neighborhoods. Some say it's because of the availability of guns to minors. Some say Hollywood has contributed to a culture of violence. Others argue that the roots of the problem are far deeper and more complex. Whatever the causes, a culture of violence has certainly infected our nation. As schoolhouse killings have shown, our children now can be reached by that culture of violence. And they aren't just casual observers; some of them are active participants and many have been victims.

But, Mr. President, I'm not so sure that we in government don't contribute to this casual attitude we sometimes see toward killing and death. With each new death penalty statute enacted and each execution carried out, our executive, judicial and legislative branches, at both the state and federal level, add to a culture of violence and killing. With each person executed, we're teaching our children that the way to settle scores is through violence, even to the point of taking a human life.

At the same time, the public debate on the death penalty, which was an intense national debate not very long ago, is muted. As the online magazine Slate recently noted, with crime rates down and incomes up, ''unspeakable crimes are no longer spoken of, murder is what happens to your portfolio on a bad day, 'family values' are debated through the Internal Revenue code, and the 'death penalty' is [often used as a term for] a tax issue.'' What has happened to our nation's sense of striving to do what we know to be the right thing? Those who favor the death penalty should be pressed to explain why fallible human beings should presume to use the power of the state to extinguish the life of a fellow human being on our collective behalf. Those who oppose the death penalty should demand that explanation adamantly, and at every turn. But only a zealous few try.

Our nation is a great nation. We have the strongest democracy in the world. We have expended blood and treasure to protect so many fundamental human rights at home and abroad and not always for only our own interests. But we can do better. Mr. President, we should do better. And we should use this moment to do better as we step not only into a new century but also a new millennium, the first such landmark since the depths of the Middle Ages.

Courtesy of the Internet and CNN International, the world observes, perplexed and sometimes horrified, the violence in our nation. When the Littleton tragedy erupted, newspapers all over the world marveled at how readily available guns are to American children. And across the globe, with every American who is executed, the entire world watches and asks how can the Americans, the champions of human rights, compromise their own professed beliefs in this way.

Religious groups and leaders express their revulsion at the continued practice of capital punishment. Pope John Paul II frequently appeals to American governors when a death row inmate is about to die. I am pleased that in a recent case, involving an inmate on death row in Missouri, the Missouri governor heeded the good advice of the pontiff and commuted the killer's sentence to life without parole. That case generated a lot of press—but only as a political issue, rather than a moral question or a human rights challenge.

But the Pope is not standing alone against the death penalty. He is joined by the chorus of voices of various people of faith who abhor the death penalty. Religious groups from the National Conference of Catholic Bishops, the United Methodist Church, the Presbyterian Church, the Evangelical Lutheran Church in America, the Mennonites, the Central Conference of American Rabbis, and so many more people of faith have proclaimed their opposition to capital punishment. And, I might add, even conservative Pat ROBERTSon protested the execution in 1998 of Karla Faye Tucker, a born-again Christian on Texas death row. Mr. President, I would like to see the commutation of sentences to life without parole for all death row inmates—whether they are Christians, Muslims, Jews, Buddhists, or some other faith, or no faith at all.

The United States' casual imposition of capital punishment is abhorrent not only to many people of faith. Our use of the death penalty also stands in stark contrast to the majority of nations that have abolished the death penalty in law or practice. Even Russia and South Africa—nations that for years were symbols of egregious violations of basic human rights and liberties—have seen the error of the use of the death penalty. The United Nations Commission on Human Rights has called for a worldwide moratorium on the use of the death penalty. And soon, Italy and other European nations are expected to introduce a resolution in the UN General Assembly calling for a worldwide moratorium.

The European Union denies membership in their alliance to those nations that use the death penalty. In fact, the European Union recently warned Turkey that if it executes the Kurdish leader, Abdullah Ocalan, Turkey would jeopardize its membership application. Just this past December, the European Union actually passed a resolution calling for the immediate and unconditional global abolition of the death penalty, and it specifically called on all states within the United States to abolish the death penalty. This is significant because it reflects the unanimous view of the nations with which the United States enjoys its closest relationships—nations that so often follow our lead.

Mr. President, what is even more troubling in the international context is that the United States is now one of only six countries that imposes the death penalty for crimes committed by children. I'll repeat that because it is remarkable. We are one of only six nations on this earth that puts to death people who were under 18 years of age when they committed their crimes. The others are Iran, Pakistan, Nigeria, Saudi Arabia and Yemen. These are countries that are often criticized for human rights abuses. And let's look at the numbers. Since 1990, the United States has executed ten child offenders. That's more than any one of these five other countries and equal to all five countries combined. Even China —the country that many members of Congress, including myself, have criticized for its human rights violations—apparently has the decency not to execute its children. This is embarrassing. Is this the kind of company we want to keep? Is this the kind of world leader we want to be? But these are the facts for this past decade, 1990 to the present.

Now, let's look at the last two years. In the last two years, the United States has been the only nation in the world to put to death people who were minors when they committed their crimes. We have executed four child offenders during the last two years. Today, over 70 child offenders remain on death row. No one, Mr. President, no one can reasonably argue that based on this data, executing child offenders is a normal or acceptable practice in the world community. And I don't think we should be proud of the fact that the United States is the world leader in the execution of child offenders.

Is the death penalty a deterrent for our children's conduct, as well as that

of adult Americans? For those who believe capital punishment is a deterrent, they are sadly, sadly mistaken. The federal government and most states in the U.S. have a death penalty, while our European counterparts do not. Following the logic of death penalty supporters who believe it's a deterrent, you would think that our European allies, who don't use the death penalty, would have a higher murder rate than the United States. Yet, they don't and it's not even close. In fact, the murder rate in the U.S. is six times higher than the murder rate in Britain, seven times higher than in France, five times higher than in Australia, and five times higher than in Sweden.

But we don't even need to look across the Atlantic to see that capital punishment has no deterrent effect on crime. Let's compare Wisconsin and Texas. I'm proud of the fact that my great state, Wisconsin, was the first state in this nation to abolish the death penalty completely, when it did so in 1853. Wisconsin has been death penalty-free for nearly 150 years. In contrast, Texas is the most prodigious user of the death penalty, having executed 192 people since 1976. Let's look at the murder rate in Wisconsin and Texas. During the period 1995 to 1998, Texas has had a murder rate that is nearly double the murder rate in Wisconsin. This data alone calls into question the argument that the death penalty is a deterrent to murder.

In fact, according to a 1995 Hart Research poll, the majority of our nation's police chiefs do not believe the death penalty is a particularly effective law enforcement tool. When asked to rank the various factors in reducing crime, police chiefs ranked the death penalty last. Rather, the police chiefs —the people who deal with hardened criminals day in and day out —cite reducing drug abuse as the primary factor in reducing crime, along with a better economy and jobs, simplifying court rules, longer prison sentences, more police officers, and reducing guns. It looks like most police chiefs recognize what our European allies and a few states like Wisconsin have known all along: the death penalty is not an effective deterrent.

Mr. President, let me be clear. I believe murderers and other violent offenders should be severely punished. I'm not seeking to open the prison doors and let murderers come rushing out into our communities. I don't want to free them. The question is: should the death penalty be a means of punishment in our society? One of the most frequent refrains from death penalty supporters is the claim that the majority of Americans support the death penalty. It's repeated so often, everybody assumes it's true. Mr. President, the facts do not support this claim. Survey after survey, from around the country, shows that when offered sentencing alternatives, more Americans prefer life without parole plus restitution for the victim's family over the death penalty. For example, a 1993 national poll found that when offered alternatives to the death penalty, 44% of Americans supported the alternative of life without parole plus restitution over the death penalty. Only 41% preferred the death penalty and 15% were unsure. This is remarkable. Sure, if you ask Americans the simple, isolated question of whether they support the death penalty, a majority of Americans will agree. But if you ask them whether they support the death penalty or a realistic, practical alternative sentence like life without parole plus restitution, support for the death penalty falls dramatically to below 50%. More Americans support the alternative sentence than Americans who support the death penalty.

The fact that our society relies on killing as punishment is disturbing enough. Even more disturbing, however, is the fact that the States' and federal use of the death penalty is often not consistent with principles of due process, fairness and justice. These principles are the foundation of our criminal justice system and, in a broader sense, the stability of our nation. It is clearer than ever before that we have put innocent people on death row. In addition, those States that have the death penalty are more likely to put people to death for killing white victims than for killing black victims.

Mr. President, are we certain that innocent persons are not being executed? Obviously not. Are we certain that racial bias is not infecting the criminal justice system and the administration of the death penalty? I doubt it.

It simply cannot be disputed that we are sending innocent people to death. Since the modern death penalty was reinstated in the 1970s, we have released 79 men and women from death row. Why? Because they were innocent. Seventy-nine men and women sitting on death row, awaiting a firing squad, lethal injection or electrocution, but later found innocent. That's one death row inmate found innocent for every seven executed. One in seven! That's a pretty poor performance for American justice. A wrong conviction means that the real killer may have gotten away. The real killer may still be on the loose and a threat to society. What an injustice that the victims' loved ones cannot rest because the killer is still not caught. What an injustice that an innocent man or woman has to spend even one day in jail. What a staggering injustice that innocent people are sentenced to death for crimes they did not commit. What a disgrace when we carry out those sentences, actually taking the lives of innocent people in the name of justice.

I call my colleagues' attention to the recent example of an Illinois death row inmate, Ronald Jones, who had been sentenced to death for the rape and murder of a Chicago woman. After a lengthy interrogation in which Mr. Jones was beaten by police, he signed a confession. As a class assignment, a group of Northwestern University journalism students researched the case of Ronald Jones. What did they learn? They learned that Mr. Jones was clearly innocent and not for some technical reason—he just didn't do it. As a result of the students' efforts, Mr. Jones was later exonerated based on DNA evidence. Mr. President, our criminal justice system sent an innocent man to death row. Mr. Jones was tried and convicted in a justice system that is sometimes far from just and that sometimes just gets it wrong. And Mr. Jones is not alone. In Illinois alone, three death row inmates so far this year have been proven innocent. Since 1987, Illinois has freed 12 inmates from death row because they were later found innocent.

Innocent, Mr. President, and they were sitting on death row. Innocent, and yet they were about to be killed. Why? Because our criminal justice system is sometimes far from fair and far from just. We can all agree that it is profoundly wrong to convict and condemn innocent people to death. But sadly, that's what's happening. With the greater accuracy and sophistication of DNA testing available today compared to even a couple of years ago, states like Illinois are finding that people sitting on death row did not commit the crimes to which earlier, less accurate DNA tests appeared to link them. This DNA technology should be further reviewed and compared to other tests. We should consider the role of DNA tests in all those committed to death row.

Some argue that the discovery of the innocence of a death row inmate proves that the system works. This is absurd. How can you say the criminal justice system works when a group of students—not lawyers or investigators but students with no special powers, who were very much outside the system—discover that a man about to be executed was in fact innocent? That's what happened in Illinois to Ronald Jones. The system doesn't work. It has failed us.

A primary reason why justice has been less than just is a series of Supreme Court decisions that seem to fail to grasp the significance and responsibility of their task when a human life is at stake. The Supreme Court has been narrowly focused on procedural technicalities, ignoring the fact that the death penalty is a unique punishment that cannot be undone to correct mistakes. One disturbing decision was issued by the Supreme Court just a few months ago. In Jones v. United States, which involved an inmate on death row in Texas and the interpretation of the 1994 Federal Death Penalty Act, the judge refused to tell the jury that if they deadlocked on the sentence, the law required the judge to impose a sentence of life without possibility of parole. As a result, some jurors were under the grave misunderstanding that lack of unanimity would mean the judge could give a sentence where the

defendant might one day go free. The Supreme Court, however, upheld the lower court's imposition of the death penalty. And one more person will lose a life, when a simple correction of a misunderstanding could have resulted in a severe yet morally correct sentence of life without parole.

As legal scholar Ronald Dworkin recently observed, ''[t]he Supreme Court has become impatient, and super due process has turned into due process-lite. Its impatience is understandable, but is also unacceptable.'' Mr. President, America's impatience with the protracted appeals of death row inmates is understandable. But this impatience is unacceptable. The rush to judgment is unacceptable. And the rush to execute men, women and children who might well be innocent is horrifying.

The discovery of the innocence of death row inmates and misguided Supreme Court decisions disallowing potentially dispositive exculpatory evidence, however, aren't the only reasons we need to abolish the death penalty. Another reason we need to abolish the death penalty is the continuing racism in our criminal justice system. Our nation is facing a crucial test. A test of moral and political will. We have come a long way through this nation's history, and especially in this century, to dismantle state-sponsored and societal racism. Brown v. Board of Education, ensuring the right to equal educational opportunities for whites and blacks, was decided only 45 years ago. Unfortunately, however, we are still living with vestiges of institutional racism. In some cases, racism can be found at every stage of a capital trial—in the selection of jurors, during the presentation of evidence, when the prosecutor contrasts the race of the victim and defendant to appeal to the prejudice of the jury, and sometimes during jury deliberations.

After the 1976 Supreme Court Gregg decision upholding the use of the death penalty, the death penalty was first enacted as a sentence at the federal level with passage of the Drug Kingpin Statute in 1988. Since that time, numerous additional federal crimes have become death penalty-eligible, bringing the total to about 60 statutes today. At the federal level, 21 people have been sentenced to death. Another eight men sit on the military's death row. Of those 21 defendants on the federal government's death row, 14 are black and only 5 are white. One defendant is Hispanic and another Asian. That means 16 of the 21 people on federal death row are minorities. That's just over 75%. And the numbers are worse on the military's death row. Seven of the eight, or 87.5%, on military death row are minorities.

Some of my colleagues may remember the debates of the late 1980's and early 1990's, when Congress considered the Racial Justice Act and other attempts to eradicate racism in the use of capital punishment. A noted study evaluating the role of race in death penalty cases was frequently discussed. This was the study by David Baldus, a professor at the University of Iowa College of Law. The Baldus study found that defendants who kill white victims are more than four times more likely to be sent to death row than defendants who kill black victims. An argument against the Baldus study was made by some opponents of the Racial Justice Act. They argued that we just needed to ''level up'' the playing field. In other words, send all the defendants who killed black victims to death row, too. They argued that legislative remedies were not needed, just tell prosecutors and judges to go after perpetrators of black homicide as strongly as against perpetrators of white homicide.

In theory, this may sound reasonable but one thing is clear: no matter how hard we try, we cannot overcome the inevitable fallibility of being human. That fallibility means that we will not be able to apply the death penalty in a fair and just manner. We will always run the risk that we will condemn innocent people to death. Mr. President, let's restore some certainty, fairness, and justice to our criminal justice system. Let's have the courage to recognize our human fallibilities. Let's put a halt to capital punishment.

The American Bar Association agrees. In 1997, the American Bar Association called for a moratorium on the death penalty because it found that the application of the death penalty raises fairness and due process concerns. Several states are finally beginning to recognize the great injustice when the ultimate punishment is carried out in a biased and unfair way. Moratoriums have been considered by the legislatures of at least ten states over the last several months. The legislatures of Illinois and Nebraska have made the most progress. They actually passed moratorium measures earlier this year.

I am glad to see that some states are finally taking steps to correct the practice of legalized killing that was again unleashed by the Supreme Court's Gregg decision in 1976. The first post-Gregg execution took place in 1977 in Utah, when Gary Gilmore did not challenge and instead aggressively sought his execution by a firing squad. The first post-Gregg involuntary execution took place on May 25, 1979. I vividly remember that day. I had just finished my last law school exam that morning. Later that day, I recall turning on the television and watching the news report that Florida had just executed John Spenkelink. I was overcome with a sickening feeling. Here I was, fresh out of law school and firm in my belief that our legal system was advancing through the latter quarter of the twentieth century. Instead, to my great dismay, I was witnessing a throwback to the electric chair, the gallows, and the routine executions of our nation's earlier history.

Mr. President, I haven't forgotten that experience or what I thought and felt on that day. At the end of 1999, at the end of a remarkable century and millennium of progress, I cannot help but believe that our progress has been tarnished with our nation's not only continuing, but increasing use of the death penalty. As of today, the United States has executed 584 people since the reinstatement of the death penalty in 1976. In those 23 years, there has been a sharp rise in the number of executions. This year the United States has already set a record for the most executions in our country in one year, 84—the latest execution being that of Thomas Lee Royal, Jr., who was executed by lethal injection just last night by the state of Virginia. And the year isn't even over yet. We are on track to hit close to 100 executions this year. This is astounding and it is embarrassing. We are a nation that prides itself on the fundamental principles of justice, liberty, equality and due process. We are a nation that scrutinizes the human rights records of other nations. We are one of the first nations to speak out against torture and killings by foreign governments. It is time for us to look in the mirror.

Two former Supreme Court justices did just that. Justice Harry Blackmun penned the following eloquent dissent in 1994:

> From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored—indeed, I have struggled—along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor. Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question—does the system accurately and consistently determine which defendants ''deserve'' to die?—cannot be answered in the affirmative. . . . The problem is that the inevitability of factual, legal, and moral error gives us a system that we know must wrongly kill some defendants, a system that fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution.

Justice Lewis Powell also had a similar change of mind. Justice Powell dissented from the Furman decision in 1972, which struck down the death penalty as a form of cruel and unusual punishment. He also wrote the decision in McCleskey v. Kemp in 1987, which denied a challenge to the death penalty on the grounds that it was applied in a discriminatory manner against African Americans. In 1991, however, Justice Powell told his biographer that he had decided that capital punishment should be abolished.

After sitting on our nation's highest court for over 20 years, Justices Blackmun and Powell came to understand the randomness and unfairness of the death penalty. Mr. President, it is time for our nation to follow the lead of these two distinguished jurists and

re-visit its support for this form of punishment.

At the end of 1999, as we enter a new millennium, our society is still far from fully just. The continued use of the death penalty demeans us. The death penalty is at odds with our best traditions. It is wrong and it is immoral. The adage ''two wrongs do not make a right,'' could not be more appropriate here. Our nation has long ago done away with other barbaric punishments like whipping and cutting off the ears of suspected criminals. Just as our nation did away with these punishments as contrary to our humanity and ideals, it is time to abolish the death penalty as we enter the next century. And it's not just a matter of morality. Mr. President, the continued viability of our justice system as a truly just system requires that we do so. And in the world's eyes, the ability of our nation to say truthfully that we are the leader and defender of freedom, liberty and equality demands that we do so.

I ask my colleagues to join me in taking the first step in abolishing the death penalty in our great nation. Today, I introduce a bill that abolishes the death penalty at the federal level. I call on all states that have the death penalty to also cease this practice. Let us step away from the culture of violence and restore fairness and integrity to our criminal justice system. I close with this reminder to my colleagues. Where would our nation be if members of Congress were followers, not leaders, of public opinion? We, of course, would still be living with slavery, segregation and without a woman's right to vote. Like abolishing slavery and segregation and establishing a woman's right to vote, abolishing the death penalty will not be an easy task. It will take patience, persistence and courage. As we head into the next millennium, let us leave this archaic practice behind.

Mr. President, I ask that the text of the bill be printed in the RECORD.

The bill follows:

S. 1917

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Death Penalty Abolition Act of 1999''.

SEC. 2. REPEAL OF FEDERAL LAWS PROVIDING FOR THE DEATH PENALTY.

(a) HOMICIDE-RELATED OFFENSES.—

(1) MURDER RELATED TO THE SMUGGLING OF ALIENS.—Section 274(a)(1)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(B)(iv)) is amended by striking ''punished by death or''.

(2) DESTRUCTION OF AIRCRAFT, MOTOR VEHICLES, OR RELATED FACILITIES RESULTING IN DEATH.—Section 34 of title 18, United States Code, is amended by striking ''to the death penalty or''.

(3) MURDER COMMITTED DURING A DRUG-RELATED DRIVE-BY SHOOTING.—Section 36(b)(2)(A) of title 18, United States Code, is amended by striking ''death or''

(4) MURDER COMMITTED AT AN AIRPORT SERVING INTERNATIONAL CIVIL AVIATION.—Section 37(a) of title 18, United States Code, is amended, in the matter following paragraph (2), by striking ''punished by death or''.

(5) CIVIL RIGHTS OFFENSES RESULTING IN DEATH.—Chapter 13 of title 18, United States Code, is amended—

(A) in section 241, by striking '', or may be sentenced to death'';

(B) in section 242, by striking '', or may be sentenced to death'';

(C) in section 245(b), by striking '', or may be sentenced to death''; and

(D) in section 247(d)(1), by striking '', or may be sentenced to death''.

(6) MURDER OF A MEMBER OF CONGRESS, AN IMPORTANT EXECUTIVE OFFICIAL, OR A SUPREME COURT JUSTICE.—Section 351 of title 18, United States Code, is amended—

(A) in subsection (b)(2), by striking ''death or''; and

(B) in subsection (d)(2), by striking ''death or''.

(7) DEATH RESULTING FROM OFFENSES INVOLVING TRANSPORTATION OF EXPLOSIVES, DESTRUCTION OF GOVERNMENT PROPERTY, OR DESTRUCTION OF PROPERTY RELATED TO FOREIGN OR INTERSTATE COMMERCE.—Section 844 of title 18, United States Code, is amended—

(A) in subsection (d), by striking ''or to the death penalty'';

(B) in subsection (f)(3), by striking ''subject to the death penalty, or'';

(C) in subsection (i), by striking ''or to the death penalty''; and

(D) in subsection (n), by striking ''(other than the penalty of death)''.

(8) MURDER COMMITTED BY USE OF A FIREARM DURING COMMISSION OF A CRIME OF VIOLENCE OR A DRUG TRAFFICKING CRIME.—Section 924(j)(1) of title 18, United States Code, is amended by striking ''by death or''.

(9) GENOCIDE.—Section 1091(b)(1) of title 18, United States Code, is amended by striking ''death or''.

(10) FIRST DEGREE MURDER.—Section 1111(b) of title 18, United States Code, is amended by striking ''by death or''.

(11) MURDER BY A FEDERAL PRISONER.—Section 1118 of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''by death or''; and

(B) in subsection (b), in the third undesignated paragraph—

(i) by inserting ''or'' before ''an indeterminate''; and

(ii) by striking '', or an unexecuted sentence of death''.

(12) MURDER OF A STATE OR LOCAL LAW ENFORCEMENT OFFICIAL OR OTHER PERSON AIDING IN A FEDERAL INVESTIGATION; MURDER OF A STATE CORRECTIONAL OFFICER.—Section 1121 of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''by sentence of death or''; and

(B) in subsection (b)(1), by striking ''or death''.

(13) MURDER DURING A KIDNAPING.—Section 1201(a) of title 18, United States Code, is amended by striking ''death or''.

(14) MURDER DURING A HOSTAGE-TAKING.—Section 1203(a) of title 18, United States Code, is amended by striking ''death or''.

(15) MURDER WITH THE INTENT OF PREVENTING TESTIMONY BY A WITNESS, VICTIM, OR INFORMANT.—Section 1512(a)(2)(A) of title 18, United States Code, is amended by striking ''the death penalty or''.

(16) MAILING OF INJURIOUS ARTICLES WITH INTENT TO KILL OR RESULTING IN DEATH.—Section 1716(i) of title 18, United States Code, is amended by striking ''to the death penalty or''.

(17) ASSASSINATION OR KIDNAPING RESULTING IN THE DEATH OF THE PRESIDENT OR VICE PRESIDENT.—Section 1751 of title 18, United States Code, is amended—

(A) in subsection (b)(2), by striking ''death or''; and

(B) in subsection (d)(2), by striking ''death or''.

(18) MURDER FOR HIRE.—Section 1958(a) of title 18, United States Code, is amended by striking ''death or''.

(19) MURDER INVOLVED IN A RACKETEERING OFFENSE.—Section 1959(a)(1) of title 18, United States Code, is amended by striking ''death or''.

(20) WILLFUL WRECKING OF A TRAIN RESULTING IN DEATH.—Section 1992(b) of title 18, United States Code, is amended by striking ''to the death penalty or''.

(21) BANK ROBBERY-RELATED MURDER OR KIDNAPING.—Section 2113(e) of title 18, United States Code, is amended by striking ''death or''.

(22) MURDER RELATED TO A CARJACKING.—Section 2119(3) of title 18, United States Code, is amended by striking '', or sentenced to death''.

(23) MURDER RELATED TO AGGRAVATED CHILD SEXUAL ABUSE.—Section 2241(c) of title 18, United States Code, is amended by striking ''unless the death penalty is imposed,''.

(24) MURDER RELATED TO SEXUAL ABUSE.—Section 2245 of title 18, United States Code, is amended by striking ''punished by death or''.

(25) MURDER RELATED TO SEXUAL EXPLOITATION OF CHILDREN.—Section 2251(d) of title 18, United States Code, is amended by striking ''punished by death or''.

(26) MURDER COMMITTED DURING AN OFFENSE AGAINST MARITIME NAVIGATION.—Section 2280(a)(1) of title 18, United States Code, is amended by striking ''punished by death or''.

(27) MURDER COMMITTED DURING AN OFFENSE AGAINST A MARITIME FIXED PLATFORM.—Section 2281(a)(1) of title 18, United States Code, is amended by striking ''punished by death or''.

(28) TERRORIST MURDER OF A UNITED STATES NATIONAL IN ANOTHER COUNTRY.—Section 2332(a)(1) of title 18, United States Code, is amended by striking ''death or''.

(29) MURDER BY THE USE OF A WEAPON OF MASS DESTRUCTION.—Section 2332a of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''punished by death or''; and

(B) in subsection (b), by striking ''by death, or''.

(30) MURDER BY ACT OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.—Section 2332b(c)(1) of title 18, United States Code, is amended by striking ''by death, or''.

(31) MURDER INVOLVING TORTURE.—Section 2340A(a) of title 18, United States Code, is amended by striking ''punished by death or''.

(32) MURDER RELATED TO A CONTINUING CRIMINAL ENTERPRISE OR RELATED MURDER OF A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT OFFICER.—Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended—

(A) in each of subparagraphs (A) and (B) of subsection (e)(1), by striking '', or may be sentenced to death'';

(B) by striking subsections (g) and (h) and inserting the following:

''(g) [Reserved.]

''(h) [Reserved.]'';

(C) in subsection (j), by striking '' and as to appropriateness in that case of imposing a sentence of death'';

(D) in subsection (k), by striking '', other than death,'' and all that follows before the period at the end and inserting ''authorized by law''; and

(E) by striking subsections (l) and (m) and inserting the following:

''(l) [Reserved.]

''(m) [Reserved.]''.

(33) DEATH RESULTING FROM AIRCRAFT HIJACKING.—Section 46502 of title 49, United States Code, is amended—

(A) in subsection (a)(2), by striking ''put to death or''; and

(B) in subsection (b)(1)(B), by striking ''put to death or''.

(b) NON-HOMICIDE RELATED OFFENSES.—

(1) ESPIONAGE.—Section 794(a) of title 18, United States Code, is amended by striking ''punished by death or'' and all that follows before the period and inserting ''imprisoned for any term of years or for life''.

(2) TREASON.—Section 2381 of title 18, United States Code, is amended by striking ''suffer death, or''.

(c) REPEAL OF CRIMINAL PROCEDURES RELATING TO IMPOSITION OF DEATH SENTENCE.—

(1) IN GENERAL.—Chapter 228 of title 18, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part II of title 18, United States Code, is amended by striking the item relating to chapter 228.

SEC. 3. PROHIBITION ON IMPOSITION OF DEATH SENTENCE.

(a) IN GENERAL.—Notwithstanding any other provision of law, no person may be sentenced to death or put to death on or after the date of enactment of this Act for any violation of Federal law .

(b) PERSONS SENTENCED BEFORE DATE OF ENACTMENT.—Notwithstanding any other provision of law, any person sentenced to death before the date of enactment of this Act for any violation of Federal law shall serve a sentence of life imprisonment without the possibility of parole.●

By Mrs. BOXER:

S. 1918. A bill to waive the 24-month waiting period for disabled individuals to qualify for Medicare benefits in the case of individuals suffering from terminal illness with not more than 2 years to live; to the Committee on Finance.

MEDICARE FOR INDIVIDUALS WITH TERMINAL ILLNESS ACT

Mrs. BOXER. Mr. President, today I am introducing legislation to correct a weakness in the Medicare law for those who develop a terminal illness.

Under current law, individuals under age 65 who are unable to work because of a disability can qualify for Medicare after a two-year waiting period. That is, two years after developing a disability, individuals can start to receive Medicare benefits to help pay for their health care.

There are reasons for this two-year waiting period, and this legislation would not change that. What I am concerned about, Mr. President, is the fact that thousands of individuals develop a disability that is terminal within two years.

I am talking about people with cancer, people with AIDS, people with Lou Gehrig's Disease, to name to just a few examples. In some cases, when these individuals are diagnosed and can no longer work, they have less than two years to live. That means they will die before the end of the waiting period, before they become eligible for Medicare, before they qualify to receive health care benefits. That is not right and not fair.

The Medicare for Individuals with Terminal Illness Act would change this. My bill would say that for people whose doctors expect them to live less than two years because of their disability or illness, there will be no waiting period. They would qualify for Medicare immediately and could get the health care they need.

Mr. President, to date, 10 individuals and 44 organizations—groups involved with AIDS, cerebral palsy, Alzheimer's Disease, hospice care, and diabetes, among others—have endorsed this legislation.

Mr. President, I encourage my colleagues to look at this list of supporters, look at the bill, and join me in correcting a problem that is denying health care benefits to thousands of Americans.

Mr. President, I ask unanimous consent that the text of the bill and a list of endorsements be printed in the RECORD.

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

S. 1918

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare for Individuals With Terminal Illnesses Act of 1999''.

SEC. 2. ELIMINATION OF MEDICARE WAITING PERIOD FOR INDIVIDUALS WITH A TERMINAL ILLNESS.

(a) IN GENERAL.—Section 226 of the Social Security Act (42 U.S.C. 426) is amended by adding at the end the following:

''(j)(1) Notwithstanding subsection (f), each individual with a terminal illness (as defined in paragraph (2)) who would be described in subsection (b) but for the requirement that the individual has been entitled to the specified benefits for 24 months shall be entitled to hospital insurance benefits under part A of title XVIII for each month beginning with the latest of—

''(A) the first month after the expiration of the 24-month period,

''(B) in the case of a qualified railroad retirement beneficiary (as defined in subsection (d)), the first month of the individual's entitlement or status as such a beneficiary, or

''(C) the date of enactment of the Medicare for Individuals With Terminal Illnesses Act of 1999.

''(2) As used in this subsection, the term 'terminal illness' means a medically determinable physical impairment which is expected to result in the death of such individual within the next 24 months.''.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO THE RAILROAD RETIREMENT ACT OF1974.—Section 7(d)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(d)(2)) is amended—

(A) in clause (i), by striking ''or'' at the end;

(B) in clause (ii), by striking the comma at the end and inserting ''; or''; and

(C) by inserting after clause (ii) the following:

''(iii)(I) has not attained age 65;

''(II) has a terminal illness (as defined in section 226(j)(2) of the Social Security Act); and

''(III) is entitled to an annuity under section 2 of this Act, or under the Railroad Retirement Act of 1937 and section 2 of this Act, or could have been includable in the computation of an annuity under section 3(f)(3) of this Act, and could currently be entitled to monthly insurance benefits under section 223 of the Social Security Act or under section 202 of that Act on the basis of disability if service as an employee after December 31, 1936, had been included in the term 'employment' as defined in that Act and if an application for disability benefits had been filed,''.

(2) AMENDMENTS TO THE SOCIAL SECURITY ACT.—

(A) DESCRIPTION OF PROGRAM.—Section 1811 of the Social Security Act (42 U.S.C. 1395c) is amended by striking ''and (3)'' and inserting ''(3) individuals under age 65 who have a terminal illness (as defined in section 226(j)(2)) and who are eligible for benefits under title II of this Act (or would have been so entitled to such benefits if certain government employment were covered under such title) or under the railroad retirement system on the basis of a disability, and (4)''.

(B) HOSPITAL INSURANCE BENEFITS FOR DISABLED INDIVIDUALS WHO HAVE EXHAUSTED THEIR ENTITLEMENT.—Section 1818A of the Social Security Act (42 U.S.C. 1395i–2a) is amended—

(i) in subsection (a)(2)(A), by striking ''section 226(b)'' and inserting ''subsection (b) or (j) of section 226'';

(ii) in subsection (a)(2)(C), by striking ''section 226(b)'' and inserting ''subsection (b) or (j) of section 226'';

(iii) in subsection (b)(2), by striking ''section 226(b)'' and inserting ''subsection (b) or (j) of section 226''; and

(iv) in subsection (d)(1)(B)(ii), by striking ''section 226(b)'' and inserting ''subsection (b) or (j) of section 226''.

(C) ENROLLMENT PERIODS.—Section 1837 of the Social Security Act (42 U.S.C. 1395p) is amended—

(i) in subsection (g)(1), by inserting ''but does not satisfy the requirements of section 226(j)'' after ''section 226(b)''; and

(ii) in subsection (i)(4)(A), by striking ''section 226(b)'' and inserting ''subsection (b) or (j) of section 226''.

(D) EXCLUSIONS FROM COVERAGE AND MEDICARE AS SECONDARY PAYER.—Section 1862(b)(1)(B)(i) of the Social Security Act (42 U.S.C. 1395y(b)(1)(B)(i)) is amended by striking ''section 226(b)'' and inserting ''subsection (b) or (j) of section 226''.

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply with respect to any application for hospital insurance benefits submitted to the Secretary of Health and Human Services on or after the date of enactment of this Act.

MEDICARE FOR INDIVIDUALS WITH TERMINAL ILLNESSES ACT—LIST OF ENDORSEMENTS

ORGANIZATIONS (44)

AIDS Legal Referral Panel—San Francisco, Altamed Health Services—Los Angeles, Alzheimer's Aid Society—Sacramento, American Diabetes Association, African American Chapter—Los Angeles, American Lung Association of California—Sacramento, Asian American Drug Abuse Program, Inc. (AADAP)—Los Angeles, California Prevention and Education Project (CALPEP)—Oakland, California Hospice and Palliative Care Association (CHAPCA)—Sacramento, California Coalition of United Cerebral Palsy Associations—Sacramento, Camarillo Hospice—Camarillo, Caring for Babies with AIDS—Los Angeles, City of Los Angeles, Common Ground Community Center—Santa Monica, County of Sacramento, Covenant House California—Hollywood, Dolores Street Community Services—San Francisco, Families First—Davis, The Family Link—San Francisco, Feedback Foundation—Anaheim, Friends of Chelation Society—Palm Springs, Homeowner Options for Massachusetts Elders—Boston, Massachusetts, and Hospice Education Institute—Essex, Connecticut.

Hospice of Marin—Corte Madera, Lambda Letters Project—Carmichael, Legal Center for the Elderly and Disabled—Sacramento, Mental Health Association of Sacramento, Mission Neighborhood Health Center—San Francisco, National Organization for Rare Disorders—New Fairfield, Connecticut, National Health Federation—Monrovia, California, Neptune Society—San Francisco,

New Village Project—Los Angeles, Ohlhoff Recovery Programs—San Francisco, Parkinson's Disease Association of the Sacramento Valley, Retired Senior Volunteer Program—Santa Barbara, Sacramento AIDS Foundation, San Francisco Community Clinic Consortium, Serra Project—Los Angeles, Shascade Community Services—Redding, Vital Options—Sherman Oaks, Westside Community Mental Health Center, Inc.—San Francisco, Women and Children's Family Services, Yolo Hospice—Davis, YMCA of Greater Sacramento, and YWCA of Sacramento.

INDIVIDUALS (10)

Barbara Kaufman—Member, SFBOS, Sue Bierman—Member, SFBOS, Ricardo Hernandez—Public Administrator/Public Guardian, City & County of SF, Steve Cohn—Member, Sacramento City Council, Eve Meyer—Executive Director, San Francisco Suicide Prevention, Mike McGowan—Member, Yolo County Board of Supervisors, Rev. Gwyneth MacKenzie Murphy—Associate Pastor, Grace Cathedral, Teresa Brown—Program Coordinator, HIV Services Division, Alameda County Medical Ctr., Lois Wolk—Yolo County Supervisor, Sarah Bennett—Executive Director, Ad Hoc Committee to Defend Health Care—Cambridge, MA.

By Mr. DODD (for himself and Mr. LEAHY):

S. 1919. A bill to permit travel to or from Cuba by United States citizens and lawful resident aliens of the United States; to the Committee on Foreign Relations.

THE FREEDOM TO TRAVEL TO CUBA ACT OF 2000

• Mr. DODD. Mr. President, today my colleague, Senator LEAHY and I are introducing ''The Freedom to Travel to Cuba Act of 2000.'' We believe the time has come to lift the very archaic, counterproductive, and ill-conceived ban on Americans traveling to Cuba. Not only does this ban hinder rather than help our effort to spread democracy, it unnecessarily abridges the rights of ordinary Americans. The United States was founded on the principles of liberty and freedom. Yet when it comes to Cuba, our Government abridges these rights with no greater rationale than political and rhetorical gain.

Cuba lies just 90 miles from America's shore. Yet those 90 miles of water might as well be an entire ocean. We have made a land ripe for American influence forbidden territory. In doing so, we have enabled the Cuban regime to be a closed system with the Cuban people having little contact with their closest neighbors.

Surely we do not ban travel to Cuba out of concern for the safety of Americans who might visit that island nation. Today Americans are free to travel to Iran, Sudan, Burma, Yugoslavia, North Korea—but not to Cuba. You can fly to North Korea; you can fly to Iran; you can travel freely. It seems to me if you can go to those countries, you ought not be denied the right to go to Cuba. If the Cubans want to stop Americans from visiting that country, that ought to be their business. But to say to an American citizen that you can travel to Iran, where they held American hostages for months on end, to North Korea, which has declared us to be an enemy of theirs completely, but that you cannot travel 90 miles off our shore to Cuba, is a mistake.

To this day, some Iranian politicians believe the United States to be ''the Great Satan.'' We hear it all the time. Just two decades ago, Iran occupied our Embassy and took innocent American diplomats hostage. To this day, protesters in Tehran burn the American flag with the encouragement of some officials in that Government. Those few Americans who venture into such inhospitable surroundings often find themselves pelted by rocks and accosted by the public.

Similarly, we do not ban travel to Sudan, a nation we attacked with cruise missiles last summer for its support of terrorism; to Burma, a nation with one of the most oppressive regimes in the world today; to North Korea, whose soldiers have peered at American servicemen through gun sights for decades; or Syria, which has one of the most egregious human rights records and is one of the foremost sponsors of terrorism.

We believe that it is time to end the inconsistency with respect to U.S. travel restrictions to Cuba. We ban travel to Cuba, a nation which is neither at war with the United States nor a sponsor of international terrorist activities. Why do we ban travel? Ostensibly so that we can pressure Cuban authorities into making the transition to a democratic form of government.

I fail to see how isolating the Cuban people from democratic values and ideals will foster the transition to democracy in that country. I fail to see how isolating the Cuban people from democratic values and from the influence of Americans when they go to that country to help bring about the change we all seek serves our own interests.

The Cuban people are not currently permitted the freedom to travel enjoyed by many peoples around the world. However, because Fidel Castro does not permit Cubans to leave Cuba and come to this country is not justification for adopting a similar principle in this country that says Americans cannot travel freely. We have a Bill of Rights. We need to treasure and respect the fundamental rights that we embrace as American citizens. Travel is one of them. If other countries want to prohibit us from going there, then that is their business. But for us to say that citizens of Connecticut or Alabama cannot go where they like is not the kind of restraint we ought to put on people.

If Americans can travel to North Korea, to the Sudan, to Iran, then I do not understand the justification for saying that they cannot travel to Cuba. I happen to believe that by allowing Americans to travel to Cuba, we can begin to change the political climate and bring about the changes we all seek in that country.

Today, every single country in the Western Hemisphere is a democracy, with one exception: Cuba. American influence through person-to-person and cultural exchanges was a prime factor in this evolution from a hemisphere ruled predominantly by authoritarian or military regimes to one where democracy is the rule. Our current policy toward Cuba blocks these exchanges and prevents the United States from using our most potent weapon in our effort to combat totalitarian regimes, and that is our own people. They are the best ambassadors we have. Most totalitarian regimes bar Americans from coming into their countries for the very reasons I just mentioned. They are afraid the gospel of freedom will motivate their citizens to overthrow dictators, as they have done in dozens of nations over the last half century. Isn't it ironic that when it comes to Cuba we do the dictator's bidding for him in a sense? Cuba does not have to worry about America spreading democracy. Our own Government stops us from doing so.

Let me review for my colleagues who may travel to Cuba under current Government regulations and under what circumstances. The following categories of people may travel to Cuba without applying to the Treasury Department for a specific license to travel. They are deemed to be authorized to travel under so-called general license: Government officials, regularly employed journalists, professional researchers who are ''full time professionals who travel to Cuba to conduct professional research in their professional areas'', Cuban Americans who have relatives in Cuba who are ill (but only once a year.)

There are other categories of individuals who theoretically are eligible to travel to Cuba as well, but they must apply for a license from the Department of the Treasury and prove they fit a category in which travel to Cuba is permissible. What are these categories? The first is so called freelance journalists, provided they can prove they are journalists; they must also submit their itinerary for the proposed research. The second is Cuban Americans who are unfortunate enough to have more than one humanitarian emergency in a 12-month period and therefore cannot travel under a general license. The third is students and faculty from U.S. academic institutions that are accredited by an appropriate national or regional educational accrediting association who are participating in a ''structural education program.'' The fourth is members of U.S. religious organizations. The fifth is individuals participating in public performances, clinics, workshops, athletic and other competitions and exhibitions. If that isn't complicated enough—just because you think you may fall into one of the above enumerated categories does not necessarily mean you will actually be licensed by the U.S. Government to travel to Cuba.

Under current regulations, who decides whether a researcher's work is legitimate? Who decides whether a freelance journalist is really conducting journalistic activities? Who decides whether or not a professor or student is participating in a ''structured educational program''? Who decides whether a religious person is really going to conduct religious activities? Government bureaucrats are making those decisions about what I believe should be personal rights of American citizens.

It is truly unsettling, to put it mildly, when you think about it, and probably unconstitutional at its core. It is a real intrusion on the fundamental rights of American citizens. It also says something about what we as a Government think about our own people. Do we really believe that a journalist, a Government official, a Senator, a Congressman, a baseball player, a ballerina, a college professor or minister is somehow superior to other citizens who do not fall into those categories; that only these categories of people are ''good examples'' for the Cuban people to observe in order to understand American values?

I do not think so. I find such a notion insulting. There is no better way to communicate America's values and ideals than by unleashing average American men and women to demonstrate by daily living what our great country stands for and the contrasts between what we stand for and what exists in Cuba today.

I do not believe there was ever a sensible rationale for restricting Americans' right to travel to Cuba. With the collapse of the Soviet Union and an end to the cold war, I do not think any excuse remains today to ban this kind of travel. This argument that dollars and tourism will be used to prop up the regime is specious. The regime seems to have survived 38 years despite the Draconian U.S. embargo during that entire period. The notion that allowing Americans to spend a few dollars in Cuba is somehow going to give major aid and comfort to the Cuban regime is without basis, in my view.

This spring, we got a taste of what people-to-people exchanges between the United States and Cuba might mean when the Baltimore Orioles and the Cuban National Team played a home-and-home series. The game brought players from two nations with the greatest love of baseball together for the first time in generations. It is time to bring the fans together. It is time to let Americans and Cubans meet in the baseball stands and on the streets of Havana.

Political rhetoric is not sufficient reason to abridge the freedoms of American citizens. Nor is it sufficient reason to stand by a law which counteracts one of the basic premises of American foreign policy; namely, the spread of democracy. The time has come to allow Americans—average Americans—to travel freely to Cuba. I urge my colleagues to support the legislation that Senator LEAHY and I have introduced today. We will be working to ensure that the full Senate has an opportunity to debate and vote on this matter when the Senate convenes next year. I hope our colleagues will join with us at that time in restoring American citizens' rights to travel wherever they choose, including to the Island of Cuba.●

By Mr. LEVIN (for himself and Mr. SPECTER):

S. 1920. A bill to combat money laundering and protect the United States financial system by addressing the vulnerabilities of private banking to money laundering, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

MONEY LAUNDERING ABATEMENT ACT OF 1999

Mr. LEVIN. Mr. President, today I am introducing, along with Senator SPECTER, the Money Laundering Abatement Act of 1999.

The Senate Permanent Subcommittee on Investigations, of which I am the ranking member, is currently holding hearings on problems specific to private banking, a rapidly-growing financial service in which banks provide one-on-one services tailored to the individual needs of wealthy individuals. The Subcommittee's investigation and hearings show that private bankers have operated in a culture which emphasizes secrecy, impeding account documentation for regulators and law enforcement entities. This culture makes private banking peculiarly susceptible to money laundering.

The Money Laundering Abatement Act is intended to supplement and reinforce the current anti-money-laundering laws and bolster the efforts of regulators and law enforcement bodies in this nation and around the world and the efforts of others in Congress.

The Subcommittee's year-long investigation and testimony by distinguished financial experts, regulators, and banking industry personnel, revealed that private bankers regularly create devices such as shell corporations established in offshore jurisdictions to hide the source of and movement of clients' funds. The motives may be benign or they may be questionable but one thing is certain: they make it harder for regulators and law enforcement personnel to track the ownership and flow of funds and avert or apprehend laundering of the proceeds of drug and weapons trafficking, tax evasion, corruption, and other malfeasance. To make matters worse, many activities which Americans find reprehensible and which can destabilize regimes and economies are not currently illegal under foreign laws. Therefore, as the current money laundering laws are written, transactions in funds derived from such activities do not constitute money laundering, but they ought to constitute money laundering punishable under United States laws.

My bill would patch these holes, particularly as they apply to private banking activities, the volume of which experts predict will grow exponentially as more and more wealth is created and banks compete for this lucrative line of business. Accordingly, I am today introducing legislation that would significantly increase the transparency of our banking system and make it possible for law enforcement and civil process to pierce the veil of secrecy that for too long has made it possible for institutions and individuals operating in largely unregulated off-shore jurisdictions to gain unfettered access to the U.S. financial system for purposes of legitimizing the proceeds of illegal or unsavory activity.

A great problem in detecting money laundering is that many private banking transactions are conducted through fictitious entities or under false names or numbered accounts in which the actual or beneficial owner is not identified. The bill requires a financial institution that opens or maintains a U.S. account for a foreign entity to identify and maintain a record in the U.S. of the identity of each direct or beneficial owner of the account. The bill would further help banks in verifying customers' identities by making it illegal to misrepresent the true ownership of an account to a bank. The bill also imposes a ''48-hour rule'' under which, within 48 hours of a request by a federal banking agency, a financial institution would have to provide account information and documentation to the agency.

Our investigation into private banking has shown that money launderers may launder their transactions by commingling the proceeds in so-called ''concentration accounts'' and aggregate the funds from multiple customers and transactions. The bill curtails the illicit use of these accounts by prohibiting institutions from using these accounts anonymously. The bill also prohibits U.S. financial institutions from opening or maintaining correspondent accounts with so-called ''brass plate'' banks—most often in off-shore locations—that are not licensed to provide services in their home countries and are not subject to comprehensive home country supervision on a consolidated basis, reducing the likelihood that U.S.-based institutions will receive funds that may derive from illicit sources.

The bill would also eliminate significant gaps in current U.S. law by expanding the list of crimes committed on foreign soil that can serve as predicate offenses for money laundering prosecutions in the U.S., including corruption and the misappropriation of IMF funds. It would expand the jurisdiction of U.S. courts, by including transactions in which money is laundered through a foreign bank as a U.S. crime if the transaction has a ''nexus'' in the United States. The bill addresses the reality that governmental corruption weakens economies

and causes political instability and when U.S. banks profit from the fruits of such corruption they run counter to U.S. interests in ending such corruption.

Another problem that we have encountered repeatedly in our investigation is that many private banks have written policies that repeatedly stress that the banker must know a customer's identity and source of funds. Yet in practice, many private bankers do not comply with their own bank's policies. To rectify this, the bill requires financial institutions to develop and apply due diligence standards for accounts for private banking customers to verify the customers' identity and source of wealth, both when opening such accounts and on an ongoing basis.

Finally, the bill would authorize funding for FinCEN to develop an automated ''alert database.'' FinCEN, an arm of the Department of the Treasury, tracks Currency Transaction Reports and Suspicious Activity Reports, important tools in fighting money laundering. However, FinCEN officials have told me that they lack a database which will automatically alert them to patterns of suspicious activity that could indicate money laundering or other illicit activity. Such a database is imperative to enable FinCEN to adequately serve the law enforcement bodies that it supplies information to.

This bill will close gaps in our anti-money-laundering laws and regulations. I ask unanimous consent that the bill and a summary of the bill be printed in the RECORD.

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

S. 1920

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Money Laundering Abatement Act of 1999''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Money laundering is a serious problem that enables criminals to reap the rewards of their crimes by hiding the criminal source of their profits.

(2) When carried out by using banks, money laundering erodes the integrity of our financial institutions.

(3) United States financial institutions are a critical link in our efforts to combat money laundering.

(4) In addition to organized crime enterprises, corrupt government officials around the world increasingly employ sophisticated money laundering schemes to conceal wealth they have plundered or extorted from their nations or received as bribes, and these practices weaken the legitimacy of foreign states, threaten the integrity of international financial markets, and harm foreign populations.

(5) Private banking is a growing activity among financial institutions based in and operating in the United States.

(6) The high profitability, competition, high level of secrecy, and close relationships of trust developed between private bankers and their clients make private banking vulnerable to money laundering.

(7) The use by United States bankers of financial centers located outside of the United States that have weak financial regulatory and reporting regimes and no transparency facilitates global money laundering.

(b) PURPOSE.—The purpose of this Act is to eliminate the weaknesses in Federal law that allow money laundering to flourish, particularly in private banking activities.

SEC. 3. IDENTIFICATION OF ACTUAL OR BENEFICIAL OWNERS OF ACCOUNTS.

(a) TRANSACTIONS AND ACCOUNTS WITH OR ON BEHALF OF FOREIGN ENTITIES.—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

''§ 5331. Requirements relating to transactions and accounts with or on behalf of foreign entities

''(a) DEFINITIONS.—Notwithstanding any other provision of this subchapter, in this section the following definitions shall apply:

''(1) ACCOUNT.—The term 'account'—

''(A) means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and

''(B) includes a demand deposit, savings deposit, or other asset account and a credit account or other extension of credit.

''(2) CORRESPONDENT ACCOUNT.—The term 'correspondent account' means an account established to receive deposits from and make payments on behalf of a correspondent bank.

''(3) CORRESPONDENT BANK.—The term 'correspondent bank' means a depository institution that accepts deposits from another financial institution and provides services on behalf of such other financial institution.

''(4) DEPOSITORY INSTITUTION.—The term 'depository institution' has the same meaning as in section 19(b)(1)(A) of the Federal Reserve Act.

''(5) FOREIGN BANKING INSTITUTION.—The term 'foreign banking institution' means a foreign entity that engages in the business of banking, and includes foreign commercial banks, foreign merchant banks, and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where they are organized or operating.

''(6) FOREIGN ENTITY.—The term 'foreign entity' means an entity that is not organized under the laws of the Federal Government of the United States, any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

''(b) PROHIBITION ON OPENING OR MAINTAINING ACCOUNTS BELONGING TO OR FOR THE BENEFIT OF UNIDENTIFIED OWNERS.—A depository institution or a branch of a foreign bank (as defined in section 1 of the International Banking Act of 1978) may not open or maintain any account in the United States for a foreign entity or a representative of a foreign entity, unless—

''(1) for each such account, the institution completes and maintains in the United States a form or record identifying, by a verifiable name and account number, each person having a direct or beneficial ownership interest in the account; or

''(2) some or all of the shares of the foreign entity are publicly traded.

''(c) PROHIBITION ON OPENING OR MAINTAINING CORRESPONDENT ACCOUNTS OR CORRESPONDENT BANK RELATIONSHIP WITH CERTAIN FOREIGN BANKS.—A depository institution, or branch of a foreign bank, as defined in section 1 of the International Banking Act of 1978, may not open or maintain a correspondent account in the United States for or on behalf of a foreign banking institution, or establish or maintain a correspondent bank relationship with a foreign banking institution (other than in the case of an affiliate of a branch of a foreign bank), that—

''(1) is organized under the laws of a jurisdiction outside of the United States; and

''(2) is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in such jurisdiction.

''(d) 48-HOUR RULE.—Not later than 48 hours after receiving a request by the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) for information related to anti-money laundering compliance by a financial institution or a customer of that institution, a financial institution shall provide to the requesting agency, or make available at a location specified by the representative of the agency, information and account documentation for any account opened, maintained, or managed in the United States by the financial institution.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5330 the following:

''5331. Requirements relating to transactions and accounts with or on behalf of foreign entities.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply—

(1) with respect to any account opened on or after the date of enactment of this Act, as of such date; and

(2) with respect to any account opened before the date of enactment of this Act, as of the end of the 6-month period beginning on such date.

SEC. 4. PROPER MAINTENANCE OF CONCENTRATION ACCOUNTS AT FINANCIAL INSTITUTIONS.

Section 5318(h) of title 31, United States Code, is amended by adding at the end the following:

''(3) AVAILABILITY OF CERTAIN ACCOUNT INFORMATION.—The Secretary shall prescribe regulations under this subsection that govern maintenance of concentration accounts by financial institutions, in order to ensure that such accounts are not used to prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner, which regulations shall, at a minimum—

''(A) prohibit financial institutions from allowing clients to direct transactions that move their funds into, out of, or through the concentration accounts of the financial institution;

''(B) prohibit financial institutions and their employees from informing customers of the existence of, or means of identifying, the concentration accounts of the institution; and

''(C) require each financial institution to establish written procedures governing the documentation of all transactions involving a concentration account, which procedures shall ensure that, any time a transaction involving a concentration account commingles funds belonging to 1 or more customers, the identity of, and specific amount belonging to, each customer is documented.''.

SEC. 5. DUE DILIGENCE REQUIRED FOR PRIVATE BANKING.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 10 the following:

''SEC. 5A. DUE DILIGENCE.

''(a) PRIVATE BANKING.—In fulfillment of its anti-money laundering obligations under section 5318(h) of title 31, United States Code, each depository institution that engages in private banking shall establish due

diligence procedures for opening and reviewing, on an ongoing basis, accounts of private banking customers.

''(b) MINIMUM STANDARDS.—The due diligence procedures required by paragraph (1) shall, at a minimum, ensure that the depository institution knows and verifies, through probative documentation, the identity and financial background of each private banking customer of the institution and obtains sufficient information about the source of funds of the customer to meet the anti-money laundering obligations of the institution.

''(c) COMPLIANCE REVIEW.—The appropriate Federal banking agencies shall review compliance with the requirements of this section as part of each examination of a depository institution under this Act.

''(d) REGULATIONS.—The Board of Governors of the Federal Reserve System shall, after consultation with the other appropriate Federal banking agencies, define the term 'private banking' by regulation for purposes of this section.''.

SEC. 6. SUPPLEMENTATION OF CRIMES CONSTITUTING MONEY LAUNDERING.

Section 1956(c)(7)(B) of title 18, United States Code, is amended—

(1) by striking clause (ii) and inserting the following:

''(ii) any conduct constituting a crime of violence;''; and

(2) by adding at the end the following:

''(iv) fraud, or any scheme to defraud, committed against a foreign government or foreign governmental entity under the laws of that government or entity;

''(v) bribery of a foreign public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a foreign public official under the laws of the country in which the subject conduct occurred or in which the public official holds office;

''(vi) smuggling or export control violations involving munitions listed in the United States Munitions List or technologies with military applications, as defined in the Commerce Control List of the Export Administration Regulations;

''(vii) an offense with respect to which the United States would be obligated by a multilateral treaty either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

''(viii) the misuse of funds of, or provided by, the International Monetary Fund in contravention of the Articles of Agreement of the Fund or the misuse of funds of, or provided by, any other international financial institution (as defined in section 1701(c)(2) of the International Financial Institutions Act) in contravention of any international treaty or other international agreement to which the United States is a party, including any articles of agreement of the members of such international financial institution;''.

SEC. 7. PROHIBITION ON FALSE STATEMENTS TO FINANCIAL INSTITUTIONS CONCERNING THE IDENTITY OF A CUSTOMER.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code (relating to fraud and false statements), is amended by inserting after section 1007 the following:

''§ 1008. False statements concerning the identity of customers of financial institutions

''(a) IN GENERAL.—Whoever knowingly in any manner—

''(1) falsifies, conceals, or covers up, or attempts to falsify, conceal, or cover up, the identity of any person in connection with any transaction with a financial institution;

''(2) makes, or attempts to make, any materially false, fraudulent, or fictitious statement or representation of the identity of any person in connection with a transaction with a financial institution;

''(3) makes or uses, or attempts to make or use, any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry concerning the identity of any person in connection with a transaction with a financial institution; or

''(4) uses or presents, or attempts to use or present, in connection with a transaction with a financial institution, an identification document or means of identification the possession of which is a violation of section 1028;

shall be fined under this title, imprisoned not more than 5 years, or both.

''(b) DEFINITIONS.—In this section:

''(1) FINANCIAL INSTITUTION.—In addition to the meaning given to the term 'financial institution' by section 20, the term 'financial institution' also has the meaning given to such term in section 5312(a)(2) of title 31.

''(2) IDENTIFICATION DOCUMENT AND MEANS OF IDENTIFICATION.—The terms 'identification document' and 'means of identification' have the meanings given to such terms in section 1028(d).''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking ''1014 (relating to fraudulent loan'' and inserting ''section 1008 (relating to false statements concerning the identity of customers of financial institutions), section 1014 (relating to fraudulent loan''.

(2) TABLE OF SECTIONS.—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1007 the following:

''1008. False statements concerning the identity of customers of financial institutions.''.

SEC. 8. APPROPRIATION FOR FINCEN TO IMPLEMENT SAR/CTR ALERT DATABASE.

There is authorized to be appropriated $1,000,000, to remain available until expended, for the Financial Crimes Enforcement Network of the Department of the Treasury to implement an automated database that will alert law enforcement officials if Currency Transaction Reports or Suspicious Activity Reports disclose patterns that may indicate illegal activity, including any instance in which multiple Currency Transaction Reports or Suspicious Activity Reports name the same individual within a prescribed period of time.

SEC. 9. LONG-ARM JURISDICTION OVER FOREIGN MONEY LAUNDERERS.

Section 1956(b) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting ''(1)'' after ''(b)'';

(3) by inserting '', or section 1957'' after ''or (a)(3)''; and

(4) by adding at the end the following:

''(2) For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, that commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States, if service of process upon such foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found.

''(3) The court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.''.

SEC. 10. LAUNDERING MONEY THROUGH A FOREIGN BANK.

Section 1956(c)(6) of title 18, United States Code, is amended to read as follows:

''(6) the term 'financial institution' includes—

''(A) any financial institution described in section 5312(a)(2) of title 31, or the regulations promulgated thereunder; and

''(B) any foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)).''.

SEC. 11. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act, this Act and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act.

SUMMARY OF THE MONEY LAUNDERING ABATEMENT ACT OF 1999

A United States depository institution or a United States branch of a foreign institution could not open or maintain an account in the United States for a foreign entity unless the owner of the account was identified on a form or record maintained in the United States.

A United States depository institution or branch of a foreign institution in the United States could not maintain a correspondent account for a foreign institution unless the foreign institution was subject to comprehensive supervision or regulation.

Within 48 hours of receiving a request from a federal banking agency, a financial institution would be required to provide account information and documentation to the requesting agency.

The Secretary of the Treasury would be required to issue regulations to ensure that customer funds flowing through a concentration account (which comingles funds of an institution's customers) were earmarked to each customer.

The list of crimes that are predicates to money laundering would be broadened to include, among other things, corruption or fraud by or against a foreign government under that government's laws or the laws of the country in which the conduct occurred, and misappropriation of funds provided by the IMF or similar organizations.

Institutions that engage in private banking would be required to implement due diligence procedures encompassing verification of private banking customers' identities and source of funds.

It would be a federal crime to knowingly falsify or conceal the identity of a financial institution customer.

An appropriation would be authorized for FinCEN, which tracks reports filed by financial institutions under the Bank Secrecy Act, to establish an automated system of alerting authorities when multiple reports are filed regarding the same customer.

United States courts would be given ''long-arm'' jurisdiction over foreign persons and institutions that commit money laundering offenses that occur in whole or part in the United States.

The definition of money laundering in current statutes would be expanded to include laundering money through foreign banks.

ADDITIONAL COSPONSORS

S. 74

At the request of Mr. DASCHLE, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 74, a bill to amend the Fair Labor Standards Act of 1938 to provide