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PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

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# Senate

*(Legislative day of Monday, January 30, 1995)*

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today's prayer will be offered by our guest Chaplain, the Reverend Richard C. Halverson, Jr., of Arlington, VA.

PRAYER

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

Let us pray:

God of the Nations, Lord of History, Thy Word declares that, ''Except the Lord build the house, they labour in vain that build it: except the Lord keep the city, the watchman waketh but in vain.''—Psalms 127:1. Again, it is written, ''* * * let every man take heed how he buildeth * * *.''—1 Cor. 3:10b.

Though much of the burden for building our Nation rests upon the ''council of elders''[1] within this Senate, we know that unless Thy decrees uphold us, the hours we spend in our best legislation are in vain.

In the words of President Lincoln, whose birth we soon celebrate: ''Without the assistance of that Divine Being * * * I cannot succeed. With that assistance, I cannot fail. Trusting in Him, let us confidently hope that all will yet be well.''[2]

Once again, in the urgency of this hour, we beseech Thee for divine assistance. We pray for a hedge of enlightened restraint around this ''necessary fence''[3] of the Senate. For through this body, regulations must pass that will either strengthen or weaken our country.

As pressures mount for instant solutions to complex problems, grant those who hold this ''senatorial trust''[4] the calm resolve to be not driven by public restlessness, nor drifting in stubborn idleness, but drawn by Thy vision of righteousness—which upholdeth the Nation.

And if the machinery of government seems to turn too slowly against the tide of national anxiety, may those who labor here take courage from the tortoise who, by perseverance, reached the ark, even in the face of an impending flood. In the name of Jesus Christ, we pray. Amen.

[1] The word ''Senate'' is derived from the Latin word, ''senatus'', ''council of elders''.

[2] These words were spoken by President-elect Lincoln as he left Springfield, Illinois, for Washington, D.C., in February, 1861 (McCollister, John. ''So Help Me God'', Landmark Books, p. 81 (1982)).

[3] James Madison referred to the Senate as a ''necessary fence'' of ''enlightened citizens'' whose responsibility it was to protect the rights and property of its citizens against ''public impetuosity''.

[4] Alexander Hamilton spoke of a ''senatorial trust.''

## RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. LOTT. Mr. President, this morning the time for the two leaders has been reserved and there will now be a period for the transaction of morning business until the hour of 10 a.m, with Senators permitted to speak for up to 5 minutes each, with the following Senators to speak for up to the designated times: Senator THURMOND, 15 minutes; Senator CAMPBELL, 10 minutes, and Senator ROBB 5 minutes.

At the hour of 10 a.m, the Senate will resume consideration of House Joint Resolution 1, the balanced budget constitutional amendment, with Senator PACKWOOD to be recognized for up to 60 minutes. At the hour of 11 o'clock, Senator DASCHLE will be recognized for up to 15 minutes, to be followed by Senator DOLE for up to 15 minutes. At the hour of 11:30, the Senate will vote on or in relation to a second-degree amendment to the motion to refer.

Therefore, Senators should be on notice that there will be a rollcall vote at 11:30 this morning.

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

The PRESIDING OFFICER (Mr. COVERDELL). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from South Carolina [Mr. THURMOND] is recognized to speak for up to 15 minutes.

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

(The remarks of Mr. THURMOND pertaining to the introduction of S. 383 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. HATFIELD. Mr. President, today, it is my distinct honor to reflect on the accomplishments of Rabbi Joshua O. Haberman, who has been serving as our guest Chaplain for this week. Rabbi Haberman's credentials and accomplishments are numerous, but let me take a minute to highlight some of his achievements.

Rabbi Haberman is the founder and president of the Foundation for Jewish Studies which sponsors a large variety of Jewish Study programs for the Greater Washington community. He is rabbi emeritus of the Washington Hebrew Congregation, the largest and oldest congregation in the District of Columbia and a past-president of the Washington Board of Rabbis.

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



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Rabbi Haberman is a graduate of the University of Cincinnati, he was ordained as rabbi at the Hebrew Union College—Jewish Institute of Religion in Cincinnati, OH, where he also earned the degree of doctor of Hebrew letters. Also of interest regarding his academic background is the fact that he is the last Austrian to be enrolled for rabbinic studies at the Jewish Theological Institute of Vienna and he later left the institute following the Nazi invasion in 1938 and continued his studies in the United States.

He is a member of the board of alumni overseers of the HUC–JIR and he has served on the executive board of the Central Conference of American Rabbis. In addition he was the cochairman of the North American board of the World Union for Progressive Judaism.

Rabbi Haberman's academic accomplishments include authoring a book titled, ''The God I Believe In,'' which is conversations about Judaism with 14 prominent Jews in our society. He has also authored an academic work titled, ''Philosopher of Revelation: The Life and Thought of S.L. Steinheim.'' In addition to being an author, Rabbi Haberman has served as an adjunct professor at many institutions including: Georgetown, Wesley Theological Seminary, American University, and Rutgers.

Rabbi Haberman was also instrumental in developing a very important religious dialog with the Roman Catholic diocese of Washington, DC, and evangelical Christian leaders as well. In addition to his ecumenical work, he initiated a Moslem-Jewish dialog with Imam Wallace D. Muhammad of the World Community of Islam in the West. The two above-mentioned accomplishments demonstrate Rabbi Haberman's dedication to working across religious and cultural barriers. They demonstrate the rabbi's willingness to leave his comfort zone and build bridges with those of different religious and cultural affiliations.

It is evident by these accomplishments that he is a man who is truly driven by his religious convictions rather than ideological associations. He has demonstrated that his life is wholly affected by his religious commitments. It is an honor to share the floor with him.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. COCHRAN. Mr. President, I understand the status of the situation on the floor is that we are in morning business; is that correct?

The PRESIDING OFFICER. The Senator is correct.

## THE BUDGET AND THE CHALLENGE OF CONTROLLING DEFICITS

Mr. COCHRAN. Mr. President, to put this debate on the budget situation in context, I hope that we will keep in mind the difficulty that Congress has had over the years, and each administration in recent years, in trying to cope with this very, very difficult challenge of controlling deficits.

In 1960, for example, interest payments on our national debt amounted to 6 percent of the Federal budget. Today, that figure has grown to 16 percent. That is the percentage of the total expenditures that will be required to be appropriated and paid in interest on the current debt in the next fiscal year, according to the President's budget.

Last year, the Federal Government paid a total of $203 billion in interest on the existing debt. The budget just submitted by the President calls for spending $257 billion in the next fiscal year on interest on the accumulated debt.

By comparison, Senators might be interested to know that if these interest costs are as they are projected to be next year by the President's budget, we will spend just about as much on interest payments as we will on national defense.

The national defense dollars that are requested by the President to be appropriated for our Nation's security next year are at $262 billion in the President's budget; the interest payments, $257 billion, a $5 billion difference. In a $1.6 trillion budget, the percentage is about the same, 16 percent.

It seems to me that to believe we are going to be able to meet this challenge of controlling deficits more effectively without some requirement to do so or some new procedures in place such as this constitutional amendment to require a balanced budget is a triumph of hope over experience.

One item that I received in my mail this week from a constituent was very interesting from a historical perspective. Andy Halbrook is a resident of Greenville, MS. His father, David Halbrook, has been a member of our State legislature for a number of years and one of our important influences in State government. He sent me a Reader's Digest article of July 1979 which talked about the origin of the movement for State legislators to petition the Government for a constitutional convention to require a balanced budget.

I am going to read the first paragraph and put the rest of it in the RECORD with this letter for the information of Senators.

In Ollie Mohamed's Belzoni, Miss., department store—

Ollie Mohamed was a State Senator at the time—

a group was discussing Federal spending, inflation and Congress's perennial inability to balance the budget. State legislator David Halbrook spoke of his new grandchild: ''That baby is going to have to pay for the things I'm enjoying. It ought to be the other way around. I ought to leave the world a little better for him.''

This article goes on to talk about the conversation that then led to, well, what are we going to do about it? And one of them got the Constitution down and read here where it is provided the State legislatures can petition the Congress to convene a constitutional convention to amend the Constitution, and they decided that it ought to be done. And so David Halbrook led the effort in the Mississippi legislature to have that resolution passed. Then some other States got involved. The National Taxpayers Union got involved. And according to this article, over a period of years they almost reached the point where they were successful. They were four States short at the time this article was written in 1979.

Andrew—''Andy''—Halbrook, David's son, suggests that we ought to name this legislation the ''David Halbrook Act,'' requiring the Congress to balance the budget as a matter of constitutional amendment. I think it is a good suggestion.

I ask unanimous consent that Andy Halbrook's letter be printed in the RECORD, along with the article from the Reader's Digest.

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

GREENVILLE, MS,
*February 2, 1995.*

Hon. THAD COCHRAN,
*U.S. Senate,*
*Washington, DC.*

Dear SENATOR COCHRAN: The balanced budget amendment is one of the most important pieces of legislation that will be considered in my lifetime and possibly in the lifetime of my children. It will have a much tougher row to hoe in the Senate than in the House. In light of this I would like to offer a suggestion that could perhaps significantly help to assure its passage.

In positioning for public approval, acceptance and support a product or a service or even a piece of legislation, perception is reality. Unless the populace can be overwhelmingly convinced to support something as broad-ranging as the balanced budget amendment it may be doomed to failure no matter how good its attributes. The way to get the popular support needed to be indomitably successful in this venture is to personalize it and to make everyone realize this is a grassroots idea from outside the beltway. In light of this please consider the following:

The balanced budget amendment was spawned in Belzoni, Mississippi by my father, Rep. David Halbrook and former Senator Ollie Mohamed. Please see the attached Reader's Digest article in testimony to this fact.

Due to his continuity of service in the Mississippi Legislature and active leadership roles in the American Legislative Exchange Council, the National Conference of State Legislators, the Southern Legislative Conference and other organizations, David Halbrook has been the torch-bearer for this idea since its inception.

Based on these facts I am asking that you consider naming the balanced budget amendment ''The Halbrook Amendment''. This will do many things to accelerate and maintain the momentum of this legislation.

David Halbrook is a life-long Democrat. Putting his name on this amendment could greatly enhance bipartisan support of this endeavor.

David Halbrook is a common man with uncommon talents and ideas, a business man, a farmer and a father concerned about his children's and grandchildren's future. The mainstream will immediately identify with him and his purpose for starting this process.

By putting a name and a face with something that can be as nebulous to the common man as a piece of federal legislation, such as was done with the Brady Bill, the public's perception of the process at hand can be immediately transformed into a tidal wave of support.

David Halbrook is a life-long Mississippian. Mississippi is in the midst of one of the most dynamic economic growth cycles in the nation. These factors could be coupled when titling this legislation the Halbrook Amendment to bring recognition to your leadership in bringing Mississippi to its current status as a good place to do business.

Finally, David Halbrook deserves this honor. He personally laid much of the groundwork for what is being debated today on Capitol Hill. I well remember his many trips to testify before one state legislative assembly after another in order to get them to put forth the call for a constitutional convention to take up this matter. As a seven term Democrat he is the senior member of the Mississippi House of Representatives. This adds credibility to his commonality. Most importantly, he is a loving and devoted father that has always tried to do the right thing by making this world a better place for his children along with everyone else.

In closing, I am requesting this not only because I have been taught to ''honor thy father and thy mother'', but I have also been taught to do the right thing. In my opinion, a balanced budget amendment is the right thing to do, and by personalizing this piece of legislation, its chances of passage will be greatly enhanced. I appreciate your consideration of my request and ideas.

Sincerely,

ANDREW L. ''ANDY'' HALBROOK,
*Concerned Constituent.*

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[From the Reader's Digest, July 1979]

A CONSTITUTIONAL AMENDMENT TO BALANCE THE BUDGET?

(By Eugene H. Methvin)

In OLLIE MOHAMED's Belzoni, Miss., department store, a group was discussing federal spending, inflation and Congress's perennial inability to balance the budget. State legislator David Halbrook spoke of his new grandchild: ''That baby is going to have to pay for the things I'm enjoying. It ought to be the other way around. I ought to leave the world a little better for him.''

That gave Mohamed, a former legislator, an idea. He found a copy of the Constitution and began to read from Article V: ''The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case shall be valid * * * when ratified by the Legislatures of three fourths of the several States. * * *''

That day in 1974, a national crusade was born to compel Congress by constitutional amendment to balance the federal budget. (An exception would occur in national emergencies, when both houses could agree by two-thirds vote to permit deficit spending.) A few months later, Representative Halbrook got the Mississippi state legislature to pass a resolution calling for a constitutional convention. Acting independently, lawmakers in Maryland, Delaware and North Dakota passed similar resolutions. The National Taxpayers Union, a feisty new citizens' lobby, took up the cause, and by April 1979 convention-call resolutions had been passed by 30 states. If four more act, Congress will be required to call a constitutional convention.

The pressure is growing. CBS and the New York Times interviewed voters last November and found that 82 percent of Democrats and 86 percent of Republicans favor a balanced-budget amendment. Five Presidential contenders (Republicans Reagan, Connally, Dole, Baker and Democrat Brown) have endorsed it. Observed Oregon senate president Jason Boe, ''This thing is coming like a 100-car freight train at Congress, and they haven't done a thing about it.''

The realization that the budget-balancers are only four states away from a constitutional convention has startled and disturbed many Washington politicians. Senate Budget Committee Chairman Edmund Muskie (D., Maine) growled that if state legislators continued their rebellion, Congress might balance the budget by cutting the $83 billion in grants and revenue sharing it gives states and localities. House Speaker Tip O'Neill's son Thomas, the Massachusetts lieutenant governor, took the lead in organizing an anti-amendment coalition of the special-interest groups that benefit most from deficit spending, including the AFL–CIO, the National Education Association and other public employee unions. President Carter assailed the proposition as ''political gimmickry'' and formed a White House task force to lobby state legislators.

Washington mobilization had effect. The Montana senate bowed to lobbying efforts and in March defeated an amendment resolution. And the Administration has promised an all-out fight in each of the 15 state legislatures that have yet to act.

Clearly, the battle lines are drawn between the Washington establishment and a disillusioned grassroots groundswell. Never before in the nation's history has so widespread a movement for constitutional change developed over such fundamental issues as the proper size of government and the way our elected representatives wield the powers to tax and spend. If the convention drive succeeds, says The Wall Street Journal the people would be saying that they have finally decided Congress can't be trusted with their money.''

Few even on Capitol Hill dispute that there is genuine ground for wondering these days. Between 1946 and 1961, Congress managed seven deficits and seven surpluses, with an overall approximate balance—and low inflation. But in the 19 years since, Congress has balanced the budget only once, in 1919, and the net deficit over those years has been a aggering $377 billion. Washington has continued the deficits in boom times as well as bust. This year, President Carter offered a 1980 budget with a $29 billion deficit—plus $12 billion more in ''off budget items—and called it ''austere.''

Two decades of Congressional and White House profligacy have helped produce severe inflation that threatens to halve the value of every dollar in five and a half years. Obvious victims include the poor and the elderly, but in the end, everybody suffers. The average family last year paid almost $800 interest on past government deficits, and inflation robbed another $800 from its purchasing power.

In 1976, running against the Washington establishment, candidate Jimmy Carter promised to balance the budget by 1979. Now that President Carter has proffered a $29 billion deficit, the public is turning to the constitutional amendment as a solution. The Associated Press found in a poll last February that ''distrust of policitians is so deep that Americans do not believe their elected officials will act. Seventy percent said politicians will not work to wipe out the deficit.''

Even without a constitutional convention, the budget-balancers may get what they want. State legislatures have used the convention call in the past to lever balky Congresses into proposing needed amendments. In fact, no amendment has ever come directly from the convention approach. State convention calls have helped prompt Congress to submit amendments to provide for direct election of Senators, repeal Prohibition, limit a President to two terms and provide for Presidential succession in case of disability.

In this session of Congress, 203 Representatives and 39 Senators support a wide variety of amendment proposals which they want Congress to submit directly to the states, circumventing a convention call. (Three-fourths of the state legislature, 38, are required to ratify an amendment.) One group would require a ''super-majority'' of either two-thirds or three-fourths of the members of Congress, in an emergency such as war or deep depression, to vote for a deficit budget. Otherwise, the legislators would have to match outlays with revenues. If revenues fell short, Congress would have to slash spending or impose a surtax. Knowing they would have to go on record in favor of higher taxes, the legislators would be certain to look harder at some of their spending ideas.

Another proposal has come from Senators Richard Stone (D., Fla.) and H. John Heinz (R., Pa.). Their amendment, drafted by a group including Novel Prize-winning economist Milton Friedman, would limit federal spending increases to the growth in the Gross National Product. If inflation is greater than three percent, the proposal would impose an even tighter limit on spending.

President Carter and Democratic leaders in Congress protest that any constitutional amendment would ''tie the hands'' of the nation in time of crisis, since a determined minority of either house could block needed appropriations. Proponents respond that a stubborn minority blocking obviously needed action would be swiftly punished at the polls. Congress could still act by majority vote in an emergency by levying taxes to finance needed spending; a minority could only block deficit spending.

Whatever the outcome of these proposed amendments, and the call for a constitutional convention, the balance-the-budget movement has triggered a mighty debate. Says the National Taxpayers Union's Jim Davidson: ''As people see their real spending power decline, this issue will not fade away.'' Adds Sen. Gary Hart (D., Colo.), ''It's a sorry state of affairs when the American people are demanding a constitutional convention because they don't trust us, and Congress is saying, 'No, you can't have one because we don't trust you.'''

This contentious scene would not faze the men who wrote the Constitution, for the debate has focused public attention once again on some eternal verities about public power, its exercise, abuse and safeguards. What healthier way for Americans to celebrate the approaching 200th birthday of their Constitution.

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

Mr. CRAIG. What is the order of business we are in at this time?

The PRESIDING OFFICER. Morning business.

MOVEMENT TO A CONSTITUTIONAL AMENDMENT TO BALANCE THE BUDGET

Mr. CRAIG. Mr. President, I appreciate what the Senator from Mississippi has just spoken of, the issue of the State legislator beginning the movement to petition Congress.

When I was a State senator in Idaho in the 1970's, I became involved in that very movement and actually brought a resolution before the State senate, and it passed the Idaho Legislature, to petition Congress for a balanced budget amendment because clearly at that time, at the State legislative level, as we were looking at what the Congress of the United States was doing and what the Federal Government was doing, we were growing increasingly fearful that debt would continue to mount and power of the Government at the central level in Washington would continue to grow, and it would, if you will, deny or weaken the ability of State legislatures and State governments to act responsibly.

When I then came to Congress in 1980 and started serving in 1981, that movement was well underway. And as the Senator from Mississippi has just mentioned, we were at that time four States short of the necessary requirements under article V of the Constitution from petitioning and therefore forcing the Congress to bring forth a resolution convening a constitutional convention.

Citizens across the country, though, at that time grew increasingly fearful of a constitutional convention, as to whether you could limit it to a single issue like a balanced budget amendment, and that if you opened up a constitutional convention and Congress in essence handed the power to craft a constitutional amendment to an autonomous body, we might see other issues come forth that many of us would not like.

So that movement stalled out at about a remaining two States and it began to back off. Congresswoman Barbara Conable of New York at that time was a leader. I became a leader involved and traveled around to the States encouraging them to continue to do so, not because I wanted a constitutional convention but because I thought it was terribly important we show that the second portion of article V of the Constitution remains a viable power inside the Constitution but that the alternative—and that is the first portion of article V—would be that Congress can propose amendments to the citizens on the Constitution and that we were in essence the always-standing, always-in-power constitutional convention, that at any time with the necessary supermajority vote, the Congress itself could bring forth an amendment to be ratified by the States.

I say to the Senator from Mississippi, as he well knows, that is exactly what we are doing at this time, and that is why some of us have worked as long as we have to assure that this process go forward and why we are so concerned today we do not put anything in the path of this amendment that could trip it up in what is, I believe, a constitutional responsibility on our part to provide a clean, simply directed amendment to the people.

We have seen an amendment—and thank goodness just this week the Senate has denied it—that would have said prior to sending forth an amendment we have to do the following things. That is not what article V says. It says you put forth an amendment and it goes straight to the States because we can only propose. It is the States that have the responsibility, or in essence the citizens themselves, to ratify an amendment because the Constitution as the organic law of our land is the people's law. We operate under it.

That is why we are here today and will be for the next week or so debating a balanced budget amendment to our Constitution because it is the adjusting, if you will, of the organic law of our land that governs us, that governs the central government, that controls the Congress of the United States, and it is the ability of the people to speak up. So what we are doing here is extending or offering to the people of this country the opportunity to speak on the issue of how the Federal Government manages its fiscal house and its budget. And I wish to thank the Senator from Mississippi for recognizing as he has that on all of these kinds of issues they really begin at the grassroots. It is the people at the very lowest level of our governments stepping forward and saying we believe the central government ought to change; it is doing things in an improper way, and the way we will change them is to adjust the Constitution of our country to cause them to act differently.

That was back in the 1970's, and it has taken now over two decades to bring forth this issue to the point where it has now passed the House of Representatives and we are within weeks of voting on it here with a strong likelihood that it can pass the Congress of the United States and pass the Senate and it will go forth to the people. So those citizens of Mississippi, through their State legislators, will have an opportunity to decide how the central government of our country ought to be run in the area of its fiscal responsibilities and matters.

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CFTC REAUTHORIZATION ACT

Mr. CRAIG. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar item No. 20, S. 178, a bill to amend the Commodity Exchange Act to extend the authorization for the Commodity Futures Trading Commission; that the bill be deemed read a third time, passed, and a motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

Mr. President, let me say this has been cleared by the minority.

The PRESIDING OFFICER (Mr. INHOFE). Is there objection? Without objection, it is so ordered.

Mr. LUGAR. Mr. President, today, we consider S. 178, the CFTC Reauthorization Act of 1995. This legislation was sponsored by myself and Senator LEAHY, and requested by the Commodity Futures Trading Commission. The only provision of this legislation is to authorize appropriations for the CFTC through fiscal year 2000. While enactment of S. 178 merely continues the CFTC's responsibilities under existing law, it is important that Congress act now to leave no doubt about the continuing role of the CFTC. Further, Congress spent considerable time and effort addressing futures related issues before enacting the Futures Trading Practices Act of 1992. The bill before us will give the Commission adequate time to complete implementation of the 1992 act and allow time for review by Congress of that implementation and the CFTC's overall performance.

A hearing on this legislation was held on Thursday, January 26, to review the CFTC's performance to date in implementing the requirements of the 1992 act, as well as access its operations generally. Testimony was taken from the CFTC, the four largest U.S. futures exchanges, two futures industry trade groups, and the National Futures Association, a self-regulatory organization.

Concerns had been raised by some exchanges about the implementation of the enhanced audit trail requirements in the 1992 act which go into effect in October of this year. However, in the testimony of the CFTC Chairman, and in her responses to questions, it was made clear that the CFTC has not held that an electronic hand-held device is necessary to meet the enhanced requirements. Further, the CFTC Chairman assured the committee that after the exchanges have attained a high level of compliance, further incremental improvements will only be required as practicable and the cost of the improvements will certainly be an issue in determining what is practicable. In short, common sense prevailed. All witnesses at the hearing supported the reauthorization without amendments. In addition to the futures industry, this legislation has received the support of a number of agricultural groups including the American Farm Bureau Federation, the National Grain Trade Council, the American Cotton Shippers Association, and the National Grain and Feed Association. No futures industry groups, or agricultural groups have notified the committee of their opposition to this bill.

The committee held a business meeting on February 1 to consider the bill. No amendments were offered and S. 178 was ordered reported favorably by the committee.

Of course, reauthorization does not preclude other futures-related legislation during the next 5 years. In fact, I expect the committee will want to conduct vigorous oversight and consider futures legislation as needed.

Mr. President, I urge my colleagues to give their approval to S. 178.

Mr. LEAHY. Mr. President, I am pleased to join Senator LUGAR today in supporting the passage of S. 178, which reauthorizes the Commodity Futures Trading Commission [CFTC]. The last authorization for appropriations for the CFTC expired in 1994. An authorization for appropriations through fiscal year 2000 is necessary to continue orderly funding of the Commission and support for its activities.

The CFTC is a small agency with an important mission—protecting the integrity and effective functioning of our Nation's futures markets. The volume of commodity futures and options contracts traded on the Nation's commodity exchanges exceeded half a billion transactions last year. Since 1974, the year Congress created the CFTC, trading on U.S. futures exchanges has increased by more than 1,500 percent. The pricing and hedging functions of these markets are vital to our economic well-being.

The last reauthorization of the agency occurred only 2 years ago with passage of the 1992 Futures Trading Practices Act [FTPA]. Passage of that bill was one of the outstanding achievements of the Agriculture Committee during my tenure as chairman. The FTPA was the toughest, proconsumer futures reform package in a generation.

The 1992 reforms are the right course for the CFTC and the exchanges to pursue. I am pleased that all witnesses and committee members agreed at the January 26 hearing that no changes to the FPTA are necessary at this time.

The Agriculture Committee will continue its careful oversight of the Commission and the exchanges. Compliance with the enhanced audit trail standard and developments in derivatives markets will receive my close attention.

I expect the exchanges and the CFTC to work diligently to complete the 1992 reforms on a timely basis. With the leadership of the Commission's new Chairman, Mary Schapiro, I am confident this will happen.

So the bill (S. 178) was deemed to have been read three times and passed, as follows:

S. 178

*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 ''CFTC Reauthorization Act of 1995''.

**SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

Section 12(d) of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended to read as follows:

''(d) There are authorized to be appropriated such sums as are necessary to carry out this Act for each of fiscal years 1995 through 2000.''.

## U.S. FOREIGN ASSISTANCE PRIORITIES IN AFRICA

Mrs. KASSEBAUM. Mr. President, I recently received a copy of a speech delivered February 3 by Brian Atwood, Director of the Agency for International Development. He outlines several thoughts on directions for U.S. assistance in Africa.

In light of the current debate over U.S. foreign assistance programs in general, and particularly in Africa, I thought my colleagues would find Mr. Atwood's comments useful. I ask that the text of Mr. Atwood's remarks be included in the RECORD at this point.

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

REMARKS OF J. BRIAN ATWOOD, SUMMIT ON AFRICA AID

I am pleased to be with you today as President Clinton's representative. I understand that the President has issued a statement that was shared with you. As you heard, it underscores the abiding commitment of this Administration to Africa.

From time to time American ballot boxes produce what are called revolutions. We know about the revolution sparked by the Voting Rights Act. Franklin Roosevelt's election created a revolution. So did Ronald Reagan's.

We are in the early stages of a revolution in Washington today. And, as in every other time in our history, good can emerge from the changes this revolution brings.

Congressional reform—the streamlining of the institution, the increased transparency, open rules—this is all long overdue. A Gore-Gingrich collaboration to reinvent government is something the American people welcome. This is not politics-as-usual, and it can produce positive change.

But in the fervor that accompanies the early stages of a revolution, incautious positions are often asserted. At the least, before such positions become the accepted wisdom, someone must challenge them, civilly, but forcefully. That is the only way we can keep revolution on a healthy course. Indeed, that is the way mandates for change are interpreted and given real meaning.

A case in point is the assertion that we have no national interests in Africa. That we must reduce or eliminate development assistance to that continent. That Africa has neither geopolitical importance for the United States nor economic value.

With all the force we can muster, we say: That is just plain wrong.

Let's examine the question objectively. For just a moment, let's leave out America's humanitarian values. Let's put aside our historic ties to Africa. Let's forget sentimentality. Instead, let's talk about hard economic facts and markets and sales. Let's ask ourselves: is Africa worth the investment? Is a continent of half a billion people worth one-half of one-tenth of one percent of the federal budget, which is what we now spend on it? Is the three dollars and change that each American family pays each year to help several dozen sub-Saharan nations a burden worth the price?

Of course it is. It is not welfare, nor is it charity. It is an investment we make in other people for our own self-interest.

How do we build markets? The answer is simple: we do it by making investments for the future. That is what vision is all about. That is what practical reality teaches us, too. If we want to talk economic rationales, then we must look at Africa as the last great developing market. We must look at it the way we looked at Latin America and Asia a generation ago.

Consider Latin America; today it is the fastest growing market for American goods. This is a huge new middle class market of 350 million people. It got that way because of investments made during the last forty years—$30.7 billion in economic assistance from the United States between 1949 and 1993. Yet our exports to all of Latin America in 1993 alone were more than two-and-a-half times that amount—$78 billion. Quite a payoff in jobs and income, and that was just one year. And the Latin American market is likely to grow three times larger in the next decade.

Where would we be if John F. Kennedy, Lyndon Johnson and Richard Nixon had not committed themselves to the Alliance for Progress and the education programs that helped create a generation of economists and technicians who now lead South America's impressive growth? What kind of customers would we have if we had not supported health and education programs that invested in the human capital of Latin America, an investment that now is producing an educated, healthy workforce that can afford to buy our goods and services? What kind of stability would we have in this market if we had not supported democracy-building programs that have made military juntas and coups a thing of the past?

It is an interesting exercise to compare sub-Saharan Africa today to three of the newest ''Asian Tigers''—Malaysia, Indonesia, and Thailand—as they were in 1960: African per capita income is today 80% of what it was in Malaysia, Indonesia, and Thailand 35 years ago. But Africa today has four times the number of people Malaysia, Indonesia, and Thailand had in 1960. Think of the potential of this African market, even at its current stage of development.

The bottom line is that Africa today is not significantly behind where the ''Asian Tigers'' were in 1960. In the three decades since, Malaysia, Indonesia, and Thailand substantially reduced poverty, their rates of population growth, infant mortality, and illiteracy. These countries are now major players in the world economy. We believe Africa can do as well.

The doubters should not just look at Africa's potential; the market is already significant, and like other developing markets, it is growing far faster than our markets in Europe. In 1992, sub-Saharan Africa imported $63 billion worth of merchandise from the world. African imports have risen by around 7.0% per year for the past decade. At this rate, the African market would amount to $480 billion by the year 2025. That is approximately $267 billion in today's dollars.

The U.S. currently accounts for nearly 10% of the African market. Do the arithmetic. Each American family now spends about $3 annually on aid to Africa. At current growth rates, that will produce something like $50 billion worth of American exports to Africa each year in 30 years. In 2025, the U.S. is projected to have a population of 320 million. Again, do the arithmetic. $50 billion worth of exports would work out to about $600 worth of exports per family, annually, in 2025. And that is if Africa's growth remains at its current level; if we make the investments Africa needs, and if African nations implement the kind of policies that have benefitted Asia and Latin America, the return for each American family in thirty years could be as much as $2000 per year.

These are not trivial amounts. They represent millions of jobs for our children financial health for our nation.

Isn't Africa worth the investments now that we made in Asia and Latin America? Those who argue against such investments

are shortchanging the next generation of Americans. There is, of course, no guarantee that our investment will pay dividends, but it is as good a bet as most mutual funds. Moreover, the cost of not acting could overwhelm our treasury, and, I fear, our consciences.

Those who say we have no strategic interest in Africa should understand that if African nations fail to make progress, if they descend into chaos and decay, the tragedy will not take place in a vacuum. Chaos there will affect our interests here. As long as we remain true to our values—and there is a strong bipartisan consensus that suggests we will (even Pat Buchanan supports disaster relief)—the costs of humanitarian operations will continue to be borne in part by the United States. If more African nations fail, we will share the costs of caring for the millions of refugees. We will shoulder the burdens of dealing with endless famine. And we will have to confront the spreading political disorder, the environmental damage, and the consequent loss of markets for our goods.

Parts of Africa are living on the edge. Many African nations face adverse climatic and soil conditions. Each day, people in these countries face problems of poor health and malnutrition and illiteracy that few other people confront.

Yet lost in the apocalyptic descriptions of an Africa seemingly falling apart is genuine reason for encouragement. The headlines rarely report the many positive developments and success stories in Africa. Yet in a number of African nations, democratically-elected, enlightened leaders, committed to broadening participation and undertaking reforms necessary for development, are creating an environment for success. This, too, is the reality of Africa:

USAID today is working in 35 African nations that, in our judgment, are in various phases of consolidating their democracies, creating free markets, and implementing serious economic reforms. Conversely, we have ended our involvement in several nations where the governments refuse to commit themselves to reform or to a development partnership with their own citizens.

A new generation of African leaders is pursuing extensive economic restructuring programs, including privatization of state-owned enterprises, reducing government functions and budgets, stabilizing the economy, and implementing policy changes that help the private sector expand.

New crops and market liberalization are expanding food production, raising farmer income and reducing food prices for consumers.

More children, especially girls, are attending school so that they can become more productive members of society. And we know from our own experience that more than any other factor, improving the education of girls and the status of women enhances the economy, the environment, and the prospects of democracy.

Programs to expand immunization and use of oral rehydration therapy are saving an estimated 800,000 African children each year.

Fertility is starting to fall as more and more parents use family planning services.

I am proud that USAID has played a role in every one of these achievements.

For every Rwanda there is a Ghana—a nation that has begun revitalizing its economy and is intent on being part of the worldwide economic expansion.

For every Somalia, there is a South Africa or a Namibia—nations that have successfully implemented democracy and peaceful change.

For every Angola, there is a Mozambique, emerging now from civil conflict.

For every tragedy, there are a half dozen islands of hope. Progress is still tentative, often fragile. Which is precisely why we must not hesitate now. But this continent is no write-off. It is a good investment.

We have learned from the mistakes we made during the Cold War. We now are concentrating our aid in countries that are implementing sound economic policies, promoting an open and democratic society, and investing their own resources in broad-based development. That is exactly what the Congress wanted to accomplish with the Development Fund for Africa. And that is why this Administration strongly supports the Development Fund for Africa. Under this fund, we have taken a longer-term approach to Africa's development, systematically addressing the root causes—economic, social, and political—of underdevelopment.

In those countries stricken with disaster or famine, we are treating emergency relief as more than an end in itself. Rather, we are structuring it to help nations make the difficult transition from crisis to the path of sustainable development.

President Clinton's Initiative for the Greater Horn of Africa is designed to apply the lessons we learned in the Sahel and Southern Africa is a troubled region that now consumes nearly half of all African relief. By emphasizing regional cooperation and planning, by helping nations acquire the ability to respond to food crises early on, we can prevent droughts from becoming famines. This Initiative, we believe, will save lives and resources. The partnerships it builds will enable the donor community to save billions of dollars in relief assistance over the next fifteen years and focus resources instead on recovery efforts and long-term development.

To prevent more failed nations, the United States must strengthen our efforts to prevent crisis and to encourage others to do so as well. While we only provide five percent of the development assistance that Africa receives, we provide 30 percent of the relief assistance directed at the continent's emergencies. It is a lot less expensive to lead the way on prevention than it is to pay the costs of failure.

I am able to make the case for assistance to Africa today because USAID has reorganized itself to be an effective instrument of development. Many of our reforms were pioneered by the Development Fund for Africa. The DEA forced us to measure results and now we are going to do this everywhere. Our work in Africa has been an essential part of our identity, and must remain so.

So, now we have a fight on our hands. We welcome it. If the revolution has indeed begun, then each of us must do everything we can to ensure that the well-being of our children—and the children of Africa—is advanced by the vision today's revolution produces. We cannot be silent. We cannot wring our hands. The case for Africa gives us the opportunity to be the champions of common sense. This is a battle well worth waging. Not for African Americans, not for historical reasons, not even for our humanitarian values, though we must never forget them. This is a battle worth waging for America's national interests and the future of *our* children. We *will* wage it. And I am confident that, in the end, common sense will prevail.

## RETIREMENT OF C. WAYNE HAWKINS

Mr. SIMPSON. Mr. President, I appreciate the opportunity to take a few brief moments of the Senate's time to acknowledge the recent retirement, on January 31, 1995, of Mr. C. Wayne Hawkins from Federal service.

Mr. Hawkins most recently served as the Department of Veterans Affairs' Deputy Under Secretary for Health for Administration and Operations, capping a distinguished Federal career that spanned 37 years. As one of VA's two Deputy Under Secretaries for Health, Mr. Hawkins was the senior non-physician official in the VA's Veterans Health Administration [VHA], the VA organization of 171 hospitals, 353 outpatient clinics, 128 nursing home care units, and 37 domiciliaries. In this capacity, he served as Chief Operating Officer of VHA—an organization which provides health care services to over two million veterans per year, and which is the largest ''chain'' of health care facilities in the United States.

Mr. Hawkins began his VA career in 1957 as a rehabilitation specialist at the Mountain Home VA Medical Center in Johnson City, TN. From that assignment, he progressed up the VA career ladder, becoming a personnel manager, then an Associate Director at a number of VA hospitals. Ultimately, he was appointed Director of the VA Medical Center in Dallas, TX, a post in which he served for 15 years before coming to Washington to serve as VHA's Deputy Under secretary. Under his steady leadership, the Dallas VA Medical Center became one of VA's flagship hospitals.

Through it all, Mr. Hawkins also served in the military's active and reserve ranks, retiring as an Army colonel in 1987 after 33 years service. He also served in major leadership capacities in the Texas Hospital Association, the American Hospital Association, and the VA Chapter of the Senior Executive Association. In 1991, he was inducted as a fellow, American College of Health Care Executives.

Mr. Hawkins received a B.S. degree in 1957 from East Tennessee State University, and an M.S. degree in 1971 in health care administration from the University of Minnesota. He completed graduate work in health systems management at Harvard University, and is a graduate of the U.S. Army Command and General Staff College. Among other honors, Mr. Hawkins is a recipient of VA's Distinguished Career Award, Presidential Rank Awards for Distinguished Executives and Meritorious Executives, the Ray E. Brown Award for Outstanding Accomplishment in Health Care Management, and numerous other Government, military and civilian awards for excellence in health care management.

Mr. President, VA will truly miss this distinguished and visionary health care executive. We who care about veterans regret that he is retiring from a role of day to day management of VA's health care system. Gladly, Wayne Hawkins is not withdrawing completely from participation in veterans affairs and health care management, so we expect to reap the benefit of his experience, intelligence and integrity for many years to come.

## WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, as of the close of business on Thursday, February 9, the Federal debt stood at $4,803,442,790,295.83 meaning that on a per capita basis, every man, woman, and child in America owes $18,233.95 as his or her share of that debt.

## SENATOR FULBRIGHT

Mr. HELMS. Mr. President, all of us who knew and/or served with Senator J. William Fulbright were saddened at the news of his passing. I had the privilege of serving my first 2 years in the Senate with this distinguished gentleman. He was an able U.S. Senator.

Senator Fulbright presided over the Senate Foreign Relations Committee with dignity and distinction. I join the American people in extending my deepest sympathies to his family.

## TRIBUTE TO BEN R. RICH

Mr. NUNN. Mr. President, I would like for my colleagues in the Senate and my fellow citizens throughout the country to note the passing of Ben R. Rich. Ben was a long-time employee at the famed Lockheed ''Skunk Works'' in California.

Ben had just recently published a book, ''Skunk Works: A Personal Memoir of My Years at Lockheed,'' with Leo Janos. This book provided us an insight into what was an outstanding career of service and dedication to having our country maintain its technological edge over any potential adversary. During his tenure at the Skunk Works from the mid-1950's until his retirement in 1991, Ben worked on a number of very important aircraft programs, such as the SR–71, the U–2, and the F–104. Perhaps his greatest contribution was to the so-called Stealth fighter program, the F–117. Ben headed the Skunk Works during the development and production of the F–117. We saw the fruits of his leadership on F–117 in the Persian Gulf war, where, more than any other system, the F–117 and its stealth gave our forces the capability to attack any of the Iraqi's highest value targets with impunity. This system is revolutionary, and Ben Rich's leadership was critical to making it a success.

Mr. President, this country will be a poorer place with his loss. We will all sorely miss Ben and his dedication to excellence. Ben Rich made a difference.

## WILLIAM MC. COCHRANE: HISTORICAL CONSULTANT

Mr. PELL. Mr. President, I am very pleased to note that William McWhorter Cochrane, who until this year was one of the Senate's most venerable staff members, is continuing his service to the legislative branch in a new capacity at the Library of Congress.

Bill Cochrane began his Senate service in 1954, thus predating all sitting Members of this body today. Over the years, he has truly become an institution in his own right.

Always faithful to his home State of North Carolina, Mr. Cochrane began his Senate career as counsel to Senator Kerr Scott, and 4 years later became administrative assistant to Senator B. Everett Jordan. In 1972, he joined the staff of the Committee on Rules and Administration, serving as staff director until 1980, a period which included my own tenure as chairman of the committee in the 95th and 96th Congresses.

One of Mr. Cochrane's special areas of interest has always been the Library of Congress, and his knowledge of that institution is encyclopedic. So it is altogether fitting that he has been named Honorary Historical Consultant to the Library, especially at this time when the Library is preparing to observe its 200th anniversary in the year 2000.

I congratulate Bill Cochrane on this occasion and I also congratulate the Librarian of Congress, Dr. James Billington, for making this appointment. I ask unanimous consent that a news release from the Library of Congress on Mr. Cochrane's appointment be printed in the RECORD at this point.

[From the Library of Congress News, Washington, DC]

WILLIAM MCW. COCHRANE NAMED HONORARY HISTORICAL CONSULTANT TO LIBRARY OF CONGRESS

Librarian of Congress James H. Billington announced today the appointment of William McW. Cochrane as the Honorary Historical Consultant to the Library of Congress. Mr. Cochrane's career in the U.S. Senate spanned 40 years.

In making the announcement, Dr. Billington said, ''As the Library of Congress approaches its 200th anniversary in the year 2000, we are fortunate to be able to draw on the knowledge and wisdom of this distinguished public servant. Bill's respect for and knowledge of the Congress, and of its Library, will bring a unique historical perspective to our bicentennial planning.''

Following service in World War II and administrative and teaching positions at the University of North Carolina, Cochrane came to the Senate in 1954 as counsel to Senator Kerr Scott (D–N.C.). From 1958 to 1972, he served as administrative assistant to Sen. B. Everett Jordan (D–N.C.). From 1972 through the 103rd Congress, he worked for the Senate Committee on Rules and Administration as staff director from 1972–1980, as Democratic staff director from 1981–1986, and as senior advisor from 1987. In addition, he held several senior positions with the Joint Committee on Inaugural Ceremonies. His work with the Joint Committee on the Library of Congress, the oldest continuous joint committee of Congress, totaled more than 30 years.

Among his numerous honors, he has received the Distinguished Alumnus Award for Public Service from the University of North Carolina and the 20th Annual Roll Call Congressional Staff Award. In 1992, he was one of six recipients of the State of North Carolina Award for Public Service.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

## BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of House Joint Resolution 1, which the clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

The Senate resumed consideration of the joint resolution.

Pending:

Reid amendment No. 236, to protect the Social Security system by excluding the receipts and outlays of Social Security from balanced budget calculations.

Dole motion to refer H.J. Res. 1, Balanced Budget Constitutional Amendment, to the Committee on the Budget, with instructions.

Dole amendment No. 237, as a substitute to the instructions (to instructions on the motion to refer H.J. Res. 1 to the Committee on the Budget).

Dole amendment No. 238 (to amendment No. 237), of a perfecting nature.

The PRESIDING OFFICER. Under the previous order, the Senator from Oregon [Mr. PACKWOOD] is recognized to speak for up to 60 minutes.

Mr. PACKWOOD. Mr. President, I had prepared over several days a speech for this morning. But because of a news article this morning on the death of Senator Fulbright the day before yesterday, I decided to change my approach and have thrown away all of the comments I was going to make. I will try to put this debate in a different light.

The Washington Post article on Senator Fulbright is well worth reading, because he was a figure of great consequence here. As we are debating this, another matter of great consequence, I look back at some of the other events that have taken place in my career on this Senate floor. I will not use Yogi Berra's famous expression, ''It's déjà vu all over again,'' because I think a more apt expression might be Justice Holmes' comment about the law, but it really relates to all of us. He said, ''The life of the law has not been logic. It has been experience.''

I think, as we look at this balanced budget amendment, we are better off to look at it in the light of experience rather than the light of logic.

I mentioned Senator Fulbright because I recall in this Chamber the most extraordinary event—certainly the most extraordinary debate, but extraordinary event—that I have ever witnessed in my life.

It was an unusual situation. It was a closed session of the Senate on the debate—this was in 1969—on the antiballistic missile system. There were two extraordinary Senators who were

going to carry the battle for and against that: Senator Symington of Missouri, high up on the Armed Services Committee, was unalterably opposed; Senator Jackson of Washington, high up on the Armed Services Committee, was unalterably in support. These two Senators had access to identical witnesses, identical information, and came down on absolute opposite sides. The antiballistic missile was a touchstone between the so-called hawks and doves.

We were then enmeshed heavily in Vietnam. This, I suppose, would have been the equivalent of the star wars of its day. Could we invent a missile that would go up in the air and shoot down other missiles? We finally agreed, under a unanimous consent, as I recall, to either 6 or 8 hours of debate. And because it was going to be highly sensitive, classified information, the Senate was cleared of all press. The galleries were closed. The staff left. We had all 100 Senators on the floor and the Vice President presiding.

We started the debate. Senator Symington, in opposition, spoke first. He spoke for an hour without notes. The only references he had were some charts behind him, showing the Russian missile system and its progress. When he finished speaking, I thought to myself, that is the end of the ABM, the antiballistic missile. No one can rebut that argument.

Then, Senator Jackson arose and spoke for an hour, without notes. I remember him turning to Stewart Symington and saying: ''Let me take you just a few charts further than where my distinguished colleague from Missouri left off.'' And Senator Jackson went on with his seven or eight charts, taking us up to what was probably the SS–18 or SS–19 at the time—a brilliant argument. And I thought when he finished, that is it. We are going to have an antiballistic missile system. No one can rebut that argument.

Then these two giants began to ask questions of each other. Like great fencers, they parried and thrusted. They each knew the answers to the questions they were asking. They hoped that somehow they could pinion the other. And the reason the questions and answers were so critical is everyone knew this was a close vote, just like this coming vote on the balanced budget amendment. Everyone knew it was one or two votes, one way or the other.

President Nixon desperately wanted the ABM because he needed it as a bargaining chip with the Soviets to attempt to begin arms reduction. Without it, he knew he could not begin. So when the two had finished their speeches and had finished questioning each other, then the rest of us had an opportunity to ask questions.

Again, you have to picture a full Chamber, 100 Senators, in closed session. There was no one here but us: no press, no gallery, no staff. And the third or fourth question was from Senator Fulbright to Senator Jackson.

Senator Fulbright said, ''Would my good friend from Washington yield to a question?''

''Yes,'' Senator Jackson said.

Senator Fulbright said, ''Has my good friend had a chance, yet, to digest the remarks of the Russian Foreign Minister, Andrei Gromyko, in Warsaw last week, in which the Soviet Foreign Minister said that the Soviet Union wanted to reach a new era of détente—of cordiality with the United States? And doesn't my friend from Washington think that before we rush pellmell into this unproven missile system, we should give just some little credence to the words of the Russian Foreign Minister?''

Senator Jackson shot back, as if it had been a prompted question. He pointed his finger at Senator Fulbright. I remember the gesture so well. They sat no more than two or three desks apart.

He said, ''Let me call to memory for my friend from Arkansas'' and then Scoop Jackson moved his hand like this and said to the—others, who were not here at that time—''that morning, when President Kennedy, in October 1962, asked Russian Foreign Minister Gromyko, who had been at the United Nations the day before, to come to Washington to chat with him. Andrei Gromyko flew down from New York and went to the White House.''

Scoop Jackson related this scene: ''That day, the President asked Gromyko, if there were any Russian missiles in Cuba.''

''No, came the answer.''

''Were there any Warsaw Pact country missiles in Cuba?''

''No.''

''Had any missiles been transported on Russian ships to Cuba?''

''No.''

''Were there any Russian troops in Cuba assembling missiles?''

''No.''

Then Scoop Jackson made this gesture. He reached down and said—''Then the President opened the drawer of his desk, took out the pictures from the U–2, threw them in front of Mr. Gromyko—showing the missiles, showing the ships, pictures so good that you could see the chevrons on the sleeves of the Russian troops in Cuba assembling the missiles.''

Scoop Jackson said, ''Andrei Gromyko left that room an acknowledged liar. If my friend from Arkansas wants to rest the security of this country on the truthfulness and credibility of Andrei Gromyko, that's his business. I would not ask a single American to sleep safely tonight based upon the credibility of Andrei Gromyko.''

The vote that afternoon was 51 to 50, with the Vice President breaking the tie. And the answer to that question was the difference of one or two votes.

So do we on occasion have the opportunity to participate in great events where we can make a difference? We do. With that vote, President Nixon was able to start negotiations with the Soviet Union, and it was the first of our major negotiations leading to arms reductions over the years.

I cite that moment because I think we are approaching a similar moment again. This time on the balanced budget amendment and just one or two of us may make an extraordinary difference for the future. I have said, quoting Holmes, it is experience, not logic.

Let us take a look at some of our experiences from that time on. In 1972—this was an open debate, it is in the RECORD—we did not have budget bills in those days. We thought we had a terrible budget problem. The deficit was $15 billion. The budget was $245 billion. This is in my lifetime in the Senate; 1972, barely 20 years ago, a budget that was smaller than some of our deficits have been in the last few years. But we thought this was so terrible that we were going to vote on a bill to delegate to President Nixon the power to cut the budget anyplace he wanted—once it exceeded $250 billion. You talk about a line-item veto. This was not just a line-item veto. It was carte blanche power to cut it wherever he wanted it. It had passed the House with Wilbur Mills leading the fight for it. It came to this body. We had an extraordinary debate. There is not even a baker's dozen of us left now from that time. I am not going to read into the RECORD all of the debate. Most of the people who were involved are now gone. But interestingly there are still a few left that opposed that effort. I was one that opposed it. I made what I thought was an extraordinary speech on the history and the power of the purse, going into the parliamentary debates and the fights with the kings' efforts over the centuries to gain power over the purse. Did we want to give to the President a power which the Parliament and the Congress had fought for the better part of 500 years to gain for itself? I said no. And all of us who talked and opted against that legislation said we the Congress can do it. We have the courage in Congress to narrow a $15 billion deficit. We do not need to give away the power to balance the budget.

It is particularly interesting to read the statements of one or two of the Democratic Senators who were in opposition to the balanced budget amendment, speaking in opposition to this particular bill in 1972, as to how we in Congress could do it. That is almost now 25 years ago. The deficit was $15 billion.

In 1978—there have been several people who have made reference to it—we had the Byrd amendment. This is not ROBERT BYRD of West Virginia. This is Harry Byrd of Virginia. We passed it in 1978. It is very simple. All it says is beginning with fiscal year 1981 the total budget outlays of the Federal Government shall not exceed its receipts. It is pretty easy to understand. It is a balanced budget statute. Somehow we did

not make it. We did not even come close.

Do you know what the problem with a statute is? Every time you pass another statute later that is in conflict, the later one governs. So we passed a later nonbinding law that says in 3 years we have to balance the budget, and, then, this Byrd law is just irrelevant. We just ignored it. I thought it was ridiculous. It was embarrassing to have it on the books and ignore it year after year. So in essence, we repealed it. Then we knew that we had to face the deficit ourselves. We had the courage to do it. We in Congress could do it. Even then we were starting to talk about constitutional amendments. But we had not quite gotten to there yet.

Now I want to go to 1981, again this experience. It is amazing how myths are perpetrated. ''The Reagan tax cuts are what led to the deficits.'' How many times have we heard that? Again, I was here. I was on the Finance Committee. But sometimes when you hear it long enough your memory plays tricks on you, and you wonder if you remember as it actually happened.

So I had Dr. Reischauer, the head of the CBO, check it for me. And indeed my memory was right. From roughly January 1980 until July 1981, a period of about 18 months, every budget projection we had from the Congressional Budget Office, from the Office of Management and Budget, from the Joint Committee on Taxation and private economists said we were going to have by 1985 between a $150 billion and a $200 billion surplus—not a deficit; a surplus.

So President Reagan proposed tax cuts in 1981. I want to emphasize something. His Treasury Department came and made staging estimates. They assumed that the tax cuts would parallel these projected $150 to $200 billion in deficits. President Reagan correctly understood that if we did not give this money back to the taxpayers, we would spend it; no question about that. Do not worry. We have plenty of experience on that. But they were to parallel the projected surpluses.

Well then, did we ever become generous. The House Ways and Means Committee took the President's bill and added to it more tax cuts. Then it came to the Senate Finance Committee. We added tax cuts to the House version. We even gave real estate 15 years for depreciation. It is no wonder that we had a building boom—built on taxes, not on economics—from 1981 on—when you could depreciate real property over 15 years. You could not lose. You did not even have to rent the building. In fact, many of them were not rented. That is what happened. But that is not the point. They were not being built to be rented. They were built for tax losses. We piled everything on we could. We went to conference, and we took the most expensive provisions of both bills and sent it down to the President. He signed it.

What the economists did not foresee in those 18 months were three things: First, the rapid decline in inflation. This was before we had, indexed, the Tax Code. We had run 4 years of inflation of 13, 14, or 15 percent. We could presume that before we indexed the Tax Code we would get about 1.7 percent increase in revenues for each 1 percent of inflation.

So if you could presume 10 or 11 or 12 percent inflation compounded from 1981 to 1985, it is no wonder we were projecting surpluses. But we did not foresee that inflation would absolutely nosedive, nor did we foresee that recession. It wasn't anybody's fault. It was not President Reagan's fault. It was a rosy scenario. This was everybody's projection. When the recession comes down, revenues go down, expenses go up.

So we had an immense shortfall by 1982. Just to corroborate this, so that those that believe in the myth do not think that I do not know of what I speak, I want to insert two letters from Dr. Reischauer in the RECORD, one of November 8, 1994, and one of December 15, 1994, and then just a portion of his testimony, just 2 weeks ago on January 26, 1995, before the Finance Committee. I will quote just one sentence when he is referring to this period.

It is reasonable then to ascribe nearly all of the underestimate of deficits during that period to errors in economic forecasts.

Mr. President, I ask unanimous consent that those three documents be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, November 8, 1994.*

Hon. BOB PACKWOOD,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR: This is in response to your request of November 3, asking CBO to provide additional information about budget projections done almost 15 years ago, before enactment of the Economic Recovery Tax Act [ERTA] of 1981. As you recognize, many changes in budget policy and presentation hamper our ability to answer questions about projections that are so widely separated in time. Nevertheless, we will answer the questions posed in your letter as best we can.

Briefly, before the enactment of ERTA, CBO's budget reports routinely warned that a continuation of current tax and spending laws would lead to a surplus that would act as a drag on the economy. The late 1970s and early 1980s were a period of high inflation. Key features of the individual income-tax—brackets, personal exemptions, and standard deductions—were not indexed for inflation, even though inflation tended to push taxpayers into progressively higher tax brackets. In response, policymakers typically enacted ad hoc tax reductions every few years to keep the revenue-to-GDP ratio from spiraling. Examples are the tax cuts enacted in 1964, 1969, 1971, 1975, 1976, 1977, and 1978. On the spending side of the budget, many entitlement programs (such as Social Security) were automatically indexed to inflation, but discretionary programs had no such automatic feature and relied on the annual appropriation process for funding (if any) to compensate them for inflation.

In doing its pre-ERTA projections, then, CBO faced a dilemma: literal projections of current-law revenues and spending implied a fiscal drag that was viewed as incompatible with long-term growth. Therefore, CBO's economic projections assumed changes in fiscal policy sufficient to offset this effect and were not predicated on unchanged laws. The tax cuts enacted in 1981 and subsequent economic developments, of course, erased projected surpluses from CBO's reports.

CBO FEBRUARY 1980 PROJECTIONS

Illustrating this dilemma, in its February 1980 report Five-Year Budget Projections: Fiscal Years 1981-85, CBO projected that the revenues collected under current tax law would climb from about 21 percent of GNP in 1981 to 24 percent by 1985. Simple arithmetic pointed to enormous surpluses in the outyears. For example, current-law revenues exceeded outlays by a projected $98 billion for 1984 and $178 billion for 1985.

CBO purposely did not, however, publish these surpluses, which it called the ''budget margin.'' The reasons was one of internal consistency. CBO's assumptions of economic performance beyond the two-year forecasting horizon were based on an analysis of historical trends and the economy's long-run growth potential. Thus, the February 1980 report assumed that the economy would grow at a real rate of 3.8 percent a year in 1982 through 1985. Such growth was incompatible with a rising revenue-to-GDP ratio; in fact, the report stated that ''fiscal policy changes that would use up most of the burden margin would be required if the economic growth path were to be achieved.'' The economic assumptions assumed approximately budget balance in 1983 through 1985 but did not assume specific tax cuts or changes in spending.

EARLY 1981 PROJECTIONS

The tax environment changed in 1981. By mid-1981, the Congress and the Administration had agreed on a large multi-year tax cut. The budget resolution prescribing the appropriate size of the cuts was adopted in May, and ERTA itself was enacted in August. Indexing for inflation was not a feature of the Administration's tax proposal submitted in March 1981, but was a part of ERTA. It did not take effect until 1985, after an intervening series of three cuts in individual income taxes effective at the start of calender years 1982, 1983, and 1984.

Economic assumptions. CBO presented its baseline projections in 1981 using two different sets of economic assumptions—those contained in the budget resolution (resembling the Reagan Administration's assumptions), and an alternative set developed independently by CBO. For the reasons described above, economic forecasts require an assumption about fiscal policy; the CBO assumptions explicitly assumed adoption of a package of tax cuts and spending cuts like those advocated by the Administration.

Budget projections. Without the tax cuts, long-run surpluses still appeared likely from the vantage point of early 1981. For example, using the economic assumptions dictated by the budget resolution, OMB envisioned a surplus of $76 billion in 1984 and $209 billion in 1986 if no changes in tax law or spending policy were adopted (Baseline Budget Projections: Fiscal Years 1982–1986, July 1981). Those economic assumptions were rosier than the set developed independently by CBO. Budget projections based on CBO's economic assumptions, which were more fully documented in a March 1981 report (An Analysis of President Reagan's Budget Revisions), foresaw smaller surpluses amounting to $23 billion in 1984 and $148 billion in 1986.

The budget resolution was expected to generate a bare $1 billion surplus in 1984, under

the economic assumptions contained therein. That would presumably imply a deficit of roughly $50 billion under CBO's less rosy assumptions.

In sum, given the best information available at the time, the Congress and the Administration reasonably thought that surpluses loomed under current law. Analysts differed, however, on whether following the policies of the first budget resolution would put the government on a balanced-budget footing or would lead to deficits.

POST-1981 DETERIORATION

Economic developments led to far bigger deficits than even relatively pessimistic participants in the 1981 debate envisioned. As you requested, we have prepared a comparison of the economic assumptions contained in the fiscal year 1982 budget resolution with the actual outcomes (see attached Table 1). For completeness, we also include a comparison with the CBO alternative forecast published in March 1981. Revisions by the Department of Commerce to economic data (such as the shift in the base year for measuring real growth) prevent the actuals from being perfectly comparable to the projections, but do not distort the overall story.

Compared with the budget resolution, the most dramatic deviations in economic performance were sharply lower real growth and sharply lower inflation. The economy plunged into recession, registered negative growth in 1982, and then recovered. Even so, real growth over the 1981–1986 period (including recession and recovery years) averaged 2.6 percent, versus the budget resolution's assumption of 4 percent. Inflation was sharply lower than in the budget resolution, averaging 4.9 percent over the 1981–1986 period (when measured by the CPI) versus the 6.6 percent assumed in the resolution. These two factors—lower real growth and lower inflation—caused nominal GNP to be about $700 billion smaller by 1986 than assumed in the resolution, with a corresponding drop in the tax base. Interest rates, however, did not behave very differently than assumed in the resolution—implying that real interest rates (nominal rates adjusted for inflation) were much higher than foreseen.

In one crucial respect, the economy performed closer to CBO's early-1981 alternative forecast. Although CBO did not foresee the recession, it did envision average real growth of 2.8 percent over the 1981–1986 period, compared with an actual rate of 2.6 percent. CBO overestimated inflation, and underestimated real interest rates (as proxied by nominal Treasury bill rates minus inflation).

The post-1981 deterioration in the budget picture cannot be allocated to individual economic variables—real growth, inflation, and interest rates—as you requested. But it is clear that economic factors were mostly responsible, with so-called technical factors running a distant second. In 1986, the deficit was more than $400 billion greater than in the CBO July 1981 baseline projections (see attached Table 2). Policy changes contributed slightly over $100 billion; this figure includes not just the impact of ERTA and other changes adopted in 1981 but also the effects of later changes, such as the Tax Equity and Fiscal Responsibility Act and the 1983 Social Security Amendments, enacted to curb the burgeoning deficit. Economic and technical changes contributed the remaining $300 billion. The deterioration was overwhelmingly in the areas of revenues and net interest and it is reasonable to ascribe nearly all of it to errors in the economic forecast.

Of course, the indexation of the tax system contributed very little to the deterioration in this five-year period, because indexing did not take effect unit 1985. By then, CBO estimated that repealing it would generate a mere $5 billion in fiscal year 1985 and less than $15 billion in 1986. Since 1985, indexation—the annual adjustment to tax brackets and other features of the individual income tax code—has operated, other things being equal, to keep such taxes roughly constant as a share of GDP.

I hope that this information is helpful to you. If you have additional questions, please do not hesitate to contact me. The principal CBO staff contact is Kathy Ruffing (X62880); more detailed questions about revenues can be answered by Rosemary Marcuss (X62680) and inquiries about CBO's economic forecast by Robert Dennis (X627750).

Sincerely,

ROBERT D. REISCHAUER,
*Director.*

TABLE 1.—ECONOMIC ASSUMPTIONS IN THE FIRST BUDGET RESOLUTION FOR FISCAL YEAR 1982 AND ACTUAL OUTCOMES

[By calendar year]

| Nov. 8, 1994 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 |
|---|---|---|---|---|---|---|---|
| | | | First Budget Resolution for 1982 [1] | | | | |
| Nominal GNP (dollars) | 2,626 | 2,941 | 3,323 | 3,734 | 4,135 | 4,641 | 4,983 |
| Real GNP growth (percentage change) | −0.2 | 2.0 | 4.1 | 5.0 | 4.5 | 4.2 | 4.2 |
| Consumer price index (percentage change) | 13.5 | 11.0 | 8.3 | 6.2 | 5.5 | 4.7 | 4.2 |
| Unemployment rate | 7.1 | 7.5 | 7.2 | 6.6 | 6.4 | 5.9 | 5.6 |
| 3-month Treasury bill rate | 11.4 | 13.5 | 10.5 | 9.4 | 8.2 | 7.0 | 6.0 |
| | | | CBO Alternative Assumptions of March 1981 [2] | | | | |
| Nominal GNP (dollars) [3] | 2,626 | 2,936 | 3,285 | 3,663 | 4,081 | 4,558 | 5,055 |
| Real GNP growth (percentage change) | −0.2 | 1.3 | 2.5 | 2.7 | 3.0 | 3.8 | 3.7 |
| Consumer price index (percentage change) | 13.6 | 11.3 | 9.6 | 8.9 | 8.2 | 7.7 | 7.1 |
| Unemployment rate | 7.1 | 7.8 | 7.9 | 7.8 | 7.7 | 7.5 | 7.2 |
| 3-month Treasury bill rate | 11.4 | 12.6 | 13.7 | 11.5 | 10.2 | 9.7 | 9.3 |
| | | | Actual [4] | | | | |
| Nominal GDP (dollars) | 2,708 | 3,031 | 3,150 | 3,405 | 3,777 | 4,039 | 4,269 |
| Real GDP growth (percentage change) | −0.6 | 1.8 | −2.2 | 3.9 | 6.2 | 3.2 | 2.9 |
| Consumer price index (percentage change) | 13.6 | 10.3 | 6.2 | 3.2 | 4.3 | 3.6 | 1.9 |
| Unemployment rate | 7.1 | 7.6 | 9.7 | 9.6 | 7.5 | 7.2 | 7.0 |
| 3-month Treasury bill rate | 11.4 | 14.0 | 10.6 | 8.6 | 9.5 | 7.5 | 6.0 |

[1] The budget resolution contained assumptions through 1984; assumptions for 1985 and 1986 are a CBO extrapolation. They were published in Baseline Budget Projections: Fiscal Years 1982–1986 (July 1981).

[2] CBO's alternative assumptions assumed fiscal policy changes comparable to those contained in President Reagan's March 1981 budget revisions. These alternative projections were published in An Analysis of President Reagan's Budget Revisions for Fiscal Year 1982 (March 1981) and in Baseline Budget Projections: Fiscal Years 1982–1986 (July 1981).

[3] Nominal GNP was not published; these levels are estimated using the published growth rates.

[4] The actuals are not strictly comparable to the 1981 projections. They reflect the shift in emphasis from GNP to GDP and the redefinition of the base year used in measuring real economic growth (from 1972 at the time of the 1981 projections to 1987 for the most recent actuals). These changes, however, do not seriously distort the comparison.

TABLE 7.—CHANGES IN BUDGET OUTLOOK, 1982–86, FROM CBO JULY 1981 BASELINE

| Nov. 8, 1994 | 1982 | 1983 | 1984 | 1985 | 1986 |
|---|---|---|---|---|---|
| | | | CBO July 1981 Baseline [1] | | |
| Revenue | 709 | 810 | 920 | 1033 | 1159 |
| Outlays: | | | | | |
| Net Interest | 72 | 70 | 67 | 62 | 59 |
| Other [2] | 687 | 742 | 796 | 853 | 911 |
| Total | 759 | 812 | 863 | 915 | 970 |
| Deficit or surplus (-) | 50 | 2 | −56 | −118 | −189 |
| | | | Changes | | |
| Policy changes: | | | | | |
| Revenues | −43 | −75 | −100 | −117 | −133 |
| Outlays: | | | | | |
| Net interest | 0 | 1 | 6 | 16 | 29 |
| Other [3] | −40 | −39 | −36 | −15 | −51 |
| Total | −40 | −38 | −30 | 1 | −23 |
| Deficit | 3 | 37 | 70 | 118 | 110 |
| Economic and technical changes: | | | | | |
| Revenues | −48 | −135 | −153 | −182 | −257 |
| Outlays: | | | | | |
| Net interest | 13 | 19 | 38 | 51 | 48 |

TABLE 7.—CHANGES IN BUDGET OUTLOOK, 1982–86, FROM CBO JULY 1981 BASELINE—Continued

| Nov. 8, 1994 | 1982 | 1983 | 1984 | 1985 | 1986 |
|---|---|---|---|---|---|
| Other [2] | 14 | 16 | −20 | −21 | −5 |
| Total | 26 | 35 | 19 | 30 | 43 |
| Deficit | 75 | 169 | 171 | 212 | 300 |
| Total changes: | | | | | |
| Revenues | −91 | −210 | −253 | −299 | −390 |
| Outlays: | | | | | |
| Net interest | 13 | 20 | 44 | 67 | 77 |
| Other [1] | −26 | −24 | −56 | −36 | −57 |
| Total | −13 | −4 | −11 | 32 | 20 |
| Deficit | 78 | 206 | 242 | 331 | 410 |
| | | | Actual Outcomes | | |
| Revenues | 618 | 601 | 666 | 734 | 769 |
| Outlays: | | | | | |
| Net interest | 85 | 90 | 111 | 130 | 136 |
| Other [1] | 661 | 719 | 741 | 817 | 854 |
| Total | 746 | 808 | 852 | 946 | 990 |
| Deficit | 128 | 208 | 185 | 212 | 221 |

[1] The July 1981 baseline was based on the economic assumptions of the first concurrent resolution, not those of CBO.

[2] Adjusted by approximately $20 billion a year in formerly off-budget outlays (chiefly lending by the Federal Financing Bank).

[3] Includes a one-time cost of about $12 billion for the purchase of maturing subsidized housing notes in fiscal year 1985.

Source: CBO memorandum, "Changes in Budgetary Policies since January 1981" (May 30, 1986), updated for fiscal year 1985 actuals.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, December 15, 1994.*

Hon. BOB PACKWOOD,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR: This responds to your request for additional information about budget projections done before the 1981 tax cuts were enacted. The conclusions that follow were discussed more extensively in my letter to you of November 8, 1994.

Before enactment of the 1981 tax cuts, CBO's budget reports routinely projected that a continuation of current tax and spending laws would lead to large budget surpluses. CBO also warned that such levels of taxes and spending would act as a drag on the economy.

The primary reason for this outlook was that high inflation was expected to drive up revenues dramatically. Because key features of the federal individual income tax were not automatically adjusted for inflation, periods of high inflation—like the late 1970s and early 1980s—pushed individuals into higher tax rate brackets and caused revenues to increase rapidly. In response, policymakers cut taxes every few years on an ad hoc basis—five times in the 1970s alone.

Illustrating this dilemma, in its February 1980 report Five-Year Budget Projections: Fiscal Years 1981–1985, CBO projected that revenues collected under current tax law would climb from about 21 percent of GNP in 1981 to 24 percent by 1985. Simple arithmetic pointed to enormous surpluses in the outyears. For example, current-law revenues exceeded outlays by a projected $98 billion for 1984 and $178 billion for 1985. Similarly, in its July 1981 report Baseline Budget Projections: Fiscal Years 1982–1986, CBO projected budget surpluses of between $148 billion and $209 billion for 1986, depending on the economic assumptions used.

In the same report, CBO estimated that the 1981 tax cuts and other policies that were called for in the May 1981 budget resolution would generate a balanced budget or a small deficit (roughly $50 billion) by 1984—again, depending on the economic assumptions employed.

This was the budget background leading to the 1981 tax cuts. Given the best information available at that time, the Congress and the Administration reasonably thought that significant budget surpluses loomed under current law. Analysts differed, however, on whether the 1981 tax cuts would put the government on a balanced-budget footing or would lead to small budget deficits.

As it turned out, the federal government ran budget deficits of about $200 billion a year from 1983 through 1986. Economic performance was poorer than envisioned in projections of either CBO or the Administration at the time of the 1981 tax bill. The economy plunged into recession, registered negative growth in 1982, and then recovered. The rate of inflation dropped sharply. By 1986 nominal GNP was about $700 billion smaller than assumed in 1981, which caused a corresponding drop in tax revenues. And interest rates remained high despite the plunge in inflation. It is reasonable to ascribe nearly all of the underestimate of deficits during this period to errors in economic forecasts.

Sincerely,

ROBERT D. REISCHAUER,
*Director.*

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STATEMENT OF ROBERT D. REISCHAUER, DIRECTOR, CONGRESSIONAL BUDGET OFFICE, ON THE ECONOMIC AND BUDGET OUTLOOK: FISCAL YEARS 1996–2000, BEFORE THE COMMITTEE ON FINANCE, UNITED STATES SENATE, JANUARY 26, 1995

THE BUDGET OUTLOOK DIFFERS FROM THE OUTLOOK IN 1980 AND 1981

At the request of Chairman Packwood, CBO has also examined how the current outlook compares with the economic forecast and budget projects CBO made before the Economic Recovery Tax Act of 1981 was enacted. The many changes in budget policy and presentation made since 1981 limit our ability to provide a detailed analysis of the differences between projections that are so widely separated in time. Nevertheless, we can explain the primary reasons for the fundamental differences between the outlook now and the outlook then.

Unlike the current Economic and Budget Outlook, CBO's budget reports issued before enactment of 1981 tax cuts routinely projected that a continuation of current tax and spending laws would lead to large budget surpluses. CBO also warned that such levels of taxes and spending would act as a drug on the economy.

The primary reason for those projections was that high inflation was expected to drive up revenues dramatically. Because key features of the Federal individual income tax were not automatically adjusted for inflation, periods of higher inflation—such as the late 1970's and early 1980's—pushed individuals into higher tax rate brackets and caused revenues to increase rapidly. In response, policymakers cut taxes every few years on an ad hoc basis—five times in the 1970s, for instance.

Illustrating this dilemma, in its February 1980 report Five-Year Budget Projections: Fiscal Years 1981–1985, CBO projected that revenues collected under current tax law would climb from about 21 percent of GNP in 1981 to 24 percent by 1985. Simple arithmetic pointed to enormous surpluses in the outyears. For example, current-law revenues exceeded outlays by a projected $98 billion for 1984 and $178 billion for 1985. Similarly, in its July 1981 report Baseline Budget Projections: Fiscal Years 1982–1986, CBO projected budget surpluses of between $148 billion and $209 billion for 1986, depending on the economic assumptions used.

In the same report, CBO estimated that the 1981 tax cuts and other policies that were called for in the May 1981 budget resolution would generate a balanced budget or a small deficit of roughly $50 billion by 1984—again, depending on the economic assumptions employed.

That budget background led to the 1981 tax cuts. Given the best information available at that time, the Congress and the Administration reasonably thought that significant budget surpluses loomed under current law. Analysts differed, however, on whether the 1981 tax cuts would put the government on a balanced-budget footing or would lead to small budget deficits.

As it turned out, the federal government ran budget deficits of about $200 billion a year from 1983 through 1986. Economic performance was poorer than envisioned in projections of either CBO or the Administration at the time of the 1981 tax bill. The economy plunged into recession, registered negative growth in 1982, and then recovered. The rate of inflation dropped sharply. By 1986, nominal gross national product was about $700 billion smaller than assumed in 1981, which caused a corresponding drop in tax revenues. Furthermore, interest rates remained high despite the plunge in inflation. It is reasonable, then, to ascribe nearly all of the underestimate of deficits during that period to errors in economic forecasts.

ILLUSTRATIVE PATH TO A BALANCED BUDGET

A constitutional amendment requiring a balanced federal budget will be considered during the early days of the 104th Congress. If the Congress adopts such an amendment this year and three-quarters of the state legislatures ratify it over the next few years, the requirement could apply to the budget for fiscal year 2002. If the budget is to be balanced by 2002, it is important that the Congress and the President begin immediately to put into effect policies that will achieve that goal. According to CBO's latest projections of a baseline that adjusts discretionary spending for inflation after 1998, some combination of spending cuts and tax increases totaling $322 billion in 2002 would be needed to eliminate the deficit in that year. The amounts of deficit reduction called for in years preceding 2002 depend on both the exact policies adopted and when the process is begun.

Mr. PACKWOOD. It was not President Reagan's fault, not really our fault. We were just wrong. The only reason I say that is because now we are not facing the same situation we were facing on projections in 1981. Now we are projecting $200 billion to $400 billion deficits as far as the eye can see. Could we be wrong? I suppose so. We were wrong in 1981. Should we base the budgeting of this Congress on the assumption that we are wrong, we are not going to have these deficits? I do not think so. I do not think so.

Let us go on to 1982. We have the recession. So a number of people say to President Reagan, we are going to have to increase the taxes to cut this deficit. He was not wild about that. To the best of my knowledge, President Reagan is perhaps the only person that ever lived who actually paid 91 percent in income taxes. He hit it in Hollywood when the rates were 91 percent, and I do not think he had to count. I think he remembered 91 percent. He was reluctant to go back to a tax increase. We promised him—we the Congress—if he will give us $1 in real tax increases, we will give him $3 in real spending cuts. Mr. President, it is not logic. It is experience. He did not get a dime of those spending cuts. We did not pass them. All he got was a tax increase.

None of us should start down that road again of promises in this Congress. I am not here attacking anybody as being immoral, malevolent, or anything else. We should not accept promises that we do not need a balanced budget amendment and we will pass spending cuts. We have not done it, and we will not do it. Anybody that was here in 1982 and bought that charade maybe can excuse themselves the first time. Remember the old adage, ''Fool me once, shame on you; fool me twice, shame on me.'' That was 1982. That is when we first had the balanced budget amendment vote in this Senate. Up until 1981—or maybe 1982, I cannot remember —I had been opposed to a balanced budget amendment. I believed we could do it. But I realized after 1981 and 1982—and especially 1982—there was never any hope that we would have the courage, and unless we were compelled to do what every city, county, and State has to do, we would never, ever, ever balance the budget. So I voted for the balanced budget amendment in 1982.

Now, let us go forward a bit again, to 1985. I feel privileged to have been a part of the 1985 budget bill. Bob DOLE, in one of the most extraordinary acts of leadership I have ever seen, from a Republican or a Democrat, managed to cobble together the Republicans—because we only got one Democratic vote—on a budget bill that had a 1-year freeze on Social Security COLA's. We were not eliminating them. We were not cutting them back to the Consumer Price Index. A 1-year freeze. It passed by one vote. It passed because we wheeled Pete Wilson into this

Chamber—now the Governor of California, then a Senator—who had an appendectomy just 24 hours before and could not walk. We wheeled him in and he voted from a gurney right over there. The controversial part of it was this 1-year freeze on the COLA's on Social Security.

Unfortunately, here I have to be critical of President Reagan. Before it got to the House, he said he would not accept it. That finished it; it was over. The Republicans had to pay for it in 1986. We had already paid for it once, politically, in 1982. Budget Director Stockman, at that time, suggested a modest change in the amount of money you could get in your Social Security benefits if you retired at 62. For that suggestion, we never even got to the place of seriously considering it. For that suggestion, he got unshirted hell. The Democrats used it in 1982 to further their campaign, and they clobbered us.

I remember a cartoon afterward—Tip O'Neill was Speaker at that time—that showed Tip O'Neill and he has his mother there, and it says ''Social Security'' on her. He is dropping her off at the nursing home, saying, ''Good to see you, Ma. I will call you in 2 years when we need you once more.'' From that day on, the Republicans have been frightened of ever talking about Social Security.

The fright is on both sides. You will recall the 1984 Democratic convention in San Francisco, where Fritz Mondale said, ''The President has a secret plan to raise taxes. He will not tell you, but I am courageous enough.'' And President Reagan says, ''There he goes again.'' For the rest of that campaign, Fritz Mondale was on the defensive about tax increases. So we are all skittish.

It is understandable why we are politically skittish. None of us, Republicans or Democrats, or the President, want to take the step forward that we all know needs to be done. The most freshman Member of this Congress, who has never been in politics before, knows what the problem is. This argument about term limits and that you have to have 8, or 9, or 10 terms to understand the problems—no, no, no. You do not have to be here 10 minutes to understand the problem. Maybe you have to be here 8, 9, or 10 terms to have the courage, when you finally feel safe enough to face the problem and say, let us solve it. We know what the problem is.

Well, where are we now? The President has given up. He, in essence, has thrown in the towel. Last year, when he proposed his health bill, he had $475 billion in Medicare and Medicaid restraints. Someone called them ''cuts'' because they were not lower than we were, but over the period of 5 years, $475 billion in Medicare and Medicaid restraints. He has no health care in the budget this year and has no restraints of any consequence in Medicare or Medicaid—as if to sort of say it is Congress' problem, or maybe the Republicans' problem, to come up with a budget.

You know, it is funny. It is all right to have those $475 billion in reductions if we were going to spend them, but it is not all right to have them if we are going to save them and apply them to the deficit. At least that is what the President is saying.

Then the critics say, well, we cannot vote for this until we know the direction we are going to go in. I have heard the Senator from Ohio, the Senator from Michigan, the Senator from South Dakota say that, until we know specifically what the roadmap is, we cannot vote for this. I would defy any Governor in this country right now—and nearly all of them operate under a balanced budget requirement—to tell me how they are going to balance their budget in 2002. I bet you they could not. They will have to raise the sales tax, or cut welfare, cut the highway fund and say we can use the State highway funds for the State. They know they have to do it and will do it, and they will do it because they have to do it. And we will do it if we have to do it. But if we use the excuse that because we do not have a roadmap now as to how it is going to be done, we will not vote for this amendment. That is a patsy's way out. That means we do not want to face the problem. This is an excuse to avoid it.

But if they want suggestions, I will give them some. My favorite one that everybody comes up with is that we will tax the rich—however you define who is rich. If we just tax the rich, that will take care of our problem. Well, I had the Joint Tax Committee do a chart for me, an estimate and a letter of how much money we could get. I asked how much money could we confiscate from those earning over $200,000? We will have a 100 percent rate of taxation. We will take it all.

They said they could not quite answer that question. They had never run that on their computers, but they could tell me how much untaxed income there was with people above $200,000. So, they sent me the letter. And this year, if we were to tax all of the rest of the income that is not now taxed above $200,000, 100 percent of it, we would get about $182 billion,—billion, with a ''b''—not enough to narrow our deficit.

My hunch is we would never get it again, because I do not think anybody would ever, ever again make over $200,000 if they had to give it all to the Government.

And the Joint Committee had a wonderful paragraph in this letter. I will just read the paragraph and then put the whole letter in. This is the effect of a 100 percent rate of taxation. These effects would be extraordinary.

> If the 100 percent tax rates were to be in effect for a substantial period of time. . . then in our judgment there would be a substantial reduction in income-producing activity in the economy and, thus, a significant reduction in tax receipts to the Federal Government.

I do not know why that should surprise anybody. But so much for the goose and the golden egg. We can get it once, then that deficit problem is right back with us again.

Mr. President, I ask unanimous consent that the text of the letter from the Joint Committee on Taxation be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
*Washington, DC, October 12, 1994.*

Hon. BOB PACKWOOD,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR PACKWOOD: This is in response to your letter of September 30, 1994, for revenue estimates of imposing a 100-percent tax on all income over $100,000, and alternatively, income over $200,000. We are unable to provide a revenue estimate for these options for the reasons given below. However, the following table, which gives the amount of taxable income above those levels reduced by the current Federal income tax attributable to such income shows the amount of tax that could be raised by such change assuming no behavioral or macroeconomic responses.

[In billions of dollars]

| Item | 1995 | 1996 | 1997 | 1998 | 1999 | 1999–95 |
|---|---|---|---|---|---|---|
| After tax income in excess of: | | | | | | |
| 100,000 ..... | 289.1 | 314.4 | 342.8 | 370.1 | 399.6 | 1,716.1 |
| 200,000 ..... | 182.3 | 195.5 | 212.6 | 227.0 | 243.5 | 1,061.9 |

As mentioned above, we are unable to provide a complete analysis of the proposal outlined. Our estimating models and methodology incorporate behavioral effects based on available empirical evidence to produce reliable estimates of the effects of tax changes in general. Even when tax rate changes are relatively small, our analyses include significant changes in behavior to account for portfolio shifts and the timing of income realizations. At a proposed tax rate of 100 percent, however, we lack historical experience on which to base an estimate of the significant behavioral effects. One may speculate that these effects would be extraordinary. If the 100-percent tax rate were to be in effect for a substantial period of time, so that taxpayers would have no rational hope of avoiding or evading the 100-percent tax in the outyears by deferring income to lower rate years or using other tax avoidance or deferral plans, then in our judgment there would be a substantial reduction in income-producing activity in the economy and, thus, a significant reduction in tax receipts to the Federal government.

I hope this information is helpful to you. If we can be of further assistance, please let me know.

Sincerely,

JOHN L. BUCKLEY.

Mr. PACKWOOD. So, let us go on down some other suggestions.

Restrain spending. We all get this from home. If we just spent no more next year than we spend now, in 3 years we will balance the budget. If we spend no more than we spend now, we will balance the budget.

I will give you some problems. You can decide what you want to do with them.

Let us just take Social Security. Let us assume Social Security now spends $1,000. You have 10 recipients and they each get $100 apiece; $1,000, that is all we spend on Social Security.

And let us say there is 10 percent inflation. Under the present law, all of those recipients would get a 10-percent increase. They would all get $110, and we would spend $1,100 on Social Security. But we said we are not going to spend any more than we spend now. Therefore, do they all get just $100 and their purchasing power declines a bit?

Or I will give you another scenario. We are only going to spend $1,000. There are 10 recipients on Social Security. But the population is aging. Let us say next year one more person becomes eligible. Now we have 11, not 10. But we are only going to spend $1,000. Do they all get about $90 instead of the 10 that got $100? When you pose this to people, they say, ''Well, we did not think about that. Maybe we can give Social Security recipients their cost-of-living increase and still hold all others.''

But now they do not expect to hold all other things this year. You are going to have to spend less this year. Do you know what you get? ''Well, we have to spend more for defense. Don't spend any more than we spent last year. Increase defense, increase education, increase health, but don't spend any more than you spent last year and take it out of somebody else. Don't take it out of me.''

I was intrigued with a statement in the paper, if quoted accurately, by the American Medical Association the day before yesterday. I like the American Medical Association, but here is the statement.

AMA leaders said at a news conference here that Medicare needs a major restructuring to save it from bankruptcy, but insisted that should not be achieved by slashing doctors' or other health care providers' fees. The American Hospital Association and others that provide health services have taken a similar position and a coalition is forming to fight such cuts.

Mr. President, there are only two expenses to Medicare. One is we reimburse the patient on occasion and the other is we pay the doctors and hospitals and labs and what not. That is all there is. Those who provide the services say, ''Not us,'' and the beneficiaries say, ''Not us, but cut spending.''

Well, if you do not cut those who provide the medical services and if you do not cut those who get the medical services, where do you cut the spending? You do not. These are the things we want to gloss over.

The same problem exists if, instead of cutting spending, you say, ''Well, let's do it at the Consumer Price Index minus 1 percent or minus 2 percent.'' You have these same variations all the way through. I am not saying it cannot be done, but you have to realize that while Social Security only goes up with the cost of living each year, plus any new members that come on—it is not just the cost of living; you have more people, more expenses—but Medicaid and Medicare go up anywhere from 7 or 8 percent, at a minimum, to 15 to 16 percent a year—a year.

Do you know what would happen if we take a 15-percent increase and compound it over 5 years? You have more than doubled your spending.

So we say, ''Well, still spend the same we spent last year. Spend what we spent last year plus inflation. It is doable and, if we are forced to do it, we will do it and we should do it.''

And everybody says the problems are the entitlements. That is a term we use here in Washington. It is not a term any ordinary American uses.

Entitlement means nothing more than a Government program that is passed and put into law and we never have to appropriate the money for it. Again, you get it automatically, unless we change the law. Social Security is the one that is best known. Medicare is one. Unless we change the law—positively vote to change it, the President has to sign it, or if he vetoes it we have to override the veto—this law goes on forever and it spends money forever.

They say, ''Take it out of the entitlements.'' We have about 410 entitlement programs in this country—410—that automatically spend money, so surely we can find some money in entitlements.

So I took a look at some of the entitlements. I have some where we can save some money.

The Canal Zone Biological Area gets $150,000 a year. This is an island in the Panama Canal Zone. The money comes out of the Department of the Interior, administered by the Smithsonian, but it is an entitlement. Well, there is one we could save. There is 150,000 bucks.

The John C. Stennis Center for Public Service Development trust fund. Now this is a big one—$680,000. This program trains State and local public servants to become more efficient. This program ought to be applied to the Federal Government, not the State and local governments. It also ''increases awareness about the importance of public service.'' We all revere John Stennis and we would hate to do anything to demean his memory, but this is $680,000 in spending.

Now, another: The Pershing Hall revolving fund. General Pershing, of course, was the commander of our troops in Europe in World War I. Pershing Hall is a Department of Veterans Affairs building in Paris, France. It does not get many tourists. It is currently being subleased to a hotel firm which is gutting the building and will turn it into a hotel. A hotel firm is going to gut the building, and turn it into a hotel. But it is an entitlement of $114,000 in fiscal year 1996.

Let us take the last one. Payment of Government losses in shipment fund. This is a permanent, indefinite appropriation in the Treasury Department. The fund would cover losses incurred by the Postal Service or any Federal agency in shipping coins, currency, and savings bonds—$500,000.

I have added up these four, and I think they come to a couple million total for these four entitlements. I said we have 410 entitlements. These are four inexpensive ones. But the bottom 400 of them altogether—there are about 410—the bottom 400, in terms of expense, cost about plus or minus $50 billion. Fifty-billion dollars is big money, but it is for 400 of the entitlements—$50 billion.

The top four entitlements, plus interest—and the top three are Medicare, Medicaid, and Social Security, and then fourth is other Government retirements, military, civilian retirements—just those four, plus interest, are $900 billion a year. You know interest is the ultimate entitlement. We have to pay it or we can be sued. The entire cost of the bottom 400, the $50 billion, is less than the amount that these four, plus interest, goes up a year.

You want to get rid of the 400? Go ahead. Save the $50 billion and the deficit, then, instead of being $200 billion will be $150 billion.

The problem is, we are all afraid to approach these big entitlements.

Now what is the old expression? If you want to go duck hunting, you go where the ducks are. The ducks are these big programs.

You think they are growing? Boy, are they growing. You take those four that I mentioned, plus interest, in 1964 those four, plus interest, were 23 percent of all of the money that the Federal Government spends—23 percent. Ten years later, in 1974, they were 39 percent. In 1984, they were 48 percent. In 1994, they were 56 percent. In the year 2004, they will be 67 percent.

One day all the money the Federal Government spends will go for these four programs, plus interest. And we are afraid to touch them.

One of two things happens, or maybe three things, if we do not do something soon. First, as we begin to spend more and more and more on these programs, if we do not increase taxes, all the other programs of Government get squeezed. We spend less on the Coast Guard and less on education and less on environmental protection and less on defense. Less on everything. So we can fund these four.

Or we raise taxes—and I am not suggesting that, and I do not want that—we raise taxes to try to fund the other programs. Do not worry about narrowing the deficit. We will not use the taxes to narrow the deficit. We will spend it if we have it, so we still have a deficit. That is the other alternative.

Or maybe we do nothing and we finally get to the place where there is a cataclysmic catastrophe coming. It is coming first in Medicare. There are two parts to Medicare. One is part A, that is hospital payments; the other is part B, and that is doctor payments.

In the year 2000 to 2001, the part A trust fund is exhausted. The part B portion which is the doctor payment—on which we now spend $47 billion out of the general fund—this is general taxpayers' money. This is not from the beneficiaries' premium that is deducted from a Social Security check.

But this scenario does not hold a candle to where we will be in Social Security in the lifetime of most of the Members of this Senate. At the moment, Social Security is taking in more money than it pays out. We will take in $70 to $80 billion more this year than we take out. That will continue on until about the year 2013.

The reason we are doing that is because we know the baby boomers born from 1945 to 1965 start to retire in about the year 2010. Give or take a few years or so from 2010—2013—the Social Security starts to pay out more than it takes in.

But at the moment it is taking in more money and investing it in Government bonds. That is all we allow it to do, Government bonds. If we had cut them lose and let them invest what they wanted in 1978, they might have invested in Texas real estate and they would be broke now.

Here comes the $70 billion more than we pay out. In it comes. Social Security administration, in essence, gives the $70 billion to the Treasury Department. The Treasury Department gives the Social Security administration a bond for $70 billion, a Government bond. We, thereupon, spend that money now, the $70 billion. We spend it on the Coast Guard, on education. We spend it on defense, we spend it on environmental protection, we spend it on everything Government spends money on. The $70 billion is gone.

This continues, in the next year, the year after that, the year after that until about the year 2013 when I estimate Social Security will probably hold almost 3 trillion dollars' worth of Government bonds. Now, at this stage they start to pay out more than they take in. The Social Security Administrator takes their bond to the Treasurer of the United States and says, ''Here, give me some money to pay these benefits.'' The Treasurer looks at the Administrator and says, ''Are you crazy? We spent that money 20 years ago. What do you mean, give you money? I don't have any money.''

At that stage we have to start redeeming the bonds. For example, if we keep faith with the recipients we have to raise the taxes to pay those bonds. That is not bad enough. About the year 2013 we start to pay out more money than we take in. By about the year 2029, only 34 years from now—look backward 34 years and that is but a memory. That is not history. Much of it is as clear today as it was 34 years ago. We think that is not a very long time. Yet think ahead and we think it is an eternity.

About the year 2029, not only is Social Security paying out a lot more than it takes in, all of the bonds are gone. They have now redeemed all of the bonds, and by that year Social Security is paying out about $3 trillion a year. Unfortunately, it is only taking in about $2.2 trillion, roughly, $700 to $800 billion shortfall and no bonds to turn in.

At that stage, if we are going to keep faith, and we are going to do it with a payroll tax we will have a whopping increase in the payroll taxes. I cannot even estimate how high it will have to be to pay that kind of a deficit.

What I fear is going to happen is this: Your children or your grandchildren at that stage will say, ''I am not going to pay that money. I will not pay that much. And I will not vote for anybody that will tax me that much,'' and this is where the cataclysmic coalition comes between generations.

We can cure that if we would face the problem now. But we are not going to, I fear. We are not going to unless we pass the balanced budget amendment. Then what does that require of Members? It does not require a cut. We spend, this year, 1995, rounded off to the nearest $100 billion, we will spend this year about $1.5 trillion, $1.5 trillion if we spend in what I referred to earlier as baseline.

If we do not change the laws at all, we do not add new spending, we do not add prescription drugs to Medicare, we do not add long-term care to Medicare, we spend as we are doing under the present law, in 7 years, in the year 2002, instead of spending $1.5 trillion, we will spend $2.2 trillion—$700 billion more.

When people talk about cutting, that is not a cut. We are not talking about cutting. In order to balance the budget in the year 2002, instead of spending $2.2 trillion we might have to spend $2 trillion. Now we are spending $1.5. Now to balance the budget we would have to spend about $2 trillion instead of $2.2. Is that impossible? Can we not do that?

The answer is, based upon experience, no. Better phrase it differently. We will not do that. Because in order to do it, we would have to undertake steps that we do not politically want to undertake and we are afraid.

I talked about some of the significant debates of 20–25 years ago and some of the steps we took and the one-vote margins that made a difference. And yet in my quarter of a century in this Senate there probably will be no more important vote that I have cast, or if I stayed here another quarter of a century, that I ever would cast than the one that says to my kids and my grandkids I was able to help save this country.

Sometimes what you do is a holding action. In the military it is referred to as a holding action. Major Devereux at Wake Island, shortly after the Japanese bombed Pearl Harbor, 200, 225 marines on this atoll, and the Japanese invaded it and we can see the footage of it, men swarming to shore like ants. There is Major Devereux, and his men, holding on, knowing they were defeated, waiting for the time.

Or maybe it was General Wainwright at Corregidor, when we moved in and it was clearly a loss. Or Jack Kennedy, a young PT boat commander being part of that rescue. Or Colonel Travis at the Alamo, extraordinary courage, when Sam Houston says to him, ''We need a holding action until we can get our army organized.'' And when the siege starts February 23, and the battle is on March 6, for 2 weeks they held out, wiped out the men but gave Sam Houston time to put the army together and win at the battle of San Jacinto. These actions made a major difference in American history.

Well, we are at that point now, but I think it is not a holding action. Every now and then, there is a difference between a holding action and an action you are going to take that is priceless. It is not Corregidor Island or Wake Island or San Jacinto.

Shakespeare said it best in Henry V. You recall the history. The French and the English in the Hundred Years War had been battling. France had clearly the superior position in geography, and they were a unified nation and the biggest nation in Europe. The British had beat them at Poitiers and then at Crecy in the early part of the Hundred Years War. But the final battle was coming at Agincourt, and the English were utterly at a disadvantage—foreign soil, 9,000 troops, the French had 30,000.

Picture Shakespeare's opening scene: Westmoreland is the king's cousin, and Westmoreland comes in. They know the battle is going to take place the next day.

He said:

O', that we now had here
But one ten thousand of those men in England
That do no work today!

And the king responds:

What's he that wishes so?
My cousin Westmoreland? No, my fair cousin.
If we are marked to die, we are enow
To do our country proud, and if we live,
The fewer the men, the greater share of honor.

Going on he says:

This day is called the feast of Crispian.
He that outlives this day and comes safe home
Will stand a-tiptoe when this day is named
He that shall see this day and live old age
Will yearly on the vigil feast his neighbors
And say ''Tomorrow is Saint Crispian.''
Then will he strip his sleeve and show his scars,
[And say ''These wounds I had on Crispin's day.'']
And gentlemen in England now abed
Shall think themselves accurs'd they were not here,
And hold their manhoods cheap whiles any speaks
That fought with us on Saint Crispin's day.

Today is an interesting day. Fortunately, there is a feast day for almost everyday. Today is Saint Scholastica Day, named after Saint Scholastica. It means ''learned.''

And we are going to vote on this day on a significant amendment that I think will determine whether or not we pass the balanced budget amendment. Some will flee, some will stand.

I quote one other part from the soliloquy that I left out at the time when Henry turns to his troops and says:

> Let he which hath no stomach for this fight depart.
> His passport shall be made
> And crowns for convoy put into his purse.
> I would not die in that man's company
> That fears his fellowship to die with us.

On this Feast Day of Saint Scholastica, the ''learned,'' we are going to vote. The vote we make will probably have a greater effect on our children and grandchildren than anything else we will ever do, and I would hate to be that man or woman that serves in this Senate whose child or grandchild comes to you 10 or 20 or 50 years from now and says: ''Where were you on Saint Scholastica Day?''

And you say: ''I fled the battlefield.''

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I have spoken with the manager of the bill on the other side, and we ask that we go to the constitutional amendment to balance the budget, which will be the order at 11 o'clock, and that we divide the approximately 12 minutes equally between the two sides.

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

Mr. REID. If the Chair will advise me when I have used 6 minutes, I would appreciate it.

The PRESIDING OFFICER. The Chair will advise you.

Mr. REID. Mr. President, I refer at this time to a statement that is on this chart behind me from the majority leader of the other body in the House of Representatives, the Honorable RICHARD ARMEY.

He said:

> We have the serious business of passing a balanced budget amendment, and I am profoundly convinced that putting the details out would make that virtually impossible.

There has been an attempt to keep from the American people what would happen to Social Security if it is not exempted from a balanced budget amendment. Why? The answer is in another statement made by the same majority leader, Congressman ARMEY, when he was asked the question why they had not produced a detailed plan for balancing the budget, wherein he responded, and I quote:

> Because the fact of the matter is that once Members of Congress know exactly chapter and verse, the pain that the Government must live with in order to get a balanced budget, their knees will buckle.

Mr. President, there are a lot of people whose knees are buckling as a result of the fact that they are going to have to vote whether or not to exempt Social Security from the balanced budget amendment. However, the amendment before this body that we will vote on at 11:30 is a mockery. It is an effort to allow people to walk from this Chamber and say, ''I voted to protect Social Security,'' when, in fact, they did just the opposite.

This fig-leaf amendment that is now before this body will be adopted today, just like it did in the other body. But passage means nothing, just as it meant nothing in the House of Representatives.

What it does provide is a fig leaf, a cover, a sham, a farce, a mockery to cloak, to conceal, to hide and mask the fact that Social Security will never be the same if the Reid amendment is not adopted, and this amendment will do nothing to conceal that, even though there is an attempt to conceal it.

Mr. President, virtually everybody will vote for this weak, infirmed, ineffectual amendment that we will be called upon to cast our ballot at 11:30. We will do it because it is just barely—just barely—better than nothing.

This amendment allows some to go home and say, ''I protected Social Security,'' but all should smile when a Member of Congress uses this amendment to say they protected Social Security because that Member of Congress will have trouble keeping a straight face when those words are spoken: ''I protected Social Security.''

I repeat, the only way to prevent the raping of Social Security is to vote for the Reid amendment next week. Today's vote is posturing and posturing only.

My amendment excludes Social Security from the general revenues of this country. This forces Social Security into the pot of red ink; that is, the general revenues of the United States. This vote is a fig leaf, but sadly, Mr. President, it does not cover even the bare essentials.

If the balanced budget amendment is ratified, then Congress is without authority to exclude Social Security trust funds from the calculations of total receipts and outlays under section 1 of the amendment, as stated by the Senate's leading legal scholar, Senator HOWELL HEFLIN, of Alabama, and the Congressional Reference Service, a man by the name of Kenneth Thomas.

So this amendment does nothing to change the direct words of the underlying constitutional amendment. Not only do we have the words of the amendment which jeopardize Social Security, but we have the report from the committee of jurisdiction, the Judiciary Committee, which reported the bill. This report is an effort by the committee—it is done on every piece of legislation—to clarify the intent of the legislation. But let us listen to what the report says. On page 19, it states that social insurance should be included in receipts.

The report on the same page excluded, or exempted, the Tennessee Valley Authority but not Social Security. This should give everyone an idea of the priorities of this body: Power over senior citizens. This amendment will do nothing for the tens of millions of Americans who pay their hard-earned money into Social Security and then expect to receive this retirement in their golden years.

No one watching this debate should be mistaken about what is happening in this Chamber this day. It is not the politics of meaning, but the politics of meaninglessness. If it is adopted, which I believe it will be, it will provide meaningless protection to the Social Security trust funds.

On the other hand, it provides meaningful protection to politics. It does not take great courage to vote for this amendment. However, it is a lot like the old beer commercial: Tastes great, less filling. It will do nothing to prevent the future raiding of the escalating surpluses that will be used to pay back the baby boomers. It does nothing to allay the fears of today's senior citizens that they will not receive what is rightfully theirs.

The PRESIDING OFFICER. The Senator has used 6 minutes.

Mr. REID. Could I have 1 more minute?

Mr. DASCHLE. I yield the Senator another minute.

Mr. REID. But it should create a state of despair for all generations, not only my generation, but my children's generation and their grandchildren. I have three grandchildren, all girls: Two age 4, one age 2. I want to protect them, because the real contract with America, the real contract with my grandchildren is not a contract of passing fancy but the Social Security contract. This contract, Social Security, deserves our defense. The vote today is a clever effort to let down our defense, to allow the destruction of the greatest social program the world has ever known, Social Security.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, let me thank the distinguished Senator from Nevada for his statement this morning and for the great leadership he has shown on this issue. This has been an issue that the Senator from Nevada has been associated with now for a long period of time. He has led our caucus, he has led the Senate, and I commend him for the tremendous effort that he has put forth, especially now over the last couple of days.

As our colleagues know, we are about to vote on a motion by the majority leader to request a Budget Committee report on how to protect current Social Security from the effects of a balanced budget amendment. I support that request, but unfortunately, we all know

that approach, while well-intentioned, just is not going to get the job done.

First, the request is just that, it is a request. It does not bind the Congress. It does not bind any future Congresses.

Second, the job is more significant than that. It is more significant than simply requesting that somehow at some point in the future we hope that Congresses can protect this important trust fund. The real job is to protect it, and the only way to protect the dedicated funds into which every working American pays to help secure his or her future or the futures of their parents or their children, the only way to do that is to do as the Senator from Nevada has now proposed.

Even if the majority leader's request was binding, which we all know it is not, it would do nothing to protect those funds in the future. There is no way that we can guarantee future Congresses are going to do what we ask them to do this year. And so they remain vulnerable to the inevitable attempts to use these funds in future Congresses as we have used them in past Congresses: To hide the true size of the deficit.

So as we contemplate amending the Constitution, it is essential—it is essential—that we completely be up front with the American people about how we are going to do it. If we want to build a trust, a faith, a confidence in this institution, we have to level with the public and acknowledge that the nonbinding request upon which we are about to vote is fine, but it simply does nothing, nothing to protect Social Security in the future. When we talk about amending the Constitution, it is the future that we are obligated to consider.

The Senate has been debating this issue for some time now, and as it has, many of us have attempted to put teeth and honesty into this particular amendment. We have done so because it is evident from the so-called Contract With America that the only reliable cutting promised by the new congressional majority is going to be made in revenues. The Contract With America promises no spending cuts at all.

Let me repeat that. The Contract With America does not delineate any cuts whatsoever in spending. To the contrary, it would commit the Government to substantial new spending. At the same time, it offers a balanced constitutional amendment—a promise with no hint on how it will be fulfilled. And that responsibility is ultimately passed on to future Congresses in a future year. It avoids the responsibility, it avoids outlining the spending cuts that will be required, and we all know we are going to have to vote for if we are here over the next 7 years.

In November of last year, the majority told us they would show us a budget cutting plan that would establish a glidepath to a balanced budget. Well, we are still waiting.

Then we began to hear that we would reach a budgetary balance painlessly by curtailing program inflation. But we have now looked at the numbers and this easy, pain-free method will not work. It will not work because the numbers do not add up.

Then the idea was to wait for the President's 1996 budget and complain that he did not do what the majority said they themselves would do in November—set out a plan to cut spending and balance the budget by the year 2002.

So since November, we have heard pledges that Social Security will not be touched, promises that a plan will be written, and declarations that it is not fair to ask when.

Current Medicare enrollees were told earlier that Medicare would not be on the chopping block. Now we are hearing complaints that the President did not put it there.

I weigh the promises against the hard facts of budget numbers, and I think a lot of colleagues would share my view that the promises do not add up, but the numbers do. And what the numbers add up to is that these promises are, frankly, unrealistic. The promise to lay out a spending plan has not been kept and apparently will not be.

Intentionally or not, the new majority sent that signal 2 days ago when every single Senator on the other side voted against telling the American people how the budget would be balanced in 7 years' time. And now they want us to accept on faith the promise to protect Social Security.

While I have no doubt that many of my colleagues truly want to keep that promise, the fact is we all know that the pending motion does not bind even this Congress, much less future Congresses. There is no binding way with which we can take this resolution and tell anybody in the future that anything is changed that would give them confidence in knowing their benefits will be there.

So, Mr. President, that is why the Reid-Feinstein amendment is necessary, to ensure that our good intentions will be realized. The amendment solidifies the Social Security promise. It writes into the Constitution, it says to Social Security enrollees, who include virtually all working people in this country, as well as their retired parents, that these trust funds will be protected from ever being used in the future to balance the Federal budget. It is the only thing—the only thing we know of that will absolutely guarantee in writing, in black and white, that Social Security is a trust fund that will always be there. I supported it last year. I will vote for it again this year. It is just as necessary today as it was back then.

Why does it deserve special treatment? Because it is a contract between generations, that is why. Because it protects older Americans against poverty, that is why. Because it protects working families in case of premature death, that is why. Because it protects workers if they are disabled by illness or accident; that is why, too.

It says to every working person: You pay into these trust funds and when it is your turn, when it is time for you to use them—when you are too old, when you are too sick, too disabled to work—your Nation will make sure you do not lose everything, everything that you have worked for.

Today, 60 years after President Franklin Roosevelt sealed the real contract with Americans, Social Security is still a promise that is honored by Government. It is something people can count on to be there when they need it. It is a contract which recognizes that we are all human, that we all grow old, we are all vulnerable to illness and to ill health and to accident. It says that we, as Americans, will not let hard-working people sink into poverty through no fault of their own regardless of the circumstances. And that is a contract.

That is a commitment that has not withstood 1 year, or one election, but generations—lifetimes. From its very creation in 1935 until 1969, everyone here knows that the program was off budget. And then everyone also knows what happened in 1969. In an attempt to mask the costs of the Vietnam war and the growing deficit, guess what happened? Social Security was put back on the budget.

Then, in 1990, Congress again voted to take it off budget. We may have forgotten what that vote was, Mr. President. It was 98 to 2—98 to 2, almost unanimous. The people in this body said Social Security ought to be off budget and not used for other things, not used to mask the debt, not used to pay for other things that may come along, whether foreign or domestic. We said then that Social Security revenues held in trust for retirement should not be used to balance the Federal budget. And we did the right thing.

The flaw in the proposal now before us is that it includes in the budget Social Security surpluses that should be set aside to pay future retirement benefits. That is the flaw. Everybody knows it is there. Everybody knows we do not want it to be there. The question is, How serious are we about taking it out of there?

Social Security is not responsible for one dime of the national debt, and it should not be raided to pay off that debt now. Those who oppose the Reid amendment argue that while Social Security did not cause the deficit, they are very concerned about what happens if we take it off the table to pay down that deficit. They do not want to acknowledge the Reid amendment can be used to ensure we protect it in the future. As long as the trust funds are part of the unified budget, we all know that they help hide the real dimensions of the budgetary imbalance. The program is currently generating a surplus. We all know that, too.

There is a critical reason for accumulating those surpluses. It was laid out

very explicitly by the senior Senator from New York just yesterday. Following World War II, the level of Social Security taxes was raised so that adequate funds would be available to pay the retirement benefits that will come due as those of us who are baby boomers retire. Those surpluses are meant to be there as a confidence-building effort to ensure the trust fund meets the predictable benefit payments in the future. If they are not there, from where will they come?

The Federal Government will owe the Social Security system nearly $3 trillion by the year 2017—$3 trillion. That is why we need to preserve the surpluses and protect them, because that $3 trillion is going to come due one day. Whether we have masked the deficit, whether we have used those funds to pay for other things or not, that money will be needed.

So the Social Security system today is taking in far more revenues than it is paying out in benefits for that reason alone. This year it will take in $69 billion more than it pays out. Between now and 2002, when the balanced budget amendment would take effect, Social Security will have amassed $705 billion in additional revenue.

Here is the point. If there is one point to the vote we are about to take, it is this. Without the Reid amendment, every dollar of those revenues will be placed on budget—every dollar—to give the false impression that there is $705 billion in available cash. Future Congresses would be able to avoid reducing the deficit by that amount, by $705 billion, in the next 7 years alone. That is why this issue is so important. The threat of the use of trust funds is a very real one. It is happening right now. It has been tried before. It will be tried again.

Our late colleague, the highly respected Senator from Pennsylvania, John Heinz, used the right word, ''embezzlement,'' when he helped to lead the fight to take Social Security off the budget.

The Senator from New York, the one to whom I have just recently referred, Senator MOYNIHAN, has described it as ''thievery.''

I have supported a balanced budget amendment because I believe it is completely unfair to leave the current legacy of debt to our children and grandchildren. But what happens if we deplete the Social Security trust fund that they are now counting on for their retirements? We will have failed. It is that simple. We will have failed to live up to our commitment to them.

The Reid amendment would restore budgetary honesty by requiring an accurate accounting of the true size of the Nation's deficit problem. That is what it does. Taking Social Security out of the calculation would protect the fiscal integrity of the Social Security trust funds. It would require us to enact the tough policies needed to eliminate the deficit.

Many of our colleagues argue it is unnecessary, that they will help protect Social Security in the future. But I urge those Senators, if they are truly sincere, to solidify that commitment in the Constitution itself to put an end to public concerns that the budget will be balanced at the expense of trust funds.

So again, I remind everyone that less than 5 years ago, 98 Senators, across party lines, voted to take Social Security off the unified budget. Solemn commitments were made then—no less solemn than today's promises—that the special status of Social Security is acknowledged and, more important, will be respected by this Congress and by future Congresses. But the future is now, and it is again necessary to defend Social Security's unique mission.

So I hope my colleagues will do the only thing that will ensure that Social Security is able to continue that mission into the future. We need to support the Reid amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, may I ask how much time the majority side has?

The PRESIDING OFFICER. The majority side has 17 minutes.

Mr. HATCH. Mr. President, let us just all understand here, the Social Security trust fund is now filled with a bunch of IOU papers because the Federal Government has been borrowing from that trust fund and has been using that money to pay off Federal obligations. By agreeing to the Reid amendment, that does not solve that problem at all. The trust fund is a bunch of IOU's. Frankly, unless we get spending under control, unless we get this Government's fiscal house in order, all that is going to be left is that pile of papers, those IOU's, because all of that money will have been spent.

So this is not that issue. Just look at this debt tracker that we have here. We are now in our 12th day. I might as well put that one up here: 12th day of debate. During these 12 days, we have gone above $4.8 trillion. We are now almost $10 billion in additional deficit in just the 12 days we have been debating this.

This is serious stuff. And, frankly, if we do not keep the balanced budget amendment intact to cover everything in the Federal Government, we will not get this under control.

I would like to congratulate Senator DOLE and all of my colleagues who support offering this motion to refer this measure. This motion requires that the Budget Committee report how, in implementing the balanced budget amendment, Congress will move toward balancing the budget without reducing Social Security benefits or increasing Social Security taxes. Let me repeat that. Congress will neither cut Social Security benefits nor increase Social Security taxes to balance the budget. I have maintained that this is an achievable goal, and now we have the first vehicle to demonstrate it.

The next step, of course, is to pass the balanced budget amendment and start the Nation down the road to fiscal responsibility. This is a very good approach to ensuring that we will not harm either our current or our future retirees as we get this Nation's fiscal house in order. And the only thing that is going to do that is the balanced budget amendment as it is written now. It is bipartisan. It is consensus. It is Democrat-Republican. It is the only one that we can get through, and we should not try to change it with issues that can be solved like this, which does solve them.

For all of our generations this is important. We want to protect Social Security. There is not a person in this body or in the other body who is not going to do that. I do not know of anyone in the House or the Senate who is not going to protect Social Security under the balanced budget amendment. And this measure that Senator DOLE, Senator DOMENICI, and others have helped with will prove it.

But everybody knows that, if we amend the balanced budget amendment to exclude Social Security from its features, the balanced budget amendment will not be worth the paper it is written on. Everybody knows that because that would be the loophole through which they would drive every program there is. We have already seen that with SSI. SSI is paid out of general revenues, but it is part of Social Security. That would be the first thing they would turn over to Social Security revenues. I will say that you can add almost any other social spending program just by calling it Social Security.

So everybody knows what I am talking about, including those who are arguing this issue. Anyone who says otherwise is simply using a scare tactic, trying to scare our seniors into believing that they are going to be hurt by a balanced budget amendment while the exact opposite is true. They are going to be killed if we do not get spending under control, and if we do not get this Government's fiscal house in order. We have to do it. And it is in the interest of our seniors to do it, and I think most seniors understand that, and I think they know these scare tactics for what they are. There is no question that we will protect Social Security as we implement the balanced budget amendment. We provide in the amendment for implementing legislation in which Congress will do that, as Senator DOLE's motion shows today.

We all want to protect Social Security. It holds a special place in our Nation's programs. We will protect Social Security and in an appropriate and reasonable way. The report required by this motion will show that we can do that. It is wholly appropriate. It is the reasonable way to do it. It is wholly reasonable, and it points the way to real protection for those who are relying upon the Social Security trust

funds as well as future generations who will depend on our disciplining ourselves and our deficit spending habits.

This provision goes to the heart of the concern of some that Social Security benefit cuts or tax hikes could result from attempts to balance the budget. It shows that, as we move to balancing the budget, we will not cut benefits or raise taxes in the Social Security trust funds in order to balance the budget.

I wholly agree with the intention of this motion, and I urge my colleagues, all those who, like me, support a real balanced budget, and all of those who, like me—meaning everybody—support protecting Social Security, I ask all of them, to vote for this measure. Let us adopt this reasonable and appropriate approach showing that we will protect Social Security as we move toward balancing our Federal budget.

This motion requires simply that the Budget Committee of the Senate report to the Congress how we can balance the budget without touching Social Security. It will show that we can do what we have said we could, and it is the right way to do it without writing a statute into this amendment.

We are talking about the Constitution that we are amending. We do not need a statute, and we need to do something about this ever-increasing debt. This is only a modest illustration. But, in 12 days our debt has gone up $9,953,280,000, in the 12 days that we have been debating this matter and delaying and putting it off. Now we are getting down to brass tacks. It is time to vote for this.

I hope that our colleagues will support the leader, Senator DOLE, and the leadership in doing this.

I yield 5 minutes to the distinguished Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, it is fair and I believe proper that the Senate of the United States speak to the citizens of this country as to our intent about how we plan to handle Social Security as we move toward a balanced budget. Therefore, I strongly support the Dole motion and encourage all Senators to vote for it because it is the appropriate way to express our will and to direct the Budget Committee in its proceedings once we have sent a balanced budget amendment to the States for their consideration and, hopefully, their ratification.

What is important is that it is separate and apart from the amendment itself because it expresses the will of Congress, and it does not clutter up the Constitution the way the Senator from Utah has so clearly spoken. It does not create the massive loophole that the Senator from Nevada is attempting to carve inside the Constitution that would allow future Congresses to drive ever-increasing social programs through the Social Security loophole and, in fact, potentially destroy the Social Security Program.

The strength of the Social Security Program has never been the law itself. The strength of the Social Security Program is right here on the floor of the U.S. Senate. It is the obligation of every Senator to honor what we believe to be a commitment to the citizens of this country who pay into a supplemental income program as to our obligation to ensure that program remain sound and stable throughout all time. There is no statute in the Constitution today singling out any special program of Government guaranteeing to the citizens how that program will be operated for all time. The Constitution has been, and must remain, a code, a sense of principle and an organic act that says here is how the collective government of our country operates. It is then Government's responsibility and this Senate's responsibility, once we have passed legislation and created law as we did with the Social Security System, to honor the commitment of that law so spoken to the American people.

Mr. President, the threat to Social Security is not the Senate of the United States. The threat to Social Security is the debt. It is the debt that is the threat. And if we fail to balance the Federal budget, Social Security will go down in 25 or 30 years. The obligations this Government will have will be so large that the tax increases that will be demanded to stabilize the system will be so large and overpowering that the average taxpayer will not be able to pay them, and by the Office of Management and Budget's own confession, 84 to 85 percent of the gross pay of the average worker out there in the future will have to go to the Government in taxes. You know what is going to happen, Mr. President, if that ever were to occur. They would look at me because, by then I would be on Social Security, and they would say, ''I am sorry, LARRY, we cannot afford you because we cannot afford to pay our bills and put our kids through school and buy a home because you are asking too much of us for your own benefit.''

That is why this motion is important, to say that it is the sense of the Congress in directing the Budget Committee, as we move to balance the budget, to do so without increasing revenues or depleting the trust funds of Social Security. That is a clear intent, a clear expression of what this Senate will do. It is not unlike what the House did before they voted on the balanced budget amendment by a vote of over 418 to say to themselves and to the American people watching that they will not balance the Federal budget on the backs of the Social Security recipients.

But what they did not do and what we must not do is to clutter up the Constitution of this country by creating political loopholes. The American people are already suspicious of us. They know that we craft laws and we create special exemptions and special and unique opportunities with inside the law. We must never do that within our Constitution. That is why the Dole motion is so important and why I urge all of my colleagues to vote in support of that motion.

The PRESIDING OFFICER. The Senator from Utah controls 5 minutes.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HATFIELD. Mr. President, removing Social Security from the provisions of the balanced budget constitutional amendment misleads the American public and the current and future beneficiaries of the Social Security system. While removing Social Security from the balanced budget amendment is purported to protect its beneficiaries, in effect that action would threaten the long-term viability of the system. As noted in the report to the President from the Commission on Entitlement and Tax Reform, benefit payments under the Social Security system will exceed dedicated revenues for the program by the year 2013. This cash-flow shortfall will result in the Social Security trust fund becoming insolvent by the year 2029. Given these projections, removing Social Security from the table as we debate our Nation's fiscal problems would be irresponsible. The Congress owes it to the current and future beneficiaries of Social Security to address this long-term problem. Removing Social Security from the balanced budget amendment addresses a short-term politically sensitive issue; however, it does not address the long-term facts that reform is needed for this program to remain solvent.

Mr. DOLE. Mr. President, this motion presents us with another opportunity to demonstrate to America's seniors that there is broad bipartisan support for protecting Social Security as we move toward a balanced budget. On January 26, the Senate voted 83 to 16 to adopt a sense-of-the-Senate amendment stating that we intend to protect Social Security. The House of Representatives endorsed a similar concurrent resolution to protect Social Security by a vote of 412 to 18.

Mr. President, we need to put a halt to the scare tactics and reassure America's seniors.

Later this year, Republicans will put forward a detailed 5-year plan to put the budget on a path to balance by 2002. Our plan will not raise taxes. Our plan will not touch Social Security. Everything else, every Federal program from Amtrak to Zebra Mussel research will be on the table.

Mr. President, I urge my colleagues on both sides of the aisle to go on record to reassure America's seniors and vote for this motion.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The yeas and nays have been ordered.

The clerk will call the roll.

Mr. LOTT. I announce that the Senator from Wyoming [Mr. SIMPSON] is absent due to a death in the family.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON] would vote ''yea.''

Mr. FORD. I announce that the Senator from Louisiana [Mr. JOHNSTON] and the Senator from Minnesota [Mr. WELLSTONE] are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota [Mr. WELLSTONE] would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 87, nays 10, as follows:

[Rollcall Vote No. 63 Leg.]

YEAS—87

| | | |
|---|---|---|
| Abraham | Feinstein | Lott |
| Akaka | Ford | Lugar |
| Ashcroft | Frist | Mack |
| Baucus | Glenn | McCain |
| Bennett | Gorton | McConnell |
| Bond | Graham | Mikulski |
| Boxer | Gramm | Moseley-Braun |
| Breaux | Grams | Moynihan |
| Brown | Grassley | Murkowski |
| Bryan | Gregg | Murray |
| Bumpers | Harkin | Nickles |
| Burns | Hatch | Pell |
| Campbell | Heflin | Pressler |
| Chafee | Helms | Pryor |
| Coats | Hutchison | Reid |
| Cochran | Inhofe | Robb |
| Cohen | Inouye | Rockefeller |
| Conrad | Jeffords | Roth |
| Coverdell | Kassebaum | Santorum |
| Craig | Kempthorne | Shelby |
| D'Amato | Kennedy | Simon |
| Daschle | Kerrey | Smith |
| DeWine | Kerry | Snowe |
| Dodd | Kohl | Specter |
| Dole | Kyl | Stevens |
| Domenici | Lautenberg | Thomas |
| Dorgan | Leahy | Thompson |
| Faircloth | Levin | Thurmond |
| Feingold | Lieberman | Warner |

NAYS—10

| | | |
|---|---|---|
| Biden | Exon | Packwood |
| Bingaman | Hatfield | Sarbanes |
| Bradley | Hollings | |
| Byrd | Nunn | |

NOT VOTING—3

| | | |
|---|---|---|
| Johnston | Simpson | Wellstone |

So the amendment (No. 238) was agreed to.

Mr. CRAIG. Mr. President, I ask unanimous consent that it be in order to vitiate the yeas and nays on the amendment numbered 237.

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

The question is on agreeing to the amendment, as amended.

So the amendment (No. 237), as amended, was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the motion to refer, as amended.

So the motion, as amended, was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak as in morning business.

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

## HELIUM PROGRAM

Mr. FEINGOLD. Mr. President, Tuesday's business section of the Washington Post had an interesting article in it on the termination of the helium program, which is a target as elusive and difficult to rein in as the helium gas itself. The subheading of the article was entitled, ''Helium Bureaucracy Targeted by Clinton Has Survived Many Budget Cutters.''

The story in the Post went on to recount how termination of the helium program has been on the target list for elimination by those seeking to find ways to reduce the Federal bureaucracy.

The story talks about how this helium program has been on the list for ways to reduce the Federal bureaucracy and the Federal deficit, but that it has survived many attempts under the Reagan, Bush, and Clinton administrations, precisely because of the usual constituencies and political horse trading that tends to keep these programs alive.

Mr. President, I suggest that this helium program is exactly what this balanced budget amendment debate is all about, or maybe the better way to say it is, is what this balanced budget amendment debate should be about. It should be about how we are actually going to balance the budget.

On January 4, the first day of this Congress, I introduced legislation, S. 45, which would terminate the Federal helium program and sell off the crude helium that the Federal Government has stockpiled to pay off the $1.4 billion in program debt that has accumulated. We have good bipartisan support on the legislation. Senators HARKIN, LAUTENBERG, LEAHY, REID, KYL, BUMPERS, and CAMPBELL have all cosponsored this effort, once again, to try to get rid of the helium program.

It did not happen to be part of the plan I proposed to reduce the deficit during my campaign. But I had not thought about that one. It is important to add new ideas because, obviously, some of the things I wanted to cut, you cannot cut. There are not the votes for it.

So the helium program was a great one to add on because we found out it really does not make sense anymore. I, along with the cosponsors, want to see the 104th Congress be the Congress that finally gets rid of this program.

For this reason, I was delighted when the President highlighted, as the first program he mentioned for a cut in his State of the Union Address on January 24, the helium program. He said it is one of the businesses that the Federal Government ought to get out of running. I was also pleased, of course, to see that the President added this proposal into his budget, and that the President submitted that to Congress on Monday of this week.

In my mind, this is exactly the step-by-step approach that real deficit reduction is all about: Proposing a bill, hoping the President will push for it in his budget, getting it down here, and hoping we will get to work on it right away instead of waiting for the balanced budget amendment to be approved or not and waiting for the States to ratify it or not.

I hope, before this Congress adjourns, we will have completed this task and turned this program over to the private sector. If there is any reality at all to all this talk behind a balanced budget amendment, then surely the helium program should be on its way out.

There is simply no good reason for the Federal Government to continue to stockpile helium or run a public program when a perfectly viable private industry has developed that supply that we need for all of the Nation's helium requirements.

Mr. President, this program, like many of the deficit reduction targets that I have been involved with trying to get rid of—like Radio Free Europe or the wool and mohair program—was begun decades ago, when there was a different need and purpose. These programs, however, seem to survive long after the original purpose, because the constituencies build up that are dedicated to one cause, and that is simply preserving and continuing their existence whether we need the program or not. This is certainly true of the helium program.

This program dates back to the Wilson administration, when observation balloons were thought to have strategic merit. The Helium Act of 1925 authorized the Bureau of Mines to build and operate a helium extraction and purification plant in Amarillo, TX, in 1929.

According to the GAO, a nominal private helium industry existed in the United States before 1937. Between 1937 and 1960, the Bureau of Mines was the only domestic helium producer, selling most of what it produced to other Federal agencies, but also supplying some to private firms.

This program got an additional boost in 1960 when the Eisenhower administration feared there would not be a sufficient supply of helium to meet the demand for strategic blimps to spot

enemy submarines in the Atlantic, and for maintaining fuel tank pressure and rocket engines for the fledgling space program at the time.

The 1960 act created incentives for private companies to return to the market and, as a result, we finally did have four private natural gas producing companies building five helium extraction facilities, and they entered the market.

What is happening now, as of 1995, is that 90 percent of the helium produced in this country does come from these private operations.

Unfortunately, though, the 1960 act also led to a growing Government-run operation and the stockpiling of helium purchased by the Federal Government.

The act also stipulated that the Bureau of Mines set prices that would cover all of this Government-run program's costs, including its debt and interest, and that Federal agencies and contractors were then required to buy helium from the Bureau of Mines.

Today, Mr. President, that debt is approximately $1.4 billion, and some have suggested that our current stockpile could supply the Government's needs, if you can believe it, for the next 80 to 100 years. Although the proponents of the program have a complicated argument about how this program does not really cost the Federal Government any money, the point is that the Federal Government does not need to run a helium program anymore. There is a private sector helium industry that can and does provide the necessary helium to the Government.

By terminating the program now, Mr. President, selling off the helium reserves over time to ensure that the taxpayers receive a fair price for the helium they have financed, we can pay off the debt and, according to the CBO, we could recover between $1 and $1.6 billion from the reserves if sold at current prices. CBO also believes that we can double annual revenues from the program by doing this over time.

Mr. President, achieving deficit reduction is a very difficult task. Programs like the helium program were created to meet certain needs. The defenders of the program have a variety of arguments to justify its continued existence, but the reality is that it appears over and over again on target lists for deficit reduction because it no longer makes any sense for the Federal Government to continue to run this program. It has not been terminated despite attempts of the Reagan, Bush, and now the Clinton administration because powerful constituencies fight to keep these types of programs alive.

Mr. President we simply cannot afford to keep these programs going. The 104th Congress should be the place where this program is terminated.

Mr. President, I ask unanimous consent that the article I referred to earlier from the Washington Post February 7, 1995, business section relating to the helium program be printed in the RECORD.

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

[From the Washington Post, Feb. 7, 1995]

ODORLESS, COLORLESS—AND HARD TO KILL

(By Cindy Skrzycki)

Deep in the earth near Amarillo, Tex., the federal government is sitting on a 32 billion-cubic-foot stash of crude helium—enough to last 100 years—and an inflated bureaucracy built on the premise that you can never have too much helium.

President Clinton burst the balloons of the helium reserve program's 195 workers in his budget request yesterday, singling out the federal program as one that had outlived its usefulness and proposing that it be phased out. Estimated savings: $16 million by 2000.

The program dates back to the observation balloons of World War I and got another boost in 1960, when Congress and the Eisenhower administration feared there would not be enough helium for Cold War strategic uses, including the expanding space program. The program's debt to the U.S. Treasury has grown from $252 million to $1.3 billion—just as impressive as the supply of helium in its Texas stockpile.

Yesterday, Clinton proposed canceling the debt, saying that it would not affect the federal budget deficit.

Its tale is one of yet another federal government program that has had more than nine lives. The program has ducked budget cutters in the Reagan, Bush and Clinton administration, allowing employees such as Armond Sonnek, assistant director for helium, and Dale Bippus, the plant's general manager, to amass about 75 years of combined federal service until their recent retirements. Still on the job is John D. Morgan Jr., 74, chief staff officer of the Interior Department's Bureau of Mines, who can trace the origins and applications of helium in his head.

Ironically, the helium program escaped its latest brush with death in the name of stemming the growth of the deficit. Just when it looked like getting rid of the program was what Clinton-style reinvention of government was all about, the now-defeated congressman from Amarillo, Democrat Bill Sarpalius, became a key vote for the president when Clinton was trying to pass his contentious budget bill in 1993.

After Sarpalius voted with the president—providing Clinton's 218 to 216 margin of victory—the program was floating high again. The administration offered legislation to cancel the program's debt and make it more efficient. The measure never got off the ground.

Now, the administration proposes getting out of the helium business, liquidating the stockpile and selling the production facility in Amarillo.

That would end the government's involvement in helium, which began in 1971, when the Bureau of Mines began researching uses of the odorless gas for the military. Research and production continued through World War II, when the government used blimps to spot enemy submarines in the Atlantic Ocean. Even now, though using helium for blimps is a tiny portion of its consumption, the airships are used for surveillance on the U.S. borders and weather observation—and, it has been reported, there may even be a stealth blimp.

The gas, a nonrenewable resource, is more commonly used today for special welding procedures, the fueling process of space shuttles and magnetic resonance imaging. For those applications, it has no replacement.

It wasn't until 1960 that the Cold War scared the government into buying, refining and stockpiling helium. It feared shortages that would leave the National Aeronautics and Space Administration and the Pentagon flat. So the Bureau of Mines became owner and operator of a helium-refining plant, a 425-mile pipeline, railroad cars and an unusual underground helium storage facility.

It filled an underground reservoir called the Cliffside Field, near Amarillo, with helium crude bought from natural gas companies. Helium, which natural gas producers had vented into the air, was being captured and sold to the government.

''It was a good investment,'' said Carl Johnson, Chairman of the Helium Advisory Council, a trade organization representing the nation's 11 helium producers, refiners and marketers. ''Without the helium collected in Cliffside field, the industry wouldn't be as vibrant as it is now.''

All this was done with a $252 million loan from the Treasury to the Interior Department—which has never been repaid. With back interest, the debt has grown to $1.3 billion. The program was intended to be self-supporting through the sale of helium, but sales projections proved too optimistic.

In the minds of some, such as officials at the General Accounting Office, the debt doesn't exist—it was merely an intergovernmental transaction between the Treasury and the late Fred Andrew Seaton, President Dwight D. Eisenhower's interior secretary, who signed the note.

Helium program staffers like to think they cost the government no money since the program covers its operating costs and, in 1994, returned $10 million to the federal till. Plus, they point out, the government does own 32 billion cubic feet of crude, unrefined helium which, at current prices, is worth about $600 million.

''Our employees think they are giving money back to the taxpayer,'' said David Barna, spokesman for the Bureau of Mines. ''They feel pretty good about it.''

There is some dispute over how the government should phase out the helium program. The companies that now supply 90 percent of the market don't want the government opening the spigot and depressing prices. After all, how many Barney balloons can you sell? There also is a vocal constituency for paying back the loan from the sale of the crude.

An administration source said the government wants to ''sell into a rising market'' but it needs to start liquidating. The calculation is that the market could absorb 300 cubic feet of crude helium annually and not be the worse for it.

And, the $1.3 billion debt?

Ever heard of forgive and forget?

## UNITED STATES-CUBAN RELATIONS

Mr. FEINGOLD. Mr. President, yesterday, the chairman of the Senate Foreign Relations Committee, the Senator from North Carolina, introduced legislation on Cuba which, with all due respect to the chairman, I think is the wrong policy at the wrong time. In seeking to strengthen an already tight trade embargo, punish non-American investment in Cuba, and increase funding for TV Marti, this proposal puts United States policy toward Cuba on the wrong track. While I oppose strongly the totalitarian rule imposed by Cuban President Fidel Castro, I do not see any way that the island Nation of Cuba now poses a military or economic

threat to the United States which warrants such a new hostile policy.

I have believed for some time that an expanded dialog with the Cuban Government is in the interest of the United States and Cuba. With the cold war over and little or no Soviet or Russian presence in Cuba, it simply does not make sense to completely ignore a country in our hemisphere because it is nondemocratic. Indeed, discussions and contacts on issues such as human rights, market economies, commercial relations, arms control, Caribbean affairs, the free flow of information, refugee affairs, and family visitation rights could actually help facilitate resolution of these complex problems and, I think, would do it, Mr. President, far better than nonengagement and isolation.

We have ongoing discussions with other nondemocratic countries like Saudi Arabia, Indonesia, and North Korea, and we recently opened a liaison office in Vietnam. Mr. President, we have even granted most-favored-nation status to China, so it makes little sense to outlaw virtually any contact with Cuba.

This proposal also threatens the United States effectiveness in international organizations by requiring the United States representatives to seek a United Nations embargo against Cuba and to oppose Cuban membership in international financial institutions. Mr. President, the United States has more important and pressing problems which require multilateral support and should not be required to pursue an outdated and misguided policy in an international forum.

Finally, Mr. President, I am particularly amused by the support of the Senator from North Carolina for more money for TV Marti. This program has been documented time and time again as ineffective. Certainly in times of serious fiscal constraint TV Marti should be eliminated; it should not be enlarged. It is very ironic that during the debate on the balanced budget amendment, when we are all claiming we are going to identify more specific cuts and cut out the fat in Government, here is a proposal which exemplifies the waste that has helped jack up the Federal deficit in the first place.

Mr. President, the chairman's proposal is provocative but it is unrealistic and shortsighted. I hope the administration will work with partners in the hemisphere to develop a multilateral strategy to promote democracy and human rights in Cuba and prepare for that day to which we all look forward, the transition of power in Cuba.

I thank the Chair and I yield the floor.

Mr. ROBB addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ROBB. Mr. President, I ask unanimous consent that I be recognized to speak as if in morning business for not to exceed 4 minutes.

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

Mr. ROBB. I thank the Chair.

## THE 50TH ANNIVERSARY OF THE INVASION AT IWO JIMA

Mr. ROBB. Mr. President, today marks an important anniversary for all of us who served in the Marine Corps and for freedom-loving Americans everywhere. On this date 50 years ago, the largest force of U.S. marines ever assembled prepared to embark on the most savage and most costly battle in the history of the Marine Corps. Nearly 100,000 troops, American and Japanese, were ready to fight to the death on the most heavily fortified island in the world, 8 square miles of volcanic ash and rock known as Iwo Jima.

Since the turn of the century, marines had pioneered and developed the capability for seizing advanced naval bases. The payoff for those many years of planning and training was seen in the successive, hard-fought victories in the amphibious landings throughout the Pacific in places like Guadalcanal, Bougainville, Tarawa, and New Britain, and on Saipan, Guam, Tinian, and Peleliu.

But now in February 1945 marine forces were approaching within 1,000 miles of the Japanese homeland for the first time and would face a determined, fanatically brave enemy who had constructed the most elaborate and ingenious system of underground fortifications ever devised. Despite thorough allied planning and preparation and all the naval and air support available, it was ultimately the marine on the beach with the rifle who eventually won this critical battle for America.

Mr. President, one out of every three marines who set foot on Iwo Jima was killed or wounded, so great was the price of victory. As Gen. Holland M. Smith, Commanding General, Expeditionary Troops, Iwo Jima, said later of his marines, ''They took Iwo Jima the hard way, the marine way, the way we had trained them to take it when everything else failed. They took Iwo Jima with sweat, guts, and determination.''

Mr. President, I thank the Chair and I yield the floor.

## AUTHORIZING BIENNIAL EXPENDITURES BY COMMITTEES OF THE SENATE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of Senate Resolution 73, which the clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 73) authorizing biennial expenditures by committees of the Senate.

The Senate proceeded to consider the resolution.

Mr. STEVENS. Mr. President, is there a time agreement on this resolution?

The PRESIDING OFFICER. One hour evenly divided.

Mr. STEVENS. I yield myself such time as I may require.

Mr. President, on January 25, the Senate Rules Committee reported a biennial omnibus committee funding resolution. It is Senate Resolution 73 and it is reports No. 104–6.

The Senate has authorized the committee funding on a biennial basis since 1989, primarily due to the good work of my great friend from Kentucky, who is the former chairman of the committee. We have worked together many years now. Senator FORD has insisted on a biennial funding resolution.

The resolution before us today is a biennial funding resolution, and it is consistent with the direction of the conference of the majority to cut committee budgets by 15 percent. Senate Resolution 73 cuts 15 percent from the 1994 total recurring budget authority. It will add 2 percent for a cost-of-living adjustment for the 1995 recurring salaries and authorize a 2.4 percent COLA for 1996 for recurring salaries. There is also a 2.4-percent COLA for January and February 1997. The 1996 and 1997 COLA will be subject to the approval of the President pro tempore of the Senate.

This resolution authorizes $49,394,804 for the period from March 1, 1995, and September 30, 1996, and $50,521,131 between March 1, 1996, and February 28, 1997.

Mr. President, this is a reduction of $7,641,011 from the 1994 funding level.

I have a chart here that shows the change in committee budget authority since 1980, and the Senate will note there has been a considerable shift in budget authority. The real dollar amount is in blue and the dollar amount adjusted for inflation is in orange. You can see that we have maintained a steady decline in the adjusted-for-inflation level of expenditures by the Senate.

We also have a second chart which shows the level of authorized committee staff since 1980. Since last year, the level of committee staff is reduced by 20 percent. In 1994, there were 1,185 authorized committee staff positions, and in 1995 there will be 947.

Again, I wish to point out that we are continuing the good work of my friend, the former chairman, the Senator from Kentucky, Mr. FORD, because these cuts are in addition to the 10-percent decrease that committee budgets took in the last Congress pursuant to his leadership.

Between 1980 and 1994, the Senate committees will have taken a 16.7 percent reduction in staff. I might say the House of Representatives took about a 5 percent reduction during that same time and that fact explains the difference in the amount of reductions currently being taken in the House compared to what we are taking in the Senate this year. But, I believe this additional cut in committee funding is a

good faith showing to the American people that we are serious about our partnership with them to reduce the size of Government.

Our people sent us a message in the last election that they want less Government. This resolution is another step toward a reduction in size of Government. This is not a new step, it is an ongoing process. It was something we have been working toward. But it is an example of the Senate's commitment to provide a more effective and efficient Government.

On a deflated basis, the total authorized dollar value in 1996 for Senate committees will be less than in 1980.

Last year all of the Senate committees combined only accounted for 17 percent of the total Senate budget.

Senate Resolution 73 continues the practice of allowing committees to carry over funds from the first year to the second year during the same Congress. This policy provides the committees with added flexibility to meet their anticipated needs and eliminates the incentive to spend or lose their money.

This resolution does not permit committees to carry over unexpended funds from the 103d Congress to the 104th Congress.

Any unexpended balances of the committees after obligations incurred during the funding period ending on February 28, 1995, will be transferred to a special reserve fund which shall be used to provide nonrecurring funds to committees that demonstrate a need for funds to meet an unusual workload or unanticipated issue that comes before them. I urge committees not to race to spend the moneys that are available for them to spend before February 28. That would diminish the special reserve and the reserve fund is of great importance to the Senate.

Last Congress the special reserve fund allowed the Senate to meet additional unforeseen needs of committees without requiring the Senate to spend new funds.

For example, after committee budgets were completed, the Armed Services Committee was required by law to conduct a major series of hearings on the issue of homosexuals in the Armed Forces. Those hearings required the Armed Services Committee to hire additional professional and support staff due to the substantial amount of work involved in the preparation and conduct of those hearings.

The guidelines of the Conference of the Majority provided for a total funding target that is 15 percent below the 1994 level plus COLA with directions that the Rules Committee consider a variety of factors and apply the cuts fairly. I believe this proposal is fair and balanced.

This resolution which was worked out by Senator FORD and myself and adopted by the committee takes into consideration the size of the committees, their workload, the growth that has accompanied the committee during the 1980's, as well as other responsibilities of the committee.

Some committee reductions are more than 15 percent. Labor's is 25 percent. Governmental Affairs, Judiciary and Intelligence are each downsized by 16.5 percent.

The smaller committees—Veterans' Affairs, Small Business, and Aging were cut 10 percent.

There is a big difference between the impact of a 5-percent cut on a $1 budget compared to 2 percent on a $4 million budget.

What I am really saying is the administrative costs of a committee are almost the same. A committee that has a smaller amount of total funds is going to be excessively impacted in their ability to get their substantive work done if we do not recognize the difference between the large and small committees and the impact of across-the-board cuts. We have attempted to recognize, this problem in this resolution.

There are certain minimum administrative costs associated with running a committee. Every committee must have a receptionist, a clerk, a systems administrative person, as well as other positions specific to the duties of that committee.

With that in mind, it was the Rules Committee's determination that the smaller committees should not take a full 15-percent cut but should take only a 10-percent cut.

The impact of the 10-percent cut on those smaller committees is just as severe if not worse than the impact of the 15- and 16.5-percent cuts the larger committees received.

There is one exception to our policy. Senator MCCAIN, the chairman of the Indian Affairs Committee, has informed me he intends to adhere to the 15-percent reduction that applies to all committees as originally submitted. That was his request to the Rules Committee. I am advised Senator MCCAIN was going to make a statement to that effect but that he is not available to do so now. It is my understanding that he intends not to spend the full amount authorized. We commend him on that position. We merely wanted to recognize the impact on small committees by our decision.

A few committees presented cases for including nonrecurring money which was not authorized in their baseline. Only authorized recurring funds were included in the baseline.

Senate Resolution 73 also contains a sense of the Senate that space assigned to the committees of the Senate covered by this resolution shall be reduced commensurate with the reductions in authorized staff.

The Committee on Rules and Administration is expected to recover space for the purpose of equalizing Senators' offices to the extent possible, taking into consideration the population of the respective States according to the existing procedures and to consolidate the space for Senate committees, in order to reduce the cost of moving Senate offices and to reduce the cost of support equipment, office furniture, and office accessories.

I believe this recommendation distributes the Senate's limited resources between the committees in a fair and equitable fashion.

I will soon move its adoption.

Before I yield to my good friend from Kentucky, let me ask for the yeas and nays on this resolution.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, as my good friend from Alaska, the chairman of the Rules Committee, has stated, before the Senate this afternoon is Senate Resolution 73. It is the 2-year budget authorization for Senate committees for the years 1995 and 1996. It continues the policy of biennial budgets established in the Rules Committee in 1989. We have 2-year budgets and we cannot get the Federal Government on 2-year budgets, which I think would save money. It would not balance the budget but it certainly would help us, give us some time for oversight.

But in the Rules Committee, and the committee chairmen have accepted it, where the money would lapse at the end of the first year, it would carry over into the second year of the biennium. The committees were not anxious then to spend the money, come back to us prove they needed it, and then prove they need more. So at the end of this year we had a considerable surplus as a result of the 2-year budget. That was returned. I think the proof is in the pudding and I am very pleased the 2-year budget authorization has worked so well.

The Rules Committee's job in markup was to find the minimum figure—and I underscore minimum figure—that will permit the committees to function effectively and efficiently. The committee conducted a review on a committee-by-committee basis. It was not all thrown in a pot and stirred up and figures pulled out. But my good friend from Alaska went committee by committee, colleague by colleague, and reviewed each committee's request with those chairmen and ranking members very closely.

Reaching a satisfactory compromise on the level of Senate committee funding is never easy. This year the problem was compounded, as my friend has said, by the overall goal of a 15 percent reduction coming on top of a 10 percent reduction last Congress. So, in essence, there was some shock as it related to the two cuts.

Senate Resolution 73 does not cover printing, but the report notes that the various Senate committees cut the cost of printing during the 103d Congress. In the last 10 years, expenses for

printing and binding were reduced almost 40 percent. That is a giant step. Expenses for detailed printers were reduced almost 35 percent. We saved, in those two reductions, $5 million. The Rules Committee reduced committee funding 10 percent in 1993, another 15 percent under this resolution, and $5 million was saved in printing costs.

These facts indicate to this member of the Rules Committee that it is doing an excellent job of controlling costs, and thereby saving taxpayers' dollars.

I believe the 15 percent reduction cuts most committees to the bare bone. To cut further would impede, in this Senator's opinion, them from fulfilling their responsibilities to the Senate.

S. Res. 73 does not include extra funds that would permit us to add moneys to committees unless funds were reduced from one or more committees.

Mr. President, I have worked with my friend from Alaska now for a good many years. I was chairman, he was ranking. Now it is reversed. I do not see much change in the committee. Our friendship is the same. Our way of working together is the same. The accommodations are the same. We have, I feel, done an excellent job of working with the members of the Rules Committee and then transferring that out to the membership of the various committees. Some did not like the cut, told us so, and asked for something less. But when all was said and done, the 15-percent criteria was adhered to, and I believe it is proper.

But I want to reiterate that, if we cut much more and we have already cut to the barebone, the committees are responsible for certain reports and certain bills to report to the Senate. They have an obligation to their colleagues to do a good job, and I think if we cut more than 15 percent we would have restricted our committees in their ability to do this job as it relate to this institution.

So I am very pleased where we are. I believe the Rules Committee has reached a fair balance in funding Senate committees for 1995 and 1996.

I urge my colleagues to support this resolution. And my chairman has asked for the yeas and nays. It is my understanding, so there will not be any misunderstanding, that under the unanimous-consent agreement yesterday there will be no votes before 5 o'clock on Monday. And, therefore, the vote on this particular resolution will be at some time after 5 o'clock on Monday next.

I thank the Chair. I thank my good friend from Alaska.

I yield the floor.

Mr. STEVENS. Mr. President, I thank my good friend for his comments.

I want to emphasize what he said. It is not pleasant to turn to the colleagues and say that they must cut their staff or expenditures of their committees must be reduced. But that was our task. I think we have done it as fairly as we can. I think the fact that, to my knowledge, no amendments will be offered to this resolution indicates that we have either achieved our goal or intimidated our colleagues. But let history determine which is correct. We were fair. The Senator from Kentucky says we were fair. I think we have been fair. I do believe that it is an indication of what is coming in this Congress; that is, that we are going to be as frugal as possible in carrying out our duties in spending the taxpayers' money.

I do not have any other requests on this side. I might ask my friend if he has any request for time on that side.

CONGRATULATING THE RULES COMMITTEE FOR REDUCING THE SIZE OF SENATE COMMITTEES

Mr. CHAFEE. Mr. President, today we are considering the resolution that authorizes the funding levels for Senate committees for the next 2 years. I would like to offer hearty congratulations to the chairman and ranking member of the Committee on Rules and Administration for making substantial progress in reducing the growth of Senate committees.

The resolution before us authorizes $7.6 million less for this year than the 1994 authorization, and that is a step in the right direction. Most of the committee budgets were reduced by 15 percent plus a 2-percent COLA for salaries. Of particular significance are the cuts in the budgets for the three largest committees: The Committees on Governmental Affairs, the Judiciary, and Labor and Human Resources. The Rules Committee should be commended for reducing the budgets of Governmental Affairs and Judiciary by 1.5 percent above the 15-percent cut received by other committees. The chairwoman of the Labor Committee also deserves enormous praise for submitting a budget that cuts expenses by a whopping 25 percent.

During the 102d and 103d Congresses I offered amendments to reduce overstaffing on these three committees.

In 1991, I proposed capping the number of available committee staff positions at 1990 levels. The amendment I proposed in the 103d Congress would have used the Finance Committee, with its substantial workload, as a benchmark. Each committee's funding level for 1993 would have been the lesser of either 95 percent of the 1992 funding level, or 95 percent of the Finance Committee's funding level—except for the Appropriations Committee, which would be funded at 95 percent of its 1992 level.

Since the beginning of the committee system as we know it today, we have seen a rapid growth in the size of committee staffs. Some of that growth is understandable, but some is not. In 1950, there were 300 committee staff positions. By 1970, that number had more than doubled to 635. It had nearly doubled again to 1,212 by 1990. In 1992, there were 1,257 committee staff positions.

In 1993 some progress was made and the number of committee staff positions for which funding was made available went down to 1,196. Nevertheless, the number of staff positions for the three big committees remained at well over 100 for each—Governmental Affairs at 120, Judiciary at 128, and Labor at 127. This year, there are 947 authorized staff positions, and only one committee has more than 100 authorized positions.

I am very pleased to support this resolution.

Mr. FORD. Mr. President, I say to the Senator from Alaska that I have no requests for statements or amendments. I believe the unanimous-consent agreement last evening prevented amendments. Therefore, I have no one seeking the floor to make a statement today. I am ready and prepared to yield the time that has been allotted to me.

Mr. STEVENS. Mr. President, I yield the time allotted to me.

Mr. FORD. Mr. President, I yield the time allotted to me.

The PRESIDING OFFICER. All time is yielded.

Mr. STEVENS. Mr. President, As I understand it, we are off this resolution, and all time has been yielded on this resolution, and that there will be no further action necessary with regard to Senate Resolution 73. Is that correct?

The PRESIDING OFFICER. The Senator from Alaska is correct.

## BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Mr. STEVENS. Would the Chair report the pending business at this time?

The PRESIDING OFFICER. The pending question is House Joint Resolution 1. The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 1) proposing a balanced budget amendment to the Constitution of the United States.

The Senate continued with the consideration of the joint resolution.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I would like to take a few minutes this afternoon, until other speakers come to speak on the matter before this body, to kind of review what has taken place over the last few days in regard to the balanced budget amendment, and, specifically, the amendment that is now pending before this body, namely the Reid amendment to exempt Social Security.

There have been, I think, a number of interesting statements made. The one that has stuck in my mind since it was made is the one made by the Senator from North Dakota [Mr. DORGAN] where he talked about a trip that he took to Central America, and a helicopter in which he was flying ran out of fuel and he landed. While on the ground waiting to be rescued, he spoke to a number of Nicaraguans or Hondurans—I do not remember which—who were native to the area. One of the questions that he asked to a young

woman there was, How many children do you have? She said, Three. He noted in the tone of her voice that she was disappointed. As the Senator from North Dakota went on to explain, in many parts of the world a person's security and their golden years is how many children they have been able to have because it is through the network of the children that they hope they will be maintained in dignity.

Mr. President, that is not the Social Security we have in this country. The Social Security that we have in this country is by virtue of an agreement made by the Congress of the United States in 1935 with the people of this country—60 years ago—where a very noble experiment was undertaken. That experiment said let us have an employee contribute a certain amount of their wages along with an equal amount from the employer, and we will put that into a trust fund. When that person, that employee, gets older, and is of retirement age, they will be able to draw in their retirement years money, an old age pension, if you will.

So I think it says a lot. It speaks volumes; that in this country the dignity of a person in their golden years is not determined by how many children they have been able to have but rather the fact that in this country we have a program that is no longer experimental but a program that works which is called Social Security. This, of course, does not take away from the fact that we should all be proud of the children we have. But certainly, this takes a burden away from the children, a burden that certainly becomes too much of a burden on occasion.

As we have proceeded with the debate, one of the things that I have noted with interest is the participation in these proceedings by the junior Senator from South Carolina [Mr. HOLLINGS]. The Senator from South Carolina has been in this body 28 years. He served as Governor of the State of South Carolina. He has been chairman of the Budget Committee. He is now the ranking member of the Budget Committee. He is a person that we look to for fiscal guidance.

I was, therefore, pleased that he joined in support of the Reid amendment, and as the debate has proceeded I think succinctly stated and summarized in a letter his position that he wrote to each U.S. Senator on the 9th of February where he said:

> Left alone, this provision would repeal Section 13301 and constitutionally endorse the violation. The Reid amendment presently under consideration corrects this unintended repeal by stating that the Social Security trust fund '' . . . should not be counted as receipts or outlays for the purposes of this article.''

Senator HOLLINGS goes on in his letter:

> John Mitchell, the former Attorney General, is known for the axiom, Watch what we do, not what we say. It should be made crystal clear that we mean what we say. If you want to continue to use the trust fund in breach of the trust, vote against the Reid amendment. If you want to maintain the trust—the contract with America made back in 1935—then please support the REID amendment.

Mr. President, the fact is that in addition to the support of the Senator from South Carolina, we have also received the support of the senior Senator from Alabama [Mr. HEFLIN]. Senator HEFLIN is the Senate's legal scholar and I would like to read a great statement that he made. Senator HEFLIN, a member of the Judiciary Committee, put out this bill with the report attached thereto. He recognized in the report, on page 72—I should tell those watching on C–SPAN, those in the offices who may not know, that a report is put out by the committee of jurisdiction on a particular piece of legislation.

The balanced budget amendment went to the Judiciary Committee. The Judiciary Committee reported out the bill with a report. Every piece of legislation, with rare exception, that comes to this floor is accompanied with a report. The purpose of the report, among other things, is it gives the Senate the views of what the committee meant in passing out the bill.

Senator HEFLIN filed a minority report and, among other things, in this statement he said—as you will recall, Senator FEINSTEIN, a member of the Judiciary Committee, offered an amendment that was the same as mine in the Judiciary Committee, which they turned down. Senator HEFLIN says in the report:

> I also support Senator FEINSTEIN's amendment to exempt Social Security from the balanced budget calculation. In the Budget Enforcement Act of 1990, Congress clearly declared that the Social Security trust fund is offbudget. In the past, surplus which has accumulated in the trust fund has been used to mask the true size of the Federal budget deficit.

I part briefly from the report language of Senator HEFLIN and state that it has been fairly well established on this floor on both sides of the aisle that this started in 1969, during the Vietnam war, when there were efforts made by the Congress and President Johnson to mask the size of the deficit that had accumulated as a result of the Vietnam war. So they started using, at that time, Social Security trust fund moneys to offset the deficit. That is what Senator HEFLIN is talking about here.

He goes on to say:

> Social Security is a self-financing contributory requirement program. Workers must contribute 6.2 percent of their salaries to the program, and employers are required to match that amount. These funds, by law, are held in trust, and the American people have a right to expect that Congress will maintain the integrity of that fund. The funds are now in surplus, and this is expected to continue until 2012.

That is what he said in the report. But he has come to the floor on more than one occasion during the past week and talked about this proposal; namely, that the opponents of my amendment are saying that they can use implementing legislation to exempt Social Security from the balanced budget calculations. Well, it is clear that attempts to protect Social Security through implementing legislation would simply be futile. Once the Constitution is amended to require that ''Total outlays for any fiscal year shall not exceed total receipts for that fiscal year,'' Social Security is certainly in danger. And that is my authority that is renowned in the legal circles—Senator HOWELL HEFLIN, who previously was chief justice of the Alabama Supreme Court.

Senator HEFLIN said:

> This means that there will be a constitutional requirement that Social Security funds be considered onbudget. If the balanced budget amendment is adopted as presently worded, it would prohibit Congress from legislatively taking Social Security funds offbudget and would nullify the provisions of the 1990 Budget Enforcement Act, which requires Social Security funds to be considered offbudget.

Senator HEFLIN is a supporter of the balanced budget amendment, as is the Senator from Nevada, the minority leader, and the minority whip. But we have some significant concerns, Mr. President, about Social Security being used to offset the deficit, especially when we consider, as Senator HEFLIN said in the report, that Social Security moneys are accumulated in a trust fund.

It has been talked about here on the floor lots of times. The Senator from North Dakota [Mr. CONRAD] compared it to Jim Bakker, the infamous clergyman who went to jail because of his misrepresentations. The Senator from North Dakota said that he went to jail—Jim Bakker—as a result of saying he was collecting money for one reason and using it for another reason. Well, that is one way to describe our fiduciary relationship to trust fund moneys accumulated in the Social Security trust fund. We cannot spend those moneys for some other purpose.

Senator HEFLIN talked about implementing legislation, but just so the Record is clear, it is not only Democratic Senator HOWELL HEFLIN, a person whose integrity is unmatched, whose legal prowess is unmatched in this body. Let us look to someone else to see if they would come up with the same conclusion. Sure enough, we went to the Congressional Research Service, an arm of the Congress, and one of the attorneys in the law division, Kenneth Thomas, had this to say:

> Under the proposed language——

He is talking about the constitutional amendment.

> ——it would appear that the receipts received by the United States which go to the trust fund and the Federal disability insurance trust fund would be included in the calculations of total receipts, and that payments from those funds would similarly be considered in the calculation of total outlays. Thus, if the proposed amendment was ratified, then Congress would appear to be without the authority to exclude the Social Security . . .

I will read that again:

Thus, if the proposed amendment was ratified, then Congress would appear to be without the authority to exclude the Social Security trust funds from the calculations of total receipts and outlays under section 1 of the amendment.

That says it real clear—namely, that if House Joint Resolution 1 passes, it does not matter what Congress does with implementing legislation—or any other kind of legislation—to exclude Social Security; they cannot and we cannot. A future Congress cannot, because to do so would violate the Constitution, which would be House Joint Resolution 1. In effect, it says you must include the Social Security trust fund in balancing the budget. So that thing we passed earlier today is not worth the paper it is written on.

It is not worth the paper it is written on. It is only for show that people can go home and say, ''I voted to protect Social Security.'' It cannot happen.

Social Security has to be included. To not do so would be violating the Constitution. I did not write the constitutional amendment that is being sought to be adopted. It was written by someone else. And, sure enough, that is what it says. ''Total outlays shall include all outlays of U.S. Government except for the repayment of debt principle.'' That is what it says.

There has also been statements made from time to time that, ''Well, there are other ways we could legislate.'' Well, according to Senator HEFLIN it simply will not work. In fact, what we have done is made it even worse.

The House has passed a measure that is comparable to what we did here today. We are going to vote on my amendment on Monday or Tuesday. If the same action is taken in the Senate that was taken in the House, that would mean both bodies of this legislature, our bicameral system of government, both bodies turned down exclusion of Social Security. So if any court later considered the constitutionality of implementing legislation, I think they would have to look to the legislative history and they would determine it was not Congress's intent to keep Social Security off budget.

First, the House defeated a proposal to exempt Social Security. And if my amendment does not pass, you would have a second time. So there would be similar authority from this body as in the House. And a court reviewing the legislative history would likely determine that Congress had its opportunity to maintain the Social Security trust funds off budget but refused to do so.

If my amendment does not pass, Social Security trust funds, I believe, are gone. The great experiment that we have had for some 60-odd years will then have failed, not because Social Security has added one penny to the debt, because it has not, but because we in Congress were unwilling to exclude Social Security from trying to balance the budget.

It is really unfair that we would use Social Security receipts—unless there were an effort made really to do that—that behind all this there is a subtle effort made to get through this part of it and then go use the Social Security moneys.

One day this week, I was on a television program at noon with a little minidebate with former Senator Tsongas. And he was very candid. He said, ''Yes, we will use Social Security moneys to balance the budget.'' He did not mince any words. He was pretty clear.

The L.A. Times set out a little quote that I made here on the floor this week, where I said that there is about as much chance for this body to balance the budget without using Social Security trust funds as Evel Knievel was going to jump the fountain at Caesar's Palace. He just would have a real difficult time doing it. It could be done, but it would be difficult.

So I think we should stop playing games and recognize that there are some who want to use these moneys. I think we should exclude Social Security and then ratchet down to do what we can to balance the budget, which we would be obligated to do under the constitutional amendment.

Opponents of my amendment argue that statutes have never been incorporated into the Constitution and this would be an unprecedented constitutionalizing of a statute. But this is pure poppycock, Mr. President. Because this is the first time, of course, that we have tried to deal with an amendment to the Constitution dealing with fiscal policy. So certainly with a program as large as Social Security, we should understand in the confines of the balanced budget how we are going handle that.

The only way to protect Social Security is to specifically exclude it from the constitutional amendment because Congress would be without authority to attempt to exclude Social Security from the balanced budget calculations for any type of implementing legislation.

The Senator from California, Senator FEINSTEIN, has said the only way to save Social Security surpluses to pay for future retirements is to balance the budget exclusive of Social Security.

Opponents have also argued, Mr. President, if Social Security is put off budget, then Congress would have to raise taxes or cut spending, $69 billion this year alone, just to keep the deficit at the current level. This is what Chairman HYDE of the House Judiciary Committee referred to when he said, ''The effect on the other Federal programs will be draconian if Social Security is excluded from the balanced budget amendment.''

That is exactly the point that I am making. We are against using Social Security trust funds to balance the budget. We want to exempt Social Security because that is where the money is and that is what we must protect.

I have said a number of different times over this last couple of weeks that famous bank robber Willie Sutton, when released from prison, was asked why he robbed banks. He responded, ''Because that's where the money is.''

Well, Mr. President, in the next few years the huge amounts of money that will be accumulating in the Social Security trust fund will be where the money is. That is where people will look to balance the budget—this year, $70 billion; next year, $80 billion; the year 2002, over $700 billion; and a few years later $1 trillion and then $2 trillion and it rises to the point where there is $3 trillion in the Social Security trust fund if we do not take those moneys as we have in the past and divert them to deficit reduction.

Fifty-eight percent of all workers pay more FICA taxes than they do Federal income tax. Over half of the people in this country pay more in FICA taxes, that is Social Security taxes, than they do in income taxes.

And, as stated repeatedly, this Social Security is the most important contract we have with America. These surplus funds should be saved and not used to balance the budget.

Opponents also argue, Mr. President, that exempting Social Security in the constitutional amendment would create a loophole. That argument was made by my friend from Idaho this morning; that passing this amendment creates a loophole through which you could add other programs, try to define them in Social Security, and thus would be exempted from the requirements of the balanced budget amendment. That argument makes no sense, no sense, because the amendment offered by the Senator from Nevada is very specific. The argument is an exaggeration that it would create a loophole.

My amendment is intended to safeguard an easily identifiable and narrowly defined program—the old-age pension and disability insurance. Anything that changes the long-term actuarial plan of Social Security is subject to a 60-vote point of order before this body. If someone wanted to place education or foreign aid or aid to families with dependent children with Social Security, it would not work. You would need 60 votes to waive that.

Having Social Security exempted from the balanced budget amendment does not—I repeat, does not—create a loophole.

Legislation which proposes either increased Social Security expenditures or decreased taxes would be in violation of 302(F) and 311(A) of the Budget Act, and thus it would be subject to a budget point of order and require, I repeat, 60 votes to waive the Budget Act.

Some have also argued, Mr. President, that an exemption for Social Security would remove the incentive Congress would have in a balanced budget amendment to provide for a long-term solvency of the trust fund. One of the most interesting—and I cannot say

most pleasant, but one of the most interesting—and educational times I have spent in Government was being a member of the Entitlement Commission which completed its work recently.

The Entitlement Commission, chaired by Senators Danforth and KERREY, was a bipartisan commission with an equal number of Democrats and Republicans. The commission was made up of elected Members of Congress, mayors, union leaders, and business leaders. A wide range of people made up that bipartisan commission. During the year we worked on that, it was very clear that the entitlements in existence in this country needed some work done on them.

It is also very clear one of the obligations we have is to look at tax policy in this country. It appears very clear to me that we must also examine tax policy in this country.

So, to say that an exemption for Social Security would remove incentive to strengthen Social Security is wrong. We all know that there has to be some changes made to Social Security. But they should be made separate and apart from the problems we are having with the rest of the Government. The Social Security trust fund should rise or fall on its own merits.

Therefore, Mr. President, I think this argument is fallacious. Social Security has also been funded by FICA tax to which over 95 percent of Americans contribute. These funds are used to pay recipients presently receiving Social Security. In the past, when it appeared to Congress that Social Security might be in jeopardy, we took care of that. We did it in 1977 and 1983. The proposal I have that is appearing before this body would not prevent Congress from making future adjustments in either the benefits or the FICA tax to keep it solvent.

The Republican measure, though, what is called S. 290, would prevent both the benefits and the FICA taxes from being changed. By freezing the levels of the benefits and the taxes, S. 290 guarantees Social Security's insolvency by the year 2029.

With Social Security, I think we can liken it to a ship which keeps itself afloat. Opponents of the Reid amendment tend to want to have the ship at least list if not sink. Social Security is a program that is publicly administered, a compulsory contributing retirement program. Financing to cover the cost of Social Security is provided by the flat tax levied on wages. They are not the Federal Government's funds, but are contributions that workers pay in and expect to get back.

Mr. President, I see my friend, the Senator from Iowa is present in the Chamber. I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Iowa.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. HARKIN. Mr. President, I first want to thank my friend and colleague, Senator REID, for his long and diligent efforts to ensure that the Social Security system in America remains sound and separate, to make sure that the people who are now receiving Social Security are not threatened by its reduction, and those who are working hard and paying into the system are assured it will be there for them when they retire. There is no one who has worked harder and longer and fought harder to protect Social Security than Senator REID from Nevada. I am proud to join him as a cosponsor on this amendment.

I am delighted to yield.

Mr. REID. I wanted the Senator to yield for a question or perhaps a statement.

I want to spread across this record one reason this debate has been so fruitful is that during the unfunded mandates debate, the Senator from Iowa offered a sense-of-the-Senate resolution to exclude Social Security from the balanced budget amendment. But for the Senator's aggressiveness on that matter during the days we spent debating that, we would not be in the posture we are today. This Senator from Nevada and the other 14 cosponsors extend to the Senator our appreciation.

Mr. HARKIN. Mr. President, I thank the Senator for those fine words, but I am literally following in his footsteps and proud to be a cosponsor with him on this amendment.

Mr. President, I have long supported a balanced budget amendment. I expect to do so again this year. However, there have been a number of issues raised concerning the amendment. Should there be a supermajority requirement for tax increases? Should there be truth in budgeting to require that the cuts necessary to reach a balanced budget by 2002 be specified? Should we make provision for times of recession when there are more demands on the Federal Government and tax receipts are down?

Each of these questions is very important and should be given the attention they deserve. Mr. President, the one issue that is of greatest concern and one that I think is necessary to address immediately, is whether Social Security should be allowed to be cut as part of the balanced budget amendment. Should Social Security funds be included along with all the receipts and deficits in calculating whether we have a balanced budget?

I have received hundreds of calls and even more letters from older Iowans who are scared to death that their Social Security will be cut to balance the budget. Almost all of these people subsist on little or nothing more than their monthly Social Security checks. They live on fixed incomes and are already struggling to meet the basics to pay for their food, utilities, and medical bills. A cut in their Social Security would literally mean for many not enough to eat or not enough to pay for their heating or phone or their medical bills.

When we talk about the average Social Security recipients, we are talking about people of very modest means. The average monthly Social Security payment to retirees is now $679 a month. That is $8,148 a year, just above the poverty level for a household of one.

Remember, for many senior citizens, Social Security represents 90 percent or more of their entire income. This is particularly true for older widows. For the majority of older widows, Social Security represents the bulk of what they have to live on. So it is perfectly understandable for them to be very fearful of potential Social Security cuts.

Mr. President, I should also note I am not just hearing from senior citizens. I am also hearing from middle-aged workers who are concerned that the surplus in the Social Security trust funds that are necessary to pay benefits when they retire will not be there. They are worried because they know that it may be just too tempting for politicians to dip into the growing Social Security trust fund surpluses to pay down the deficit.

And our workers have every reason to be worried. Today the surplus stands at about one-half trillion dollars. By the year 2010, the Social Security surplus is projected to reach $2.1 trillion. And by 2020 it will grow to an astounding $3 trillion surplus. That surplus is nearly two times the entire Federal budget for this year. It will be very tempting to be used to balance the budget. Some will say, a little bit out will not hurt. But, in fact, Mr. President, we need to not only protect against cuts in Social Security but in the coming years we will have to add to that surplus.

The current projections are that even with a $3 trillion surplus in the year 2020, the system will go bankrupt by around the year 2030, a mere 10 years later. So in the next 25 to 30 years, we are going to have to make some adjustments in the Social Security program to ensure that it remains sound beyond the year 2030.

But that is nothing new, we have made those adjustments in the past, and we will make those adjustments in the future. I will point out one that could be considered. We have a cap on income for those paying into the system. I think it is around $60,000 or $62,000 a year. So if you are making a million dollars a year in income, you pay the same into Social Security as someone making $60,000 a year, and

that is not right. I think that level is going to have to be raised. That adjustment alone would help us immensely with the Social Security trust funds.

Mr. President, I hope the Senate does the right thing and adopts the amendment offered by Senator REID. A number of our colleagues, including myself, have cosponsored this. The Reid amendment is simple and straightforward. It is not convoluted. It simply puts in writing what just about everyone in this body says they are committed to. It explicitly exempts Social Security income and outlays from balanced budget calculations in the constitutional amendment.

Now, there be will be some to say, Why do we need this? We just adopted the Dole resolution a couple of hours ago. The Dole resolution agrees with the Reid amendment that Social Security is important and deserves to be protected. But, Mr. President, the Dole amendment is only a fig leaf and, I might add, a very small and a very transparent fig leaf. It offers little comfort to the millions of Americans who are so concerned about and dependent upon Social Security. What it says to them is clear: Protecting Social Security is not as important as balancing the budget. It says we need a constitutional amendment to balance the budget, but protecting Social Security, the financial security of millions of Americans, is not deserving of that same kind of protection and elevation in our system.

People who say that the Dole provision is enough are basically saying that protecting Social Security is not important enough to actually include in the Constitution.

The people who support the Dole resolution—I voted for it as a prelude to voting for the Reid amendment—but those who say they voted for the Dole resolution so now they do not need to vote for Reid are basically saying Social Security is important enough only to be protected through legislation to implement the balanced budget amendment, legislation that can be adopted and changed virtually overnight by a simple majority vote in the Congress.

What the Dole amendment says to senior citizens and future Social Security recipients is: Trust us, we'll protect you.

We have heard that one before. We have taken a number of important steps over the past few years to protect Social Security from abuse. In 1990, we took it off budget. This past year, we passed legislation to make Social Security an independent agency, so as to insulate it from politics and other programs. If we fail to specifically exempt Social Security from the proposed balanced budget amendment, we will effectively put Social Security back in the budget, and this would be a great step backwards.

So, Mr. President, those who support the Dole amendment and say now they do not have to support the Reid amendment are sort of like a used car salesman that says to a person buying a used car: Well, you don't need a warranty, just trust me. If anything happens to the car, just trust me, but you don't need a warranty. Just as none of us would do that and plunk down cold hard cash to buy something without some kind of warranty, we should not buy just the Dole amendment. We have to pass the Reid amendment to, once and for all, say to the people of this country that Social Security is so important, so important a part of our social and economic system that it deserves to be in the Constitution of the United States.

So let us do the right thing. Let us put our commitment into writing. Let us adopt the Reid amendment and really protect Social Security.

Mr. President, if the proponents of the balanced budget amendment are really serious—if they are really serious, as I am—about passing and getting it out into a form the States can support, then they ought to support the Reid amendment.

I have heard some rumors around here—and I am sure it comes as no surprise to anyone; I have not heard it said in any debate, but I am going to say it—I have heard it said around here that some of our friends on the other side of the aisle, some of the Republicans, are kind of secretly hoping that this does not pass because if it does not pass, then they can blame Democrats for not passing an amendment to balance the budget and use it in upcoming campaigns.

I hope that is not true, but it has been said around here, and I have heard it. I am sure everyone else has heard it, too. I hope that is not the case.

So I say to my friends on the other side of the aisle, especially those who rushed to support the Dole amendment, the fig leaf, if you really want to pass a constitutional amendment to balance the budget, you ought to support the Reid amendment. There are many in this body who, if the Reid amendment is adopted to exempt Social Security from the balanced budget amendment will then vote for the constitutional amendment to balance the budget, and I think then there would clearly be the votes to pass it.

I have heard, again, that there are some games being played. Then again, if the Reid amendment can be defeated, the balanced budget amendment will be defeated and it can be used as a campaign issue. Like I say, I hope that is not true. It is being said around here. We all know it.

So I say to those who like me are truly serious about having a balanced budget amendment, you ought to support the Reid amendment and do not in any way think that by supporting the Dole resolution that the elderly of this country are going to be fooled. There is not a smarter, more intuitively sage voter or citizen than our senior citizens. They have been around the block. They have watched us over the years. They know what happens in this place when Social Security gets a surplus and becomes very tempting to use to balance the budget. They are not going to be fooled by a fig-leaf vote for the Dole amendment.

I say to those who are really, truly serious about, A, protecting Social Security and, B, getting a constitutional amendment to balance the budget, I invite them to support the Reid amendment.

With that, I yield the floor.

Mr. CAMPBELL. Mr. President, I would like to take this opportunity to respond to the amendment introduced by my friend, the Senator from Nevada, Senator REID, and my other distinguished colleagues on this side.

Social Security, as well as Medicare, has been one of the most successful Government-run programs in the history of this country. Every hard-working, tax-paying American participates in these programs—we all have a vested interest in the Social Security program whether we are present or future beneficiaries.

As it stands now, Social Security is set to go bankrupt in 2029. Only a few years ago, the Social Security program was projected to go broke in 2036.

I acknowledge the fact that Social Security may be on the caboose of this balanced budget train because of its current surplus versus other more problematic programs like Medicare and Medicaid, but this program is still connected to the budget as a whole.

This Senator believes Social Security is vital to a high quality of life for all Americans. It is my belief that the Senators who are offering this amendment are doing so because they, too, believe Social Security is vital to our Nation.

There are indications that an exemption for Social Security is the only way to get the balanced budget amendment through the Senate. As a supporter of the balanced budget amendment, I hope that is not the case. Even so, to keep one of the largest programs in our country out of the balanced budget amendment discussion is fiscally irresponsible and wrong.

It's wrong because it would provide constitutional protection to a single statutory program—Social Security. The Constitution should not be used for this purpose. There are sound reasons to consider ways to keep Social Security solvent beyond 2029 in the coming years. Codifying Social Security in the U.S. Constitution prevents Congress from considering anything that may in fact be intended to preserve Social Security for the future.

The Constitution is not the place to set budget priorities, nor to enshrine statutes passed by Congress. Congress can exempt Social Security through statute.

I would also ask why not, if Social Security, any other worthy program? The argument that Americans have paid into Social Security and should not be denied getting those benefits rings hollow when we all know for a

fact that a majority of current and past retirees are receiving or will receive far more in benefits than what they paid into Social Security plus interest. Americans also pay into a variety of very good and worthy programs as well, in the form of taxes. Should those worthy programs also be exempted using that kind of argument?

Keep in mind that the balanced budget amendment does not specify where the cuts will take place. This language only forces Congress to balance the budget by the year 2002. Year after year, Congress will have the authority, should this measure pass, to choose what cuts will come from what programs. Social Security would not necessarily have to be cut. This hype we are getting about how necessary it is to have a Social Security exemption in order to preserve benefits is driven by powerful lobbying groups and is unjustified. You and I know that Congress will not vote to cut Social Security benefits to those who need those benefits. There may be trimmings of benefits for the wealthiest of Americans, but we are not about to vote to deny benefits to the millions of Americans who rely on Social Security as their only source of retirement income. So a constitutional exemption is not necessary.

To prioritize which program or programs are worthy of exemption in the balanced budget amendment will only chip away, piece by piece, the value of a balanced budget amendment and pit one program against another.

Let me take just a few more minutes and read to you a couple letters I have received this month from Coloradans regarding the treatment of Social Security and Medicare, the two largest entitlement programs in our Federal budget. Take for example,

Donald Kynion, from Walsenburg, CO, who says ''I feel you should do what is best for the country. If changes in Social Security and Medicare are necessary then make them. Cut spending and too much government!''

Or listen to 72-year-old Edith Seppi from Leadville, CO, who says ''I hope you will be fair to all Americans and pass legislation that will cut the debt, even if we all must be a part of the cuts. I hope interest groups will not control the decisions you make. I hope you do what you believe is best for our country. So, count me in on the side that says do the best that you can.''

Doing the best that we can, is not allowing certain privileged programs to be exempt from this difficult task of balancing our budget.

If a family was forced to balance their budget for the month, could they be successful by omitting their mortgage payments? Where should this family then get the money to make this payment? Where then should Congress find the funds to pay the baby boomers when they retire?

I beg my colleagues not to exempt any program, no matter how successful or useful it is to us, from the balanced budget amendment. If we are forced to balance the budget, all programs on this train, whether they are Medicare, veterans pensions, unemployment compensation, SSI, and Social Security, will have a chance for a better tomorrow if we balance our budget today.

The balanced budget amendment gives this country hope for a better quality of life further down the tracks. Let's not derail this effort.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I would like to address the underlying amendment, the basic resolution seeking to amend the Constitution of the United States to put into the Constitution a provision requiring a balanced budget.

In my view, amending the Constitution would be economically unwise and constitutionally irresponsible. The amendment would have the very substantial risk of promoting economic instability, retarding economic growth and shifting the basis of our democracy from majority to minority rule.

Every time you talk about the problems connected with the implementation of this amendment, things get very fuzzy around here, but I think it is clear that we are inviting fiscal paralysis or court intervention in the conduct of economic policy, or both.

I wish to address two concepts that I think are very important in thinking about this amendment to the Constitution to require a balanced budget. One is the argument that is made and drawing a supposed analogy with the States that State and local governments have to balance their budgets; businesses have to balance their budgets; individuals have to balance their budgets; why does not the Federal Government operate under the same constraint?

Now, not only is this argument wrong factually—most State and local governments actually run deficits if they use the accounting principles which are used to compute the Federal budget—but this argument also fails to recognize the different responsibilities of the Federal as opposed to the State and local governments with respect to the overall functioning of the economy.

The State analogy is superficially attractive. Most States have some form of balanced budget requirement, either statutory or constitutional. But it needs to be clearly understood that many States maintain capital budgets which are not subject to the balancing requirement. Others have developed off-budget funding mechanisms to circumvent the balance requirement, or they use accounting rules which count some borrowing as a form of revenue for the balancing requirement.

Official data on the debt incurred by State and local governments gives a very different picture from this assertion that the States run balanced budgets. This chart shows that State and local government debt has been growing year by year. This chart begins in 1972 and runs out here to 1992, the amount of borrowing has increased steadily since 1972..

Now, how can this be? Everyone says State and local governments have to balance their budgets. Yet the amount of State and local debt has been on the upswing. In fact, we had a hearing before the Joint Economic Committee. Two Governors testified that having a balanced budget requirement in their State which they had to adhere to assured them a good credit rating.

Of course, the question then is why is a good credit rating relevant to you if you are required to run a balanced budget? They need a good credit rating because they do not run a balanced budget. They have a capital budget which they fund by borrowing. So they acknowledge that the balance requirement for the budget is only on their operating budget and that they make active use of a capital budget for which borrowing is allowed.

Now, this proposal before us makes no provision in the Federal accounting regime for a capital budget. It, in effect, would require the Federal Government every year to balance receipts with outlays, and it makes no provision whatever for what in most places is treated as a capital budget. Not only do State and local governments borrow for investment; the same thing is true of businesses and individuals. I could show you a similar chart geared to each of the major corporations in this country which would show that their amount of outstanding debt had increased over the years because they make prudent borrowing in order to enhance the investment capacity of their business and in order to be in a better position to compete.

Individuals do not balance their budgets every year. They run huge deficits in the year they buy a home or a car because they borrow in order to fund it. Yet everyone regards it as a prudent and reasonable practice to borrow on a capital debt, the use of which you then have over an extended period of time and to pay back over the lifetime of that capital asset the amount that you have borrowed and the interest charges upon it. Then you get the use of the capital asset now, in the present, and you amortize its use over time.

That is how people buy houses. The only people in the country who could afford to buy houses, if they were required to do it under the kind of regime you want to impose on the Federal budget, would be the very wealthy, who are in a position to pay for it out of their flow of income. The overwhelming percentage of people in this country are in no position to do that, and of course, what they do is they borrow. They incur a large deficit in the year they make the purchase, but they set it up with a schedule over time in order to make the repayment. As long as the amount they are borrowing is reasonably related to what their income is and their ability to repay it,

everyone regards that as a wise and prudent policy to follow.

So the first point I wish to make is that the very concept of a balanced budget amendment is flawed in the sense that we do not have a capital budget at the Federal level. This requirement would require the Federal Government to fund capital expenditures in the operating budget, which, as I pointed out, is not done by State and local governments, it is not done by businesses, and it is not done by individuals.

Now, let me turn from this flaw in terms of not providing for a capital budget to address the fact that it does not allow for the workings of what is called countercyclical fiscal policy. Countercyclical fiscal policy is the effort to ameliorate the ups and downs of the business cycle. The fact is, that in the current budget framework we automatically try to offset the economic downturn. The deficits automatically increase because revenues decrease and the payout of unemployment insurance, food stamps, and other income stabilizers increase. If, in fact, in an economic downturn you try to balance the budget, you would only contribute to the downturn. You would make it worse. You would have deeper cycles of boom and bust. And that, of course, is what occurred throughout a good part of our history.

This chart shows the percentage change in our gross national product, beginning in 1890 and coming forward to today.

What this chart shows—and I think it is very important—is that after World War II we put into place what we called automatic fiscal stabilizers. We broke out of that pattern of thinking where we tried, when we went into a recession or an economic downturn, to balance the budget, thereby driving the economy even further into downturn.

That is what we used to do. And you can see when we tried to balance the budget during recessions we had tremendous fluctuations that took place in the economy. We had these huge swings up and down, and the downturns would go very deep.

During the Great Depression negative growth was 15 percent. As those who have read history know, it was an incredible time in this country. People were selling apples on the street corner, grass was growing in the streets, the wind was whistling through deserted homes in the rural areas of our country. We had other downturns where we had 8-, 10-, 12-percent negative growth in the course of the cycle.

Now, what has happened in large part as a consequence of these fiscal stabilizers is we have to be able to ameliorate the huge swings of the business cycle.

We still get the ups and downs, but they do not have the wild gyrations with all extremely harmful consequences. In fact, since the economic stabilizers have been in place we have rarely gone into a negative growth experience. Most of the fluctuations take place above the negative growth line. So while we get the ups and downs, we still manage to keep it within the positive growth range.

A rigid balanced budget requirement would have its most perverse effect during recessions. It would require the deepest spending cuts or tax increases in recessions, when revenues automatically fall far short of expenditures. We have learned over these last 50 years, as this chart demonstrates, to be more flexible with fiscal and monetary policy in responding to business cycle downturns. As a result, we have experienced less violent downturns than before. This chart clearly illustrates the moderation of downturns that have accompanied the more flexible fiscal policy of roughly the last 50 years.

Just this week, the Chairperson of the Council of Economic Advisers, Laura Tyson, wrote an op-ed piece entitled ''It's a Recipe for Economic Chaos,'' speaking on the proposal to amend the Constitution to require an annual balance budget. I want just briefly to quote some parts of that article.

Mr. President, I ask unanimous consent the full article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SARBANES. Ms. Tyson says:

> Continued progress on reducing the deficit is sound economic policy, but a constitutional amendment requiring annual balance of the federal budget is not. The fallacy in the logic behind the balanced budget amendment begins with the premise that the size of the federal deficit is the result of conscious policy decisions. This is only partly the case. The pace of economic activity also plays an important role in determining the deficit. An economic slowdown automatically depresses tax revenues and increases government spending on such programs as unemployment compensation, food stamps and welfare.

Let me just comment on that. As she points out, an economic slowdown automatically brings about an increase in the deficit because you lose tax revenues and you make payments out of the Treasury in terms of income support programs.

She goes on to note, then:

> Such temporary increases in the deficit act as ''automatic stabilizers,'' offsetting some of the reduction in the purchasing power of the private sector and cushioning the economy's slide. Moreover, they do so quickly and automatically, without the need for lengthy debates about the state of the economy and the appropriate policy response.

In other words, the economic downturn adjusts automatically. You do not have to wait until you are deep into the trough and you recognize that you are deep in the trough to take some action to do something about it. This proposal has a waiver provision in it which requires an extraordinary 60 votes, which of course raises the question: Would you be able to get that vote even if you were in a difficult circumstance? But even if we assume you can, by the time you are aware and perceive that you are in a difficult circumstance, you are well into your downturn. The downward momentum has begun.

The automatic stabilizers check that downward momentum the moment it begins to happen. So they act as a counterbalance. Not completely, because we get the ups and downs. But, as you can see over the experience of the last 50 years, we have markedly improved this performance and we no longer had the very deep dips into negative growth that we used to experience.

These deep dips into the negative represent people out on the street, unemployed. These represent the foreclosures on farms and on homes. These represent the bankruptcy of businesses, small and large. That is what these deep dips represent. They are not just lines on a chart. They represent a lack of activity out in the economy. As I have indicated, we have been able to check a good part of this over the last 50 years.

As Dr. Tyson goes on to say in her article:

> A balanced budget amendment would throw the automatic stabilizers into reverse. Congress would be required to raise tax rates or cut spending programs in the face of recession to counteract temporary increases in the deficit. Rather than moderating the normal ups and downs of the business cycle, fiscal policy would be required to aggravate them.

Let me just repeat that:

> Rather than moderating the normal ups and downs of the business cycle, fiscal policy would be required to aggravate them.

So Mr. President I hope people will think long and hard before we put ourselves back in a box that will return us to the approach that was taken before World War II. This problem extends back into the 19th century. This chart begins in the late 1800's, where we had these tremendous boom and bust swings in the economy, and we paid a very heavy price for that from time to time.

We have a situation now in which these automatic stabilizers work as we go into an economic downturn in order to help ameliorate the volatility of the economy and, as a consequence, we have experienced far less violent downturns in the last 50 years.

Finally, I want to just make reference to the assertions that are made that we can simply waive the balanced budget requirement. We are going to waive the Constitution. That is an interesting concept. There are no other provisions in the Constitution that are waivable. No one talks about waiving the Bill of Rights. I do not quite know how you have waivable principles in your Constitution which is, after all, designed for a statement of fundamental principle, not for matter to be waived away.

We do not put substantive policy into the Constitution. This is what will be

happening here. In order to counter that problem, they say we are going to provide for a waiver through a three-fifths override provision. The waiver provision says this requirement is not an enduring principle, it is a matter of current judgment. As I say, no other constitutional principle—free speech, individual rights, or equal protection—can be waived by a three-fifths vote.

Finally, such a provision would permanently shift the balance of power from majorities to minorities in our society, violating the democratic principles upon which our Government is based. A three-fifths supermajority effectively gives control over fiscal policy to a minority in either House, not what the framers of the Constitution had in mind when they established our democratic form of Government.

I just want to quote from James Madison—he is the father of our Constitution—with respect to supermajorities.

This proposal before us has a three-fifths requirement, a 60-vote requirement. It is not three-fifths of those present and voting, it is a flat 60-vote requirement. It also has a requirement of 51 votes—again, not a majority of those present and voting—but of 51. You actually have to produce 51 affirmative votes to invoke other provisions.

Madison, in Federalist Papers No. 58, in addressing questions about supermajorities says, and I am now quoting in Federalist No. 58:

> It has been said that more than a majority ought to have been required for a quorum; and in particular cases, if not in all, more than a majority of a quorum for a decision. That some advantages might have resulted from such a precaution cannot be denied. It might have been an additional shield to some particular interests, and another obstacle generally to hasty impartial measures. But these considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or, in particular emergencies, to extort unreasonable indulgences.

That was James Madison's view of requiring extra supermajorities. In fact, the founders of the Constitution were very careful. They had this debate. It was an extended part of the debates in Philadelphia at the Constitutional Convention in the summer of 1787, and again it was the subject of debate in the ratification process across the States. But in those deliberations in Philadelphia, the founders were very careful. They required supermajorities in certain very, very limited instances. Of course, amending the Constitution itself was one of those very limited instances. Impeachment was another. Ratification of treaty was yet another. But I think it is very important to appreciate what Madison's perception was, and it was this perception that was reflected in the basic document.

I am not going to discuss today the danger that the courts would come in and intervene to implement this requirement although I think it is a very real danger, and I know Robert Bork and other scholars have written expressing that very concern.

We have amended the Constitution only 27 times in the history of the Republic. The first 10 amendments took place almost immediately. Those were the Bill of Rights. So I think it is accurate to say that we have amended it literally 17 times over the life of the Republic, over 205 years.

We have been very careful about amending this Constitution. It has been done only in certain, very limited instances, and I think in situations in which we had a very clear view of what the consequences would be. We lowered the voting age. That was a very clear provision. We provided for the direct election of Senators by the people rather than by the States. We changed the term dates for the President and the Congress. But the basic document has held steady throughout the more than 2 centuries of our Republic's history.

But putting this balanced budget requirement in the Constitution will undercut countercyclical economic policy, the very policy that has led to this very substantial improvement in economic performance in the post-World War II period. It would burden the Constitution and the courts with issues which should probably be decided by the President and by the Congress.

I think we need to be very careful. The courts have in some instances assumed jurisdiction over what I think are essentially executive and legislative policy matters. They have done that with respect to prison systems, for instance, in some States in the country, and there is a very real possibility that under this proposal they would be assuming an extended authority with respect to budget and fiscal decisions, decisions which should properly in my view be decided by the executive and the legislative branches interacting as provided for in the Constitution. In addition, it would shift the principles of our democracy from majority to minority rule.

The Constitution is a relatively brief general statement defining the political and civil liberties of our citizens and the defining of the framework of our Government. It does not establish any specific domestic policy or foreign policy or economic policy. We do not put the substance of policy into the Constitution out of a belief that you make substantive policy through the interaction of the Congress and the President.

Because of its focus on universal principles, the Constitution has endured for over two centuries despite the dramatic changes in American society.

I think it is clear that we should proceed with great caution any time we come up against amending our basic charter.

The desire to put a balanced budget amendment into the Constitution is frequently justified in the name of political expediency. It is put forward as a way of supposedly addressing the problem of the deficit. I have voted here on occasions for both spending cuts and tax increases in order to bring about a deficit reduction. And I have a concern about placing on future generations the consumption of the current generation. I have a different view when we talk about capital investment, as I indicated at the outset, because I think a very prudent case can be made as to why it is a sensible and wise economic policy to borrow in order to purchase a capital asset which will then be used over an extended period of time.

Enacting a constitutional amendment itself will not bring about that deficit reduction. The deficit reduction will come about through the actual enactment of measures involving expenditures and revenues, as we did in August 1993 when we passed the deficit reduction program which has worked quite well and has brought down the deficit in a very significant and substantial way.

I just want to come back to this point of the fluctuation for a moment. It is very important to understand that if the economy starts downward, and we do not try to offset that as we have done by these fiscal stabilizers, the economy will worsen. As it worsens, your deficit grows. If you take more and more extreme measures to try to bring the deficit under control during an economic downturn, you only drive the economy further down which means your deficit only gets larger. So the problem compounds itself. You in effect end up working at counterpurposes. No one wants to go back to this situation that we used to confront before economic stabilizers were in place. But I say to my colleagues, we have to be exceedingly careful. We may be throwing ourselves right back into the difficulties that we confronted earlier in this century and which were particularly marked with the Great Depression.

Mr. President, you address the deficit by dealing with real measures to address spending and revenues. We ought not to lock into the Constitution a provision which is faulty in its concept since it lacks a capital budget, which all the State and local governments have, and which is faulty in not providing for a way to address economic downturns and, therefore, it carries the risk with it that the economy would be precipitated into very deep downswings in the economic cycle, and we would pay the price across the country of people out of work, the mortgages on homes being foreclosed, small farmers losing their farms, and small businesses going bankrupt.

Mr. President, I yield the floor.

EXHIBIT 1

[From the Washington Post, February 7, 1995]

IT'S A RECIPE FOR ECONOMIC CHAOS

(By Laura D'Andrea Tyson)

Continued progress on reducing the deficit is sound economic policy, but a constitutional amendment requiring annual balance of the federal budget is not. The fallacy in the logic behind the balanced budget amendment begins with the premise that the size of the federal deficit is the result of conscious policy decisions. This is only partly the case. The pace of economic activity also plays an important role in determining the deficit. An economic slowdown automatically depresses tax revenues and increases government spending on such programs as unemployment compensation, food stamps and welfare.

Such temporary increases in the deficit act as ''automatic stabilizers,'' offsetting some of the reduction in the purchasing power of the private sector and cushioning the economy's slide. Moreover, they do so quickly and automatically, without the need for lengthy debates about the state of the economy and the appropriate policy response.

By the same token, when the economy strengthens again, the automatic stabilizers work in the other direction: tax revenues rise, spending for unemployment benefits and other social safety net programs falls, and the deficit narrows.

A balanced budget amendment would throw the automatic stabilizers into reverse. Congress would be required to raise tax rates or cut spending programs in the face of a recession to counteract temporary increases in the deficit. Rather than moderating the normal ups and downs of the business cycle, fiscal policy would be required to aggravate them.

A simple example from recent economic history should serve as a cautionary tale. In fiscal year 1991, the economy's unanticipated slowdown caused actual government spending for unemployment insurance and related items to exceed the budgeted amount by $6 billion, and actual revenues to fall short of the budgeted amount by some $67 billion. In a balanced-budget world, Congress would have been required to offset the resulting shift of more than $70 billion in the deficit by a combination of tax hikes and spending cuts that by themselves would have sharply worsened the economic downturn—resulting in an additional loss of 1¼ percent of GDP and 750,000 jobs.

The version of the amendment passed by the House has no special ''escape clause'' for recessions—only the general provision that the budget could be in deficit if three-fifths of both the House and Senate agree. This is a far cry from an automatic stabilizer. It is easy to imagine a well-organized minority in either House of Congress holding this provision hostage to its particular political agenda.

In a balanced-budget world—with fiscal policy enjoined to destabilize rather than stabilize the economy—all responsibility for counteracting the economic effects of the business cycle would be placed at the doorstep of the Federal Reserve. The Fed could attempt to meet this increased responsibility by pushing interest rates down more aggressively when the economy softens and raising them more vigorously when it strengthens. But there are several reasons why the Fed would not be able to moderate the ups and downs of the business cycle on its own as well as it can with the help of the automatic fiscal stabilizers.

First, monetary policy affects the economy indirectly and with notoriously long lags, making it difficult to time the desired effects with precision. By contrast, the automatic stabilizers of fiscal policy swing into action as soon as the economy begins to slow, often well before the Federal Reserve even recognizes the need for compensating action.

Second, the Fed could become handcuffed in the event of a major recession—its scope for action limited by the fact that it can push short-term interest rates no lower than zero, and probably not even that low. By historical standards, the spread between today's short rates of 6 percent and zero leaves uncomfortably little room for maneuver. Between the middle of 1990 and the end of 1992, the Fed reduced the short-term interest rate it controls by a cumulative total of 5¼ percentage points. Even so, the economy sank into a recession from which it has only recently fully recovered—a recession whose severity was moderated by the very automatic stabilizers of fiscal policy the balanced budget amendment would destroy.

Third, the more aggressive actions required of the Fed to limit the increase in the variability of output and employment could actually increase the volatility of financial markets—an ironic possibility, given that many of the amendment's proponents may well believe they are promoting financial stability.

Finally, a balanced budget amendment would create an automatic and undesirable link between interest rates and fiscal policy. An unanticipated increase in interest rates would boost federal interest expense and thus the deficit. The balanced budget amendments under consideration would require that such an unanticipated increase in the deficit be offset within the fiscal year!

In other words, independent monetary policy decisions by the Federal Reserve would require immediate and painful budgetary adjustments. Where would they come from? Not from interest payments and not, with such short notice, from entitlement programs. Rather they would have to come from either a tax increase or from cuts or possible shutdowns in discretionary programs whose funds had not yet been obligated. This is not a sensible way to establish budgetary priorities or maintain the health interaction and independence of monetary and fiscal policy.

One of the great discoveries of modern economics is the role that fiscal policy can play in moderating the business cycle. Few if any members of the Senate about to vote on a balanced budget amendment experienced the tragic human costs of the Great Depression, costs made more severe by President Herbert Hoover's well-intentioned but misguided efforts to balance the budget. Unfortunately, the huge deficits inherited from the last decade of fiscal profligacy have rendered discretionary changes in fiscal policy in response to the business cycle all but impossible. Now many of those responsible for the massive run-up in debt during the 1980s are leading the charge to eliminate the automatic stabilizers as well by voting for a balanced budget amendment.

Instead of undermining the government's ability to moderate the economy's cyclical fluctuations by passing such an amendment, why not simply make the hard choices and cast the courageous votes required to reduce the deficit—the kind of hard choices and courageous votes delivered by members of the 103rd Congress when they passed the administration's $505 billion deficit reduction package?

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington [Mr. GORTON] is recognized.

Mr. GORTON. Mr. President, the debate over the relationship between Social Security and the balanced budget amendment seems now to be drawing to a close. The truly vital vote on the subject was cast just a few hours ago, evidencing the attention this Congress will pay to the security of our Social Security system.

Early next week, I believe the Reid amendment will be tabled. A mention of Social Security will not be added to the Constitution of the United States. I believe that both sides in this debate share a deep and sober dedication to the viability of our Social Security system. I am delighted that we had an opportunity earlier today to vote overwhelmingly our dedication to seeing to it that none of the promises made to our senior community are repudiated in any respect whatsoever.

Now it is only required of us that we deal decisively with this proposed addition to the Constitution on the subject of Social Security and go on to passing a balanced budget itself, the prospects for which, it seems to me at least, have increased dramatically during the course of this week.

Despite the dedication of those who have proposed this addition to the Constitution, in fact, adding this reference to Social Security to the Constitution of the United States would clearly undercut the very security they say they seek. Once you take this large, vital portion of the money which is collected by the Government in the United States and distribute it to beneficiaries by the Government of the United States and place it outside of the constitutional limitations on spending, which we propose, you run the overwhelming risk that some new Congress, faced with the unpleasant task of balancing the budget without ever being able to count Social Security, would simply lower the Social Security payroll tax and substitute for it a new general fund tax to balance an incomplete budget, while at the same time greatly risking the sanctity and the security of the Social Security trust fund.

Or perhaps an equally imaginative Congress, faced with the same difficult choices but with this huge loophole, will simply define other programs for the benefit of the elderly; for veterans; or for that matter, for children; as Social Security, and have them paid for out of the trust fund, therefore saving money on the balance of the budget and making the tasks of those Members of Congress easier than they otherwise would have been.

The common thread running through these and other similar examples, Mr. President, is the fact that we do not treat the budget of the United States as a unitary whole. We give future Members of Congress the ability overwhelmingly to play games—games which have nothing to do with the amount of money the United States is taking in in taxes and fees, or alternatively with the amount of money that is going out, being spent. A simple

redefinition of the tax, a simple redefinition of a spending program without any change in substance, could manipulate the impacts of the balanced budget amendment. Almost certainly, any such manipulation would be to the detriment of the Social Security trust fund.

So, Mr. President, rather than buttressing our promises with respect to Social Security, the Reid amendment, over a period of years, will seriously undercut them. Those who drafted and those who most enthusiastically supported the motion of the distinguished majority leader, Mr. DOLE, on this subject are, by and large, those in this body like myself who, 2 years ago, repudiated the President's attempt to limit or even eliminate certain Social Security cost-of-living adjustments. They were those, like myself, who fought—unfortunately, unsuccessfully—against a 70-percent tax increase on a number of Social Security recipients' incomes just 2 years ago. They are, by and large, the people who believe, as I do, that we should reduce or eliminate the earnings test on the earned income of Social Security recipients and encourage them to keep on contributing to our society.

Those of us who wish to protect Social Security by defeating the Reid amendment, who have shown our dedication to Social Security by our enthusiastic support of the Dole motion, and who have shown that in past years by our actions with respect to Social Security are truly those who will protect those whose lives depend on the security and sanctity of that system.

So, as I have said, Mr. President, I believe we are close to the end of this debate and that this debate will end, as it should, in retaining the balanced budget amendment in its original and pristine form, and at the same time providing the highest degree of protection for the Social Security system itself. As a consequence, we will, once again, be back debating the fundamental issue which has been before this body: Are we for the status quo? Do we think the system which has led to a $4 trillion debt, which promises us, through the President's budget, $200 billion, more or less—generally more—in deficits forever; that this is a system with which we should be content; that generalized promises of doing better in the future are all that is required? Or, Mr. President, will we be found with those who say the system is broken down and that only outside discipline, only a discipline which can be provided effectively by the Constitution of the United States itself, will cause Presidents and all Members of Congress, Republicans and Democrats, liberals and conservatives, to operate under the same rules and will require them to exercise the discipline necessary to balance the budget of the United States?

Those who are comfortable with, those who favor, the status quo, those who think that the job that has been done is a fine job will align themselves with the opponents to this constitutional amendment. Those who feel that we need to act differently, that we need to operate under different rules, that we need to be a part of a constructive resolution to do the job this country demands of us will vote in favor of House Joint Resolution 1 and submit this constitutional amendment to the people of the States.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I ask unanimous consent that I be allowed to proceed as if in morning business for not to exceed 10 minutes for the purpose of introducing a bill and making a brief explanation of it.

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

The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair.

(The remarks of Mr. EXON and Mr. DORGAN pertaining to the introduction of S. 387 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

(Mr. COCHRAN assumed the Chair.)

Mr. DORGAN. Mr. President, I would like to turn now to the Reid amendment and the constitutional amendment to balance the budget.

Senator REID has done, I think, a great service for this institution to raise this issue, and it is a critically important issue. This is not a debate about whether we should balance the budget. Everyone here in this Chamber understands our responsibilities. This is not a debate about ''whether''; it is a debate about ''how'' we address this crippling fiscal policy problem in this country.

Some have said that there is great uncertainty and it is hard to estimate what a deficit might be. I heard the Senator from Nevada earlier, I believe probably yesterday, in which he talked about one of the reasons for the uncertainty is that we do not always know what will happen to change the deficit or change the receipts or change expenditures.

He mentioned the Federal Reserve Board. Actually, the Federal Reserve Board has increased interest rates seven times in a year. Seven times the Open Market Committee—paradoxically it is called the Open Market Committee, though it meets in a closed room, behind closed doors. I call it the ''closed market committee.'' They had a national mandate for all Americans. What does it do to the Federal budget? It increases the cost of the Federal budget.

I just received some information that I had asked be developed by a number of sources, and I would like to share it with the Members of the Senate, that respond to some of the points that the Senator from Nevada made.

First, let me talk about the national costs. The Federal Reserve Board-imposed interest rate hikes in the last year or so have been the following:

Home mortgages will be increased by $35 billion over the next 5 years. That is what people will pay additional on their home mortgages. In other words, the Fed has said to people out there who own homes, we will send you a bill for $35 billion more dollars. No democracy there. There is no debate about that. That is what the Fed said: We will send this bill.

Small businesses will pay about $96 billion more in the next 5 years as a result of the seven interest-rate increases.

Home equity and credit card loans will increase $86 billion over the next 5 years.

And especially, the point the Senator from Nevada was making, the Federal Reserve Board by its action has increased the cost to the Federal Government during this coming 5-year budget period, has increased Federal spending by $171 billion. How did it do that? The Federal Government will pay now $171 billion more to finance its debt than it was estimated to have to pay under the old interest rates.

So, when we talk about balancing the budget in revenues and expenditures, here is something the Fed did that says we will ask the Federal Government to assume $171 billion in higher deficits over the next 5 years because we are imposing higher interest rates.

I suppose one could say this ought not be criticized if one thought that the Fed was doing it in a justifiable way. The fact is, there is no credible evidence of inflation on the horizon. They are fighting a phantom, nearly invisible, opponent and, in my judgment, they simply believe they are a set of human brake pedals whose sole design is to bring the economy to a standstill. They apparently believe their mission in life is making sure unemployment never goes below 5 percent and making sure economic growth never goes above 3 percent.

I have no idea how they came up with those economic theories. I have no idea which schools teach that. Obviously, they collected it from somewhere and they are able to impose it because the Federal Reserve Board is unaccountable to virtually anyone at this point.

The point the Senator from Nevada made is that some things are very hard to predict. And $171 billion added to the deficit in 5 years is hard to predict, especially if no one is able to determine what the Federal Reserve Board is going to do.

I feel very strongly, as I think do many Republicans and Democrats in this Chamber, that if you were to rank the challenges we face in this country, near the top of that list—maybe at the top of the list—is the challenge of bringing this crippling fiscal policy problem under control. These budget deficits threaten this country's future. It is very simple. Everybody says it. Nobody ever does much about it.

All of us—I say us—want to appear to be the ones to have the answer and the

others do not. The conservatives especially say, ''We're, the conservatives, and its the other people's fault.'' We say, ''Gee, it's—.'' It is everybody's fault. Republicans and Democrats, Presidents and Congresses, have been unable to come to grips with a budget which links entitlement programs to inflation so they continue to increase automatically, and links taxes to inflation the other way so it holds them down and you have a disconnection; therefore, you have very significant budget deficits. And it does threaten this country's future.

So the question we come to the floor with today is, how do we respond? Not whether—how? The Senator from Utah asked the question whether some want to respond to this by raiding Social Security trust funds, a program which, incidentally, does not cause one cent of the Federal budget deficit. This year the Social Security System will take in nearly $70 billion more than it spends, so it is not causing one penny of the Federal budget deficit. That is by design. We want to save by design right now to be able to pay for the baby boomers when they retire.

So the question the Senator from Nevada asks is a simple question: Do those who want to balance the Federal budget want to break the promise and go into the Social Security trust funds, yes or no? It is like the old binary system, you have two choices, yes or no. It is not difficult. It is not rocket science. One can answer that yes or no.

I want to tell a brief story about something that happened in North Dakota in the year 1867. In the year 1867, the Philadelphia Inquirer, a newspaper in Philadelphia, published a story in their newspaper about how the military garrison at Fort Buford, ND, had been wiped out. This Philadelphia Inquirer story said the military garrison under the command of Colonel William Rankin up at Fort Buford, northwestern North Dakota, had fallen. Thousands of Indians, they said in their story, swept down and took over that Fort Buford and wiped it out. It said Rankin actually shot his wife rather than let her be captured during that siege. Then it said Colonel Rankin himself, who led that military outpost, was burned at the stake.

President Andrew Johnson, President at the time, came under attack by political foes, and congressional investigations were called, wondering how could this happen in our country. General Sherman said that he was embarrassed that he had no firsthand information about it.

And then later the truth.

The story was an April fool's story. It never happened. It just did not happen. The worst episode at that Fort had been a single cannon shot which had scattered a small band of Indians. So this story about massacre that spread across the Nation, had the President responding, generals embarrassed, and Congress calling for investigations during a time, of course, of slower communications, radically slower communications in 1867, never happened. It was a hoax. The massacre hoax at Fort Buford, ND.

Well, we have seen a lot of hoaxes. The American people have seen a lot of hoaxes. The question, I suppose, one might ask now is: What is the hoax here? Is it a hoax for people to believe that maybe we can deal with these budget deficits and try and respond to our children's future in a positive way, or is it a hoax? Is it just one more empty promise, one more promise to make and then break? That is the question.

I have spoken several times on this, and I have not been one who said if this amendment does not pass, I am going to vote this way or that way on the underlying constitutional amendment. I have avoided saying that for a very specific reason. Because I view this as a very solemn responsibility.

The U.S. Constitution, which I brought to the floor before, is quite a sacred document. It says, ''We the people.'' That is the way it starts, ''We the people.'' Senator BYRD says this is ''my contract with America,'' the American Constitution. It is a pretty good contract to start with and to end with. ''We the people.''

What can ''we the people'' in this country expect from our leaders? The senior Senator from Utah, Senator HATCH, for whom I have great affection, says, ''Let's pass an amendment to change the U.S. Constitution.'' The senior Senator from Maryland, Senator SARBANES, someone for whom I have great respect, says, ''No, that would be the wrong thing to do.'' There is real division in this Chamber about what to do. Not whether it is a good idea to bring into balance the budget deficits, to strive to stop spending money we do not have, often on things we do not need and mortgaging our children's future. It is not a question of whether or a difference on whether, it is a question of how.

I take a look at what we face in the coming years, and I see enormous deficits in the out years, under virtually everyone's proposals.

I have said, and I do not mean this in a pejorative way, the conservatives say, ''Gee, we have this Contract With America and here is what our plan is: We want to increase defense spending, we want to cut taxes and we want to balance the budget.''

And we said, ''Gee, we know you are people of good faith, but could you share with us how that is all possible? Haven't we heard this before? How could you possibly do that? How do you cut your revenue, increase one of the largest areas of spending and balance the budget?''

So we offer a right-to-know amendment, and they say, ''No, we do not want to get into details and make people's legs buckle.'' A Congressman in the other body said, ''If we provide the details, it would make people's legs buckle.'' What would make them buckle? We would like to understand how you get from here to there, because we want to get there as well. We share the desire to get to the same destination.

The question that Senator REID is asking with his amendment is not whether we should pass this constitutional amendment to balance the budget. I have voted for one in the past and may vote for one again. The question he asks is how, in doing so, will the Social Security funds be treated? Will we decide on the one part of the Contract With America to increase defense spending, at a time, incidentally, when the U.S.S.R. is gone, there is no Soviet Union, the Berlin Wall is down, the cold war is largely over? Will we increase defense spending and resurrect Star Wars, one of the goofiest gold-plated weapons systems, so out of step with reality and so unnecessary for this country? Will we do that? And if we do that, how will we pay for it?

Will some decide, ''Well, there is one way to pay for it. There is $70 billion in the Social Security trust funds just this year we raised but did not spend. That is sitting there. We can pay for it that way.'' Except, that is a contract. We said to the American people we are going to collect more from your paychecks in order to save it, and those who say let us balance the budget and increase defense spending and cut taxes, who might look at that Social Security trust funds as one giant golden goose, they, I think, will be breaking a promise with the American people.

So we are saying in this amendment we would like to see if everyone here will pledge to keep the promise.

I would not suggest that there should not ever be changes in the Social Security system. Any changes in that system ought to be made for one reason, and that is to make the system whole. The Social Security system ought to be made viable, and it ought to be made solvent for the long term. But changes in Social Security must be made for its own sake, for the sake of preserving that system, not because someone wanted to do something else to cut taxes or increase defense spending.

We face staggering challenges in this country, and I could list some of them. I do not have to do that at great length. But all of us understand how difficult these challenges are. The challenges include environmental challenges, clean air, clean water. Does anyone here not want clean air to breathe or clean water to drink? Of course, we do. The epidemic of teenage pregnancies among unwed mothers; a welfare system that seems out of whack, has the wrong incentives; a staggering number of people who are left behind in our country.

Two days ago I saw again a press story that said more American children live in poverty today than ever before. More American children are poor than ever before in this country.

These are staggering challenges to which we have a responsibility to respond. The question is, how do we do that? We do that in part with a Federal budget. And there are plenty of needs for which we must make investments. But we must, at the same time we do that, pay for them.

I am not someone who comes here to talk about a balanced budget amendment or the Reid amendment and says, as far as I am concerned, let us fold up the tent and just shut down shop here at the Government.

There are a lot of things we do I am proud of, I care about, and I am going to fight for. A commitment to this country's children is first and foremost. If we are not willing in these discussions, all of these discussions, even as we strive to balance this budget—and I will help do that—if we are not willing to stand up for this country's children, all of us, and say, those of you who are disadvantaged, we are going to give a head start; those of you who need help, we are going to give you an upward bound program; those of you who are hungry, we are going to give you food, we are going to help you find something to eat; those of you who need shelter, we are going to help; those of you suffering abuse—physical abuse, sexual abuse—we are going to help.

Right now there is a place in this country with a stack of files on the floor. As I speak, a stack of files alleging child abuse against young children is lying unexamined because there are not enough people to investigate these charges. Physical violence and sexual abuse files are sitting on the floor. People have alleged that young children are victims, and there is not enough money for those folks out there to investigate them. It just breaks your heart, brings tears to your eyes to hear stories of these kids. And to think somewhere tonight there is a 3-year-old or 4-year-old out there who is going to suffer abuse and someone knew it, because it was complained about before and it did not even get investigated.

My point is this. We must make a commitment to the children in this country. Someone once said 100 years from now it really will not matter how much your income was, it will not matter how big a house you lived in, if the world is a better place because you were important in the life of one child. We can be important in the lives of every child in this country. It is a question of deciding what is important for us. It is important to balance the budget because those children inherit the debt. If we are unwilling to pay for the things we now consume as a country, the children inherit that debt. So it is important to do that.

It is also important with respect to what we spend money on to understand that children come first in this country. This country's future is the future of its children. We are going to have, I think, very substantial debates, fights later this year about what to spend money on.

Let me go back to this issue because it is not an unimportant issue. It is such a clear issue to me. We have people who, at a time when more children are living in poverty than ever before in the history of this country, when we have children who are hungry and homeless, say, well, now is the time for us to rebuild star wars; it is time now; we need a new gold-plated weapons program in defense; we need to build star wars.

I do not even understand what kind of thinking produces that sort of nonsense, but people believe it. Some people do. If they propose it, they will fight for it. And do you know, it is a lot easier to get money for a weapons program, a lot easier to get money to build a weapons program, than it is to get money to try to investigate charges of child abuse. I tried last year to get $1 million to help those people to investigate those charges.

We have to do better than that. We have to change. We have to change with respect to the priorities we decide are important in this country's future, what we invest in, what makes us a good country with a good future. But we also have to change.

The Senator from Utah and others are absolutely right; we have to change, change this stream of deficits that hurt this country. And we can do it. There is nobody better qualified to do it than the American people now today, to start today. And it may be the constitutional amendment is the way to do that. If it ratchets up even with a small percent the chance of doing it, then I think we will have served some good purpose. But not if while serving that good purpose we break another solemn promise of saying we are going to raid the Social Security trust fund to do it.

Some people in here, it seems to me, are afraid to ask for responsible choices from the American people. I think it is reasonable to ask the people to make choices.

Let me give you an example. In this country, we spend nearly $400 billion on gambling. We gamble more in this country than we spend on defense, which is one of the largest items in the Federal budget. So someone says well, gee, if you propose a 1-cent gas tax, people get all upset. Sure, I understand that. But the fact is we must force people to make choices. Some choices are very hard to make. Nobody would ever want to pay an increased tax and no one wants spending cuts in areas where spending benefited them. And yet the solution, it seems to me, is probably going to have to in the long run be both, in one measure or another.

We cannot continue to ignore the problem, and I say to those who bring this to the floor I think they do justice to this country's agenda because it is something we ought to be debating and we ought to force the Congress to deal with it.

I do hope, however, that as we do this we will do it the right way. And the right way, it seems to me, would be, when we vote on Monday on the Reid amendment, to decide to vote yes, to tell the American people we have a number of contracts going on around this country. One is a political contract called the Contract With America. Another is the fundamental contract called the U.S. Constitution, which supersedes it all and has made it all possible.

Under the Constitution we have made a promise, probably one of the most successful promises ever made and a promise that I expect to be kept for decades to come, and that is the promise of Social Security.

The Senator from Nevada I guess mentioned this morning again the story I told yesterday about landing in a helicopter that was out of gas in Nicaragua. I was up in the mountains actually by Honduras, between the border of Nicaragua and Honduras, and discovering up there for the first time what Social Security meant. I was talking to the people, campesinos, and discovered that they do not have Social Security. They have as many children as they can have during the childbearing years and hope that maybe, if the children are lucky enough to grow old, the children will provide for the parents who raised them. If you are lucky enough to have children grow up with you, that is your Social Security. I had not even thought about it before, until that day out in the jungle of Honduras talking to some of the campesinos.

This is an enormously fortunate Nation, to have had some people to make tough choices but to develop approaches that have been very, very good for this country, one of which is Social Security.

I know we had people who, when it was constructed, said, Gee, this is socialism. What on Earth are we doing?

It is not socialism. Not at all. It has been the most successful program, I think one of the most successful programs, in this country's history. It has been there for every generation and will be there for every generation.

Now, some will say, well, why are you doing this? Why do you raise the question of Social Security, Senator REID? The answer is that just today in The Washington Post and the New York Times, once again there are two more references by public officials who say we are simply going to have to adjust Social Security to deal with the budget deficit.

I say to people, if you adjust Social Security, do it to make the Social Security system solvent if it is necessary, but do not ever do it to deal with the operating budget deficit that this country is running because we cannot reconcile our revenue with things we are spending it on other than Social Security. That really, it seems to me, would be breaking a promise.

So just today, again, with two references, one in the New York Times

and one in the Washington Post, again on this subject, it underscores, I think, the need that Senator REID says is foremost here to pass an amendment that simply says when we amend the Constitution that we will continue the promise. The promise is the Social Security system is a trust fund paid for with dedicated taxes, not running at a loss and not contributing one cent to the Federal deficit, and we promise we will not balance the budget by raiding the Social Security trust funds.

I said before I do not ask for three reasons one would not vote for this, just one good reason, one reason someone would decide not to vote for this amendment. The only conceivable reason I can divine is that some way, somehow, someday down the road, someone wants to use this money in order to make it easier to balance the budget. But of course in my judgment that would be breaking a promise.

So, having said all of that, let me again congratulate the Senator from Nevada, Senator REID, and the Senator from Utah. Again, this is a debate we should be having. It is when we should have it. There are a few left who say this does not matter. This matters more than almost anything else because we are spending tomorrow's money today.

I have a 5-year-old young daughter who is going to grow up and inherit a $10 or $12 or $14 trillion debt. Somehow I am going to try to prevent that from happening with every ounce of my energy because it is unfair, unfair to have her do that. So that is what these debates are about.

I appreciate very much the leadership of the Senator from Nevada and I look forward to the vote Monday.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, prior to the Senator from North Dakota leaving the floor, I want to say to him, and to the senior Senator from Utah, and to the American people, I think what has gone on during the last week or so—I should say more than that—what has gone on since we have started this congressional session has been very constructive. We have had some very difficult debates on coverage, unfunded mandates, and now this balanced budget amendment. But I think these debates have been very good. We have debated issues. We have not gotten involved in personalities. We have, on this issue and a number of other issues, a real difference of opinion and we will debate this—as to whether or not there should be an exemption for Social Security—the rest of this day, Monday, and perhaps Tuesday. But this is drawing to a close.

I say to my friend, the manager of the bill, I think this has been, for lack of a better description, a high-class debate. We are, really, talking about issues that are important to the American public. I hope the debate that will transpire the next few hours on this particular amendment will remain constructive and in so doing I think it brings honor to this institution and to the American public.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I rise in support of the balanced budget amendment.

I have always supported a balanced budget. Montanans want a balanced budget. We must listen to the people and give them a balanced budget. The Federal Government must learn to live within its means—just like the middle-class families we all represent. And I now believe a constitutional amendment is the best way to make that happen.

I questioned this amendment in the past simply because I have a reverence for the Constitution. I do not like the thought of amending it to address any subjects beyond the fundamental questions of our rights and responsibilities as citizens.

There are serious, thoughtful arguments against this amendment, arguments on constitutional principle, and arguments based on its practical effects. But I have seen us evade our responsibility too many times.

Rising interest payments and rising spending are denying our children their shot at the American Dream. They are eating away every essential function of the Federal Government. And when presented last year with a chance to solve part of the problem by containing Government health spending, Congress would not do it.

It is time to send the balanced budget amendment on to the States. It is time to let our Governors, State legislatures, and citizens debate the issue and vote on it. It is time to move beyond the amendment, cut waste in Washington and work with the States to set priorities and control spending. If we work together as a country we can do the job. And if we set our priorities carefully we will find the consequences are not so dire as the opponents of this amendment predict.

Let us begin with a look at the problem we face.

Every year, for the past 14 years, we borrowed $150 or $200 billion. In that time, our national debt grew to its present extravagant size of $4.6 trillion. And not only is debt growing, it is growing faster than our economy.

It rises about 5 percent a year, faster than we can expect GDP to grow in the foreseeable future. That means every year, we give up more of our income to pay interest on the debt.

Each year, more tax dollars go not to useful purposes like defense, fighting crime and drugs, education or promoting public health but to commercial and foreign banks. Our fiscal situation is bad already, and our children will take the worst of it.

Last year, for the first time, Federal net interest payments topped $200 billion. Next year it will be $260 billion, $1,000 for every American man, woman, and child. And without emergency action on the deficit, interest payments will be higher every year from here to eternity.

The question, however, is not whether consistent over-borrowing is wrong. Obviously, there are times—in wars, in depressions—when borrowing is not wrong. But to do it year after year, without any emergency, is scandalous.

Last year the economy grew faster than it has in a decade. Any economist would say that years like 1994 are years in which we should run a surplus and retire some of the debt. Instead we borrowed more.

So we now face two questions.

First is the practical question of how to make enough cuts and raise enough revenue to balance the budget. And the second—the more profound question—is how to establish an ethic that says constant, irresponsible overborrowing is simply wrong.

On the practical side, we have made a start with the normal budget process. In 1993 we made a massive cut in the deficit—$486 billion over 5 years.

That has succeeded. You can see the effects already. In the last year of the Bush administration, the deficit was $222 billion. In fiscal year 1994 it was $203 billion. And this year it will be down to $176 billion. As a percentage of GDP, it has not been this low since 1979.

That is a start, but we must do more. And since the 1993 budget passed, I have kept at it. Last year I looked into overspending on Federal courthouses. And I cut $120 million out of the courthouse construction budgets. Further investigation found judges spending taxpayers' money on private kitchens and rosewood paneled offices.

I worked with Senator DeConcini, then the Intelligence Committee chairman, to cut $50 million from the CIA's National Reconnaissance Office, when we caught them wasting money on a building with a fountain and a sauna.

That is all to the good. But there is more waste to cut.

The Army Corps of Engineers insists on building more and more levees at great expenses to the taxpayer—an expensive, backward policy, which turns damaging floods into disasters like the Missouri flood of 1993.

We cut out the supercollider but we still fund giant boondoggles like the $70 billion space station.

We still pay $12 million a year for an absurdity like TV Marti—the weather balloon unsuccessfully beaming dubbed reruns of ''Laverne and Shirley'' to Cuba between 3 and 6 in the morning. I have tried to cut both and I will try again.

And on a broader scale, many in Congress like talking about spending cuts in the abstract more then cutting spending in the concrete. Back in 1984, I joined Senators KASSEBAUM, GRASSLEY, and BIDEN in sponsoring an amendment to freeze all Federal spending across the board for a year. It was

simple—some said simplistic—but effective. We got just 33 votes.

Last year, I was one of just 31 Senators to support Senator BOB KERRY'S amendment to cut over $94 billion in Federal spending. Its cuts in Public Law 480 Food Aid and the honey program meant pain at home in Montana. Means testing for Medicare part B would have made wealthy senior citizens pay a bit more.

But it was fair. It spread the pain equally around the country, and we cannot afford to reject deep, fair cuts like that one again.

I have seen this happen one time too often. And I do not believe it will stop unless we make a clean break with the past and establish a new ethic of responsibility. And I conclude that the only way to establish such an ethic is through a step as dramatic as a balanced budget amendment.

So, while I respect and at many points agree with the arguments made by the amendment's opponents, I will support this amendment to our Constitution. But I will also try to improve it, because in three critical areas it falls short.

RIGHT TO KNOW

First, the amendment is only a statement that the budget must be balanced. It contains no plan of how to do it.

That is also a question of values. In Montana, you look people in the eye and tell them the truth. You do not promise to fill them in later. Our state government is the country's most open and accessible. Our State constitution guarantees the people access to virtually every official document or meeting.

It should be the same in Washington. A ''right to know'' provision, requiring us to spell out a program that balances the budget within seven years, is an essential part of a balanced budget amendment. And without a detailed, specific plan to cut spending, reduce interest rates and raise revenue, experience tells us that this amendment will fail to do the job.

Why do I say that? Because I remember the Gramm-Rudman-Hollings Act I voted for back in 1986. That act required us to meet a set of progressively lower deficit targets every year, ultimately balancing the budget by 1992.

Well, we all know what happened. Because it lacked a plan to meet the targets, Gramm-Rudman became an annual exercise in gimmicks. Payment dates delayed or moved up, savings double-counted, revenue forecasts artificially pumped up and more. It was a well-intentioned failure, and we must not repeat it.

So because of practical necessity as well as old-fashioned Montana honesty, we need full disclosure in this amendment. We have a right to know—the people have a right to know—the consequences before we act. I deeply regret an earlier attempt to add this right to know concept was defeated.

CAPITAL INVESTMENT AND CONSUMPTION NOT THE SAME

Second, when the Federal Government thinks about how to balance the budget, it can take a good lesson from Montana and from some of the other States.

Our State of Montana Constitution requires a balanced budget. But despite that provision, and without violating it in any way, Montana has a State debt of over $400 million.

How did it happen? Simple. Montana balances its operating budget. But Montana can borrow money to support its capital budget, that is the money it uses to build and improve public highways, buildings and water systems. That is straightforward, sensible policy. It is not a shell game. And, of course, it is also how businesses and families manage their budgets.

Middle-class families watch their money. They stay on a budget and do not spend more than they earn on luxuries like restaurants and CD players. But when they make major, essential purchases, like cars and homes, they carefully, within their means, borrow. Virtually nobody pays cash for a house.

Likewise, most successful businesses strictly avoid borrowing to pay for operating expenses. But they do borrow at times to expand their working space. A farmer on the Hi-Line borrows to buy a new tractor. A small envirotechnical company in Butte borrows to buy a computer system. Businesses borrow to buy essential capital goods that raise their productivity and mean more profits in the long run, and they are right to do so.

The right policy for Montana, small business and families is also right for the country. On critically important capital projects, borrowing is sometimes right.

CAPITAL BUDGETING AND HIGHWAYS

For example, Dwight Eisenhower asked our generation to accept a significant debt burden to fund the Interstate Highway System. In 1956, when he signed the bill creating the Interstate, we had a balanced budget. But beginning in 1958 and throughout the 1960's, we ran deficits.

And since 1956, we have spent $130 billion on the Interstate. If we had spent nothing, the debt would be lower by $130 billion plus interest. But Ike made the right decision.

Through I–15, I–90, and I–94, the Interstate System makes Montana a viable part of the modern economy. Across the country, it eased the flow of commerce, created millions of jobs, and brought us untold additional wealth. Compared to these benefits, some additional debt is unimportant.

We are now beginning its successor, the National Highway System. The NHS will do for our children what the Interstate did for us. It will mean jobs, growth, and higher productivity, and if we need to accept some debt to build it, that is appropriate.

Passing this amendment, without ensuring that we can keep a separate capital budget, risks destroying the National Highway System. Towns like Lewistown, Glasgow, and Kalispell will remain isolated. Our farmers will be at a competitive disadvantage. Our businesses will see transportation costs higher than they should be, and that would be sad and foolish.

A separate capital budget will make sure that wise capital investments like the National Highway System are protected. Thus, I intend to support an amendment to give us a capital budget as well as an operating budget, and allow us to make the wise choice Dwight Eisenhower made 40 years ago.

EXEMPT SOCIAL SECURITY

Finally, we come to an item of great sensitivity. That is, how will a balanced budget amendment affect Social Security?

Social Security is not really a government program at all. It is essentially a pension fund. People who work contribute to it throughout their career. The Federal Government manages the money and returns it to them with interest on retirement.

So it is not Federal money. It belongs to the people who pay into the system. It is wrong to count payments from the Social Security trust fund as spending, or to count Social Security contributions as revenue. To do either is really a breach of contract.

Robert Olandt, from Rollins in the Flathead, expresses it perfectly in a letter he wrote me 2 weeks ago:

> Sir, you and I and countless others are or have been paying Social Security premiums with the expectation that this program will, in fact, not be diminished . . . that quality of life may be preserved as we enter later maturity. Just getting old is bad enough. There has to be some dignity as well.

When this amendment passes, we can pass budget resolutions which do not cut Social Security. I will work very hard to make sure we do that. But the temptation to include Social Security will be great. And the better course is to say now, in this amendment, that Social Security is off the table.

MONTANANS MUST FACE THIS TOGETHER

Mr. President, we must balance the budget. We must learn to live within our means.

On no issue are Montanans more united. When I walk the highways of our State people stop and tell me we have to balance the budget. I listen to them at workdays, when I spend a day at Ribi Immunochem in Hamilton, on Geoff Foote's ranch on the Blackfoot or the Big Spring Water Plant in Lewistown. And I feel the same as any other Montanan.

But feeling is not doing. And doing will hurt. According to the National Association of State Budget Officers, about 28 percent of Montana's State budget comes from the Federal Government. On top of that the Federal Government spends about $330 million to support Montana crop and livestock producers, $30 million at Glacier and Yellowstone National Parks, and $100 million at Malmstrom Air Force Base.

To balance the budget by 2002—without new Federal taxes, without a separate capital budget, and with each State taking a proportionately equal cut—the Treasury Department predicts that the Federal Government will need to cut spending by $277 million in Montana.

That includes $52 million in highway funding—and when we give up $52 million in highway funding, we lose 2,000 high-paying construction jobs and hundreds of miles of road repair. We give up $123 million in Medicaid. And we lose over $100 million in education funding, welfare payments, environmental protection, housing, help for veterans, and more.

So debate in the Senate is only the beginning. Difficult and painful decisions lie ahead for our State. We must set our priorities. We must decide which programs we are willing to pay for and which we are willing to live without. And all Montanans and Americans ought to shape these priorities together—so that we share the stress fairly, and so that we cut as much waste and as few essential services as possible.

But we must make these decisions. We can no longer postpone them. Because at bottom, they are questions that relate more closely to values than to accounting.

I found the essay Prof. James Wilson published in the Wall Street Journal a few weeks ago very perceptive. He said that in years past:

> something akin to a Victorian ethos and restrained our spending. Now that ethos is gone.

That goes for everyone. The Federal Government has evaded the problems at the root of the deficit for a decade. State governments blame Washington for unfunded mandates without admitting how much Washington pumps into their budgets every year. Citizens write letters demanding tax cuts, money for local projects, and a balanced budget.

That is a failure of values. At every level, it is a failure to admit the truth and take responsibility. It shows how far we have come from the ethos Wilson describes.

Whether or not it passes, we must get back to the values we have lost. Like living within our means. Like thinking more about our children than ourselves. So in the coming months I hope to hear from our State's legislators and elected officials, and most of all from ordinary, middle-class Montanans as to how we start. And I will seek their views on where they see waste in Montana, where Federal spending can be eliminated and where Federal support is essential.

This is a heated, spirited, principled debate. But underneath it is a consensus. We need to live within our means. We need to set priorities. And we need to work together to do it.

That is true of the political parties. It is true of the State and Federal levels of government. Most of all, it is true of us all, as ordinary American citizens. And there is no time better than now to begin.

(Mr. KYL assumed the Chair.)

Mr. HATCH. Mr. President, as far as I know, that may be the last set of remarks. There may be one other Senator coming over to speak. We would like to shut the Senate down because I think everybody has really had a good chance. I first pay tribute to my colleague from Montana and tell him how much we appreciate his willingness to support this balanced budget amendment. I know it has been a very difficult decision for all of us because there are arguments on both sides of this issue.

I also have a great deal of affection not only for him but for my colleague from Nevada, who, it seems to me, has conducted this debate on his amendment with about as much dignity and class as anybody I have ever seen in the history of the Senate. I personally appreciate it. So I thank the Senator from Montana and the Senator from Nevada, as well. Both of you are dear friends. Let us keep fighting, because I personally believe we can pass this joint resolution. I think we have to. Even though nothing is perfect, it is a Democratic and Republican, bipartisan opportunity for us to try and do something.

Mr. President, some of my colleagues have argued that the balanced budget amendment is a figleaf. To the contrary, it is the first step toward our country's fiscal atonement. That is a pretty high-flung term to talk about ''atonement,'' but $5 trillion in debt, going to $6.3 trillion within 3 years, spending our children's and grandchildren's future away, I think this is fiscal atonement. That is what we should do.

We have been unwilling to deal with our exploding debt. The few times we have tried, the short-term benefits of partisan politics consumed our institutional duty to attend to our Nation's long-term interests.

If we have learned anything from recent history, we have learned that we lack the fiscal backbone to make the tough decisions, or restrain ourselves from engaging in shortsighted political assaults when some in Congress demonstrate the willingness to do so. I suggest, perhaps that both sides of the aisle are responsible. When Republicans tried to curb the growth in entitlements by changing Social Security back in 1985, Democrats seized on that opportunity and took back the Senate. When Democrats tried to address the deficit by raising taxes last Congress, Republicans jumped into action and, of course, we took back the Senate.

If we have learned anything from the past decade, it is that we should not raise taxes or play with Social Security. But we have also learned that without the balanced budget amendment to give us the fiscal backbone we need, neither party is willing to restrain itself from partisan politics when it comes to budget cutting. Instead of viewing the balanced budget amendment as a reward for congressional cowardice, my hope is that we will begin to see it as a first step toward our own fiscal penance, and I call it fiscal atonement.

The truth is we must act. If we fail to act here, can any of us honestly admit that, without the balanced budget amendment to give us backbone, we will continue business as usual and we believe the Congress will develop the institutional courage to act responsibly any time in the next several years if we pass this amendment?

Teddy Roosevelt said:

> The danger of American democracy lies not in the concentration of administrative power in responsible hands, it lies in having the power insufficiently concentrated so that no one can be held responsible.

Without the balanced budget amendment, we will be content to hold the other party, or the President, or the past Congresses, responsible in lieu of ourselves.

Why act now? Why should we act? Because such an act is important. So much is riding on our vote. If we do not act, just think of the fate we are leaving for our future generations. As Senator DASCHLE said last Congress when he voted in favor of the balanced budget amendment, ''We are leaving a legacy of debt for our children and grandchildren. A lot of people have paraphrased that during this debate.

Every child born in America today comes into this world over $18,500 in debt. And that debt is growing. We are concerned about our children and our grandchildren.

In President Clinton's fiscal year 1959 budget, it was estimated that for children born in 1993—these kids right here—the lifetime net tax rate will be 82 percent. The net tax rate is the estimate of taxes paid to the Government less transfers received, if the Government's total spending is not reduced from its projected path and if we do not pay more than projected. The 82 percent figure for our children stands in stark contrast to the 29 percent net tax rate for the generations of Americans born in the 1920's, and the 34.4-percent net tax rate for the generation born in the 1960's.

Now, that is right from the Clinton administration's 1995 budget, generational forecasting.

Each year that we endure another $200 billion deficit will cost the average child—these children right here and all of our children throughout this country and our grandchildren—over $5,000—$5,000—in taxes over his or her working lifetime. And we have, under this budget, 12 straight years of $200 billion deficits. So just add it up—5,000 bucks per child each year that we endure another $200 billion deficit. It is going to cost the average child over $5,000 in taxes over his or her working lifetime just to pay—now get this—just to pay the interest costs on the debt. President Clinton's conservative deficit estimate alone for the next 5 years

will mean a total of $25,000 in taxes for these children, just to pay interest on the debt.

A lot is riding on our vote. When this child is 11 years of age in fiscal year 2005, the CBO's conservative projection shows that the deficit will top $400 billion—more than twice today's level. In that year alone, this child right here will be charged and all of our children will be socked with a $10,000 tax bill, just to pay the interest on the deficit. The debt will reach nearly $6.8 trillion, or 58 percent of our GDP.

That is from the ''CBO Economic and Budget Outlook, Fiscal Years 1996–2000.''

CBO notes that the growing deficits stem from entitlement spending, particularly by major health care programs. Entitlements will grow from roughly one-half to two-thirds of all Federal spending. Spending for both Medicare and Medicaid is still projected to rise by 10 percent per year through the year 2005. These two programs alone will overtake Social Security in the year 2000 and catch up to total discretionary spending by the year 2005. That is just Medicaid and Medicare alone. In the year 2005, the first baby boomers from our generation will be several years away from eligibility for Social Security. The child in this picture will be over 55 years away from eligibility.

Our debt is ballooning. It took our Nation 205 years—from 1776 to 1981—to reach the first $1 trillion national debt. It took only 11 years to quadruple that figure. Today, the national debt stands at over $4.8 trillion and it is only going to take another 3 years to get it up to $6.3 trillion. Today, the national debt stands at almost $5 trillion. Citizens of other nations, like Argentina, Canada, and Italy have faced stagnant or lower living standards when their Governments ran up huge debts. Future generations face higher interest rates, less affordable housing, fewer jobs, lower wages, and a loss of economic sovereignty.

Let me just say this. We have been talking about Social Security. I want to take care of our senior citizens and I intend to do so, and I think everybody else around here does, too, in spite of this debate.

But I have to tell you something that people have to stop and think about. If we keep running this debt up into the air as we have been doing, if we keep accumulating the deficits that we have and paying so much interest against the national debt, I have to tell you we are robbing our children and our grandchildren and our future generations. And it is not right.

When Social Security came into being, there were 46 workers for every person on Social Security. Today, it is a little bit better than three for every person getting Social Security, and by the year 2020 it is going to be two. It is going to be these kids who are going to share the burden. And we have been robbing our kids. Now, it is time for us to talk about the kids and about our grandchildren, at the same time we are trying to take care of our seniors. But we cannot forget them. And if we do, we deserve the condemnation that should come our way.

Let me tell you something. Sooner or later, if we want Social Security to be strong, we have to have a strong economy. If we want a strong economy, we have to get spending under control. We have not been able to do that for 26 years and certainly not for over the last 14 years.

And I have to tell you, it is getting worse and worse. If we want to get our economy under control, we have to pass this balanced budget constitutional amendment. It is one way we can. It is our only hope right now. It is not a Republican amendment. It is not a Democrat amendment. It is both of us. We have worked together. Seventy-two or seventy-three courageous Democrats voted for this in the House, and we will have a number of them here. All we need are 15.

So I hope the folks out there will get with their Democrat Senators and let them know they expect them to vote for this balanced budget amendment, regardless of what happens. And if we pass this, we will be on the way to some fiscal restraint and some fiscal sanity that may save the lives and the futures of these children that are born today.

Mr. GRAIG. Mr. President, I rise to oppose the Reid amendment. Now that the Dole motion has passed, the Senate has expressed its will to protect Social Security.

The best protection we could provide for the Social Security system, and for the welfare of our senior citizens, in general, is to pass the balanced budget amendment and send it to the States for ratification as soon as possible.

Any amendment, such as the Reid amendment, that claims to do both, require a balanced budget and protect Social Security with an exemption, will do neither.

From every proposal like this that we have seen so far, it seems obvious that there is no practical way to do both those things in one constitutional amendment.

On the other hand, the Dole motion, with the amendments proposed by the majority leader, is the real vote on protecting Social Security.

THE REAL VOTE WAS ON THE DOLE MOTION

The Dole motion, combined with the Kempthorne amendment to S. 1 recently, fully commits this Senate to protect the integrity of the Social Security system and the benefits of seniors who are counting on that system.

The Dole motion deals with how we get to a balanced budget by fiscal year 2002. Even if the Reid amendment worked as its author has indicated, it would not be effective until fiscal year 2002 at the earliest.

To get to a balanced budget by 2002, Congress will need to restrain the growth in spending to 3 percent a year. With Social Security off the table, we will have to hold non-Social Security spending to 2.25 percent growth a year.

That is a reasonable glide path, just slowing the growth in spending between now and 2002. After the budget is balanced in fiscal year 2002, spending can resume growing at the same rate as revenues at that time, now projected at more than 5.2 percent a year.

So, obviously, budget discipline will have to be tighter before fiscal year 2002 than after 2002. The Dole motion sets Social Security aside as a priority immediately, while we are on that deficit-reduction glide path, and after 2002, as well.

The Dole motion protects Social Security when it needs protection. A yes vote on the Dole motion is the real vote to protect Social Security, now and later.

THE REID AMENDMENT WILL NOT WORK

The Reid amendment does not even purport to protect Social Security until 7 or 8 fiscal years from now. In reality, careful examination shows that the Reid amendment will never protect Social Security.

These five facts best summarize what is at stake as we debate the Reid amendment:

First, the debt is the threat to Social Security, our seniors, and the economy.

Second, nothing in the language of the Reid amendment provides any protection for Social Security or seniors.

Third, the Reid amendment would create perverse incentives to raid the Social Security trust funds on both the spending and revenue sides.

Fourth, nothing in the underlying House Joint Resolution 1 would overturn present statutes protecting Social Security or prevent future efforts to strengthen its priority status.

Fifth, a Constitution should include timeless principles, not temporary priorities.

Mr. President, let's be realistic: Social Security has 100 friends in this Senate.

I do not doubt that the supporters of the Reid amendment earnestly seek to protect Social Security. I do think some of them want to vote against the balanced budget amendment, and I hope they will not hide behind Social Security as an excuse.

I share the goal of protecting Social Security benefits from being cut, or Social Security taxes from being raised, to balance the budget and pay for other spending.

But the Reid amendment would take us in the opposite direction from that goal. At the same time, it would undermine the basic purpose of the balanced budget amendment itself.

Let us examine these five principal issues one at a time.

First, the debt is the threat to Social Security, our seniors, and the economy.

Some of our colleagues have taken to the floor to remind us that Social Security has not been contributing to the

deficit and to the buildup of the national debt.

I agree. It is exactly the other way around—the debt is the threat to Social Security.

Gross interest on the debt is already approaching one-fifth of total Federal spending. It is the second largest item of Federal spending now and, by the end of the decade it will pass up Social Security as the largest item.

As the debt grows, as the cost of servicing the debt grows, it threatens to crowd out all other budget priorities—including Social Security.

The more debt the Government runs up, the more we have to pay out in interest, the less we will have to pay for anything we want.

We know what happens when any debtor racks up too much debt and heads into bankruptcy—every lender who is owed something by that debtor now stands to lose out.

Current Social Security surpluses represent an obligation, a commitment, to pay those dollars back out in benefits tomorrow. But if the debt keeps growing, in the not-too-distant future, there will be so much debt that the Government will not be able to honor all its obligations.

In the year 2013, the Social Security trustees project that OASDI outlays will exceed FICA tax revenues. The trust funds will start to run an operating deficit. In 2019 total OASDI outlays will exceed total income and Social Security will begin to run annual deficits. In 2029, the trustees estimate, the trust funds will be exhausted.

According to the Kerry-Danforth Entitlement Commission, under current trends, at about that same time, by the year 2030, total Federal spending will top 37 percent of GDP, net interest will exceed 10 percent of GDP, and the deficit will be about 19 percent of GDP.

Contrast that with today: For fiscal year 1995, Federal spending is expected to be 21.8 percent of GDP, net interest 3.3 percent of GDP, and the deficit 2.5 percent of GDP.

How much more pressure will those future deficits, that interest burden, place on future Social Security beneficiaries? An intolerable amount.

Those future trends will be unsustainable for the economy and devastating to seniors depending on Social Security.

The best way to protect Social Security is to protect our future ability to meet all our obligations. And the best way to do that is to pass the balanced budget amendment and send it to the States for ratification.

Second, nothing in the language of the Reid amendment provides any protection for Social Security or seniors.

Let us look at the plain meaning of the language in the Reid amendment.

All the Reid amendment does is provide a simple exemption. It simply exempts receipts and outlays for the Old Age, Survivors, and Disability Insurance [OASDI] from the calculations of total Federal receipts and outlays—from the calculation of balanced budgets.

Nothing in the Reid amendment says, Congress shall not cut Social Security benefits.

Nothing in the Reid amendment says, Congress shall not raise Social Security taxes on working class people.

Nothing in the Reid amendment says, you cannot change the actuarial balances in the Social Security trust funds.

Nothing in the Reid amendment requires Congress to do any of the things to protect Social Security that the supporters of the Reid amendment say they want to do to protect Social Security.

At the very best, the Reid exemption is a fig leaf that does not add one layer of protection for Social Security.

At the very worst, this exemption could be disastrous for Social Security and our seniors, as I will explain next.

Third, the Reid amendment would create perverse incentives to raid the Social Security trust funds on both the spending and revenue sides.

The Reid language is a simple exemption. And it is all loophole.

It exempts anything you put into, and anything you take out of, the OASDI trust funds from the discipline of the balanced budget.

In other words, it allows unlimited deficits, as long as the accountants say you are deficit spending only out of the OASDI trust funds.

Supporters of the Reid exemption acknowledge this. They say they have taken care of that possibility by limiting OASDI outlays to ''provide old age, survivors, and disabilities benefits.''

But most of the problem remains.

In its own terms, the Reid exemption says that OASDI trust funds can be used to pay for any ''old age, survivors, and disabilities benefits,'' in addition to what we currently call ''social security'' benefits.

Let us add up what is possible to include in this loophole, if the Reid amendment to the balanced budget amendment were in the Constitution today, for fiscal year 1995.

Under current statutory definitions, $334 billion will be spent for Social Security in fiscal year 1995.

In addition to what we currently consider Social Security, here are some of the programs that obviously would qualify to be paid for out of Social Security trust funds under the Reid amendment, that are paid for from other sources today:

| | *Billions* |
|---|---|
| Medicare | $176 |
| Supplemental security income | 24 |
| Federal civilian retirement and disability | 42 |
| Military retirement and disability | 28 |
| Veterans' benefits and services | 38 |
| Other retirement and disability | 5 |
| Subtotal | 313 |

Those, obviously, are programs that provide old age, survivors, and disability benefits, and adding these spending programs to the OASDI trust funds would almost double what we currently spend on Social Security.

Then, a reasonable question arises, what else might be considered disability or survivors benefits? When Aid to Families with Dependent Children [AFDC] was first created, it was portrayed primarily as providing for widows and surviving children. And most social programs aimed at disadvantaged populations could be said to prevent or mitigate a disability.

So, Congress could also go into the Social Security trust funds to pay for programs like these:

| | *Billions* |
|---|---|
| Medicaid | $90 |
| Housing assistance | 27 |
| Food stamps | 26 |
| Family support | 18 |
| Public Health Service | 13 |
| Child nutrition | 8 |
| Education for the disadvantaged | 7 |
| Head Start | 4 |
| Dislocated workers and Job Corps | 2 |
| Other social services | 6 |
| Subtotal | 201 |
| Total, newly exempt spending | 514 |
| Grand total, potentially exempt spending | 848 |

In other words, the Reid exemption would open at least a half-trillion-dollar loophole for deficit spending for programs that are not currently funded out of the Social Security trust funds.

Other programs may qualify, as well. The list I have given is what seemed obvious after only a cursory examination of the President's new budget and CBO's January Economic and Budget Outlook.

Senator THOMPSON, during the Judiciary Committee markup of Senate Joint Resolution 1, envisioned that christening a new aircraft carrier the ''U.S.S. Social Security'' would allow it to sail through this kind of loophole.

Add that $533 billion in loophole deficit spending to the $334 billion in Social Security spending that the exemption supporters say they want to protect, and you can move half the budget offbudget—$867 billion in fiscal year 1995.

But it gets worse.

The Reid amendment merely says that OASDI receipts are exempt from the balanced budget amendment—it does not guarantee that today's FICA taxes will continue to be deposited in the OASDI trust funds tomorrow.

Under the Reid amendment, Congress could simply deposit FICA tax revenues into the General Treasury, to help balance the budget, instead of putting them into the OASDI trust funds. This year, that will amount to $357 billion.

Far from protecting Social Security, the Reid amendment creates a perverse incentive to raid Social Security revenues, to use them for other purposes, and to shift every spending program possible offbudget, and into deficit spending, by paying for them out of the Social Security trust funds.

At best, if Congress did not exploit the loopholes, the perverse incentives,

offered by the Reid amendment, that exemption would provide absolutely no additional protection for Social Security.

But we would not be here debating the Balanced Budget Amendment in the first place if deficit spending were not so tempting as to become a permanent, systemic problem. Therefore:

The Reid amendment would be worse for Social Security, and worse for the national debt, than the status quo.

A balanced budget amendment with the Reid amendment would be more likely than the ''clean'' balanced budget amendment, without the Reid amendment, to result in raiding the Social Security trust funds for other purposes.

To repeat the conclusion I stated before: Any amendment, such as the Reid amendment, that claims to do both, require a balanced budget and protect Social Security with an exemption, will do neither.

This is exactly the problem created when you try to reference a statutory creation in the Constitution.

The revenues that go into, and spending that comes out of, the Social Security trust funds, have been set by statute. New spending can be added or subtracted by statute. Revenues can be redirected by statute.

If you create a loophole in the Constitution that can be exploited by statute, it will be. That is why you do not find problems like Social Security referenced anywhere else in the Constitution.

Fourth, nothing in the underlying House Joint Resolution 1 would overturn present statutes protecting Social Security or prevent future efforts to improve its priority status.

The balanced budget amendment is all about setting priorities.

No supporter of any one program really has anything to worry about unless they fear that most of the American people and most of the Congress will consider their program a low priority.

Realistically, we know that is not going to be the case with Social Security.

Bob Myers, former Deputy Commissioner of the Social Security Administration, said it well at our press conference earlier last week:

> It's my opinion, very strongly held opinion, that if it (the balanced budget amendment) were to go into effect and into operation, Social Security benefits would be cut. . . . Congress would see that this would not be logical, or would not be fair.

Social Security has numerous protections under current law that would not, in any way, be overridden or changed by the balanced budget amendment.

These current protections include the following:

The Social Security Amendments of 1983 removed the OASDI trust funds from the totals of the official budget as of fiscal year 1993 and made them ''exempt from any general budget limitation imposed by statute on expenditures * * *.''

Gramm-Rudman-Hollings in 1985 accelerated Social Security's off budget status to fiscal year 1986 and exempted it from the automatic spending-cut sequester.

Gramm-Rudman-Hollings made it out of order—subject to a 60-vote waiver in the Senate—to include Social Security changes in a deficit-reduction reconciliation bill or conference report.

The 1990 Budget Enforcement Act removed Social Security from any parts of the budget process designed to reduce and control budget deficits.

The 1990 act excluded Social Security from all spending caps and any pay-as-you-go limitations.

The 1990 act also created a point of order against making changes in the actuarial balance in the trust funds—subject to a 60-vote waiver in the Senate.

Under House Joint Resolution 1, these statutory protections would continue to set aside Social Security aside as a special case, as a priority, within a balanced budget. They would keep Social Security off the table when it comes to budget discipline and deficit reduction. Nothing would prevent Congress from acting to wall off Social Security further.

Fifth, a constitution should include timeless principles, not temporary priorities.

A constitution is a document that enumerates and limits the powers of the Government to protect the basic rights of the people.

Within that framework, it sets forth just enough procedures to safeguard its essential operations. It deals with the most fundamental responsibilities of the government and the broadest principles of governance.

Our balanced budget amendment fits squarely within that constitutional tradition. It is dedicated to the same kind of fundamental, timeless principles enshrined elsewhere in the Constitution.

The guiding principle of the balanced budget amendment could be summed up as follows: The ability of the Federal Government to borrow money from future generations involves decisions of such magnitude that they should not be left to the judgments of transient majorities.

That principle will never change. If the Framers of the original Constitution had realized how insufficiently they had provided for that principle, the balanced budget amendment would have been included in 1787 or 1789.

Social Security, however important, is a statutory program. It involves obligations that we all agree we must honor. But we already know that it will go through changes in the future, as the population goes through changes.

For the sake of future retirees, we know that Congress may have to address these trends at some time in the future, as the trends themselves become clearer. We also know that Congress will only make changes that our senior citizens and the rest of the American people support.

But we cannot predict what the American people will want in this program 30, 40, and 50 years from now. We do know that we do not want them to have to amend the Constitution to perfect the operation of that statutory program.

Mr. President, I also ask unanimous consent that I may enter additional materials into the Record at this point, including: A letter from the 60/Plus Association, endorsing the balanced budget amendment and opposing the Social Security exemption; materials from the Seniors Coalition; and additional fact sheets and information.

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

TAX FAIRNESS FOR SENIORS,
*Arlington, VA, February 9, 1995.*

Hon. LARRY E. CRAIG,
*U.S. Senate, Washington, DC.*

DEAR SENATOR CRAIG: I am writing to you to express the strong support of the 60/Plus Association for the Balanced Budget Amendment to the Constitution, which is now being considered by the U.S. Senate.

The 60/Plus Association is a two-year-old, nonpartisan, seniors advocacy group with more than 225,000 members. For the 103d Congress, we presented the Guardian of Seniors' Rights award to 226 House and Senate Members.

The Balanced Budget Amendment is the best friend the Social Security system and our nation's seniors could have. The Senate should pass H.J. Res. 1, as passed by the House of Representatives in a strong bipartisan vote, and submit it immediately to the States for ratification.

Continued, growing deficit spending is the greatest threat to the integrity of the Social Security system and to the present and future benefits paid from Social Security trust funds. Past deficits have created a national debt of $4.8 trillin—an alarming 70 percent of our Gross Domestic Product. Gross interest payments now consume nearly one-fifth of total federal spending and will surpass Social Security as the largest item of spending by the end of the decade.

This national debt already has depressed the economy and lowered seniors' standard of living. As the costs of servicing that debt continue to climb and to squeeze all other budget priorities, they threaten the very existence of Social Security. Today's Social Security surpluses represent a commitment to seniors tomorrow. But a debtor bankrupted by an excessive debt load is not able to meet any of its commitments. Bitter experience has shown that only the Balanced Budget Amendment can save our nation from that fate.

While well-intentioned, these attempts to exempt Social Security from the discipline of the Balanced Budget Amendment are completely misguided. Instead of protecting seniors, exemptions like that in the Reid Amendment would allow the Social Security trust funds to run unlimited deficits. This would create an irresistible temptation to pay for all sorts of unrelated programs out of the trust funds, completely destroying the unique purpose for which they were created and rendering them insolvent.

The debt is the threat to Social Security and America's seniors. A ''clean'' balanced budget amendment, such as H.J. Res. 1, is their best protector. The 60/Plus Association

urges you and your colleagues to pass this urgently needed legislation and resist the scare tactics of those who create any loopholes that would compromise either balancing the budget or protecting Social Security.

Former Senator Paul Tsongas summed it up best when he said he was ''embarrassed as a Democrat to watch a Democratic President raise the scare tactics of Social Security.''

In other words, it's ''scare us old folks time again'' as opponents drag a 30-year-old red herring across the trail.

Many seniors—including this one—vividly remember the scare tactics then—the LBJ TV ad—a giant pair of scissors cutting through a Social Security card—with the clear implication that a vote for Barry Goldwater and Republicans would mean the end of Social Security.

Seniors didn't buy that canard then, nor do they now, 30 years later, judging by the response we get from the vast majority of seniors.

Sincerely,

JAMES L. MARTIN,
*Chairman, 60+.*

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THE SENIORS COALITION,
*Fairfax, VA, January 24, 1995.*

Memorandum re balanced budget amendment.

To: Senator CRAIG.

Fr: Jake Hansen, Vice President for Government Relations.

The Seniors Coalition has supported a balanced budget amendment for several years. On behalf of our one million members nationwide, I am requesting your support of S.J. Res. 1 in the next few weeks.

It is vital that Congress pass a measure that would require the federal budget to be balanced. Our members feel that if the government were forced to evaluate its spending the way every family in America evaluates their own, this country would not be ''heading down the wrong path.'' While there are a great many factors that contribute to this public perception, the bottom line for many Americans is that the government takes too much from them and spends too much on programs that do not work. The time to end the cycle of taxing and spending has come.

I also want to touch briefly on the role of Social Security in the balanced budget amendment. We feel that there is no reason to exempt Social Security from a balanced budget. In fact, such an exemption would create a serious policy and political crisis for Congress, and would lead to the destruction of the Social Security system.

If Social Security is exempted, the total force of balancing the budget will find its way to Social Security. There will be an overwhelming temptation to either redefine government programs as Social Security programs, or pull money out of the Trust Fund to balance the budget by cutting Social Security taxes to offset tax increases elsewhere. In fact, there would be nothing to stop Congress from ''borrowing'' as much money as it wanted from the Trust Funds to finance any other government program.

We feel confident that the political climate surrounding Social Security is enough to protect it, thus engaging in destructive policy in the name of protection will only lead us down the path of truly committing damage to the Social Security system.

What is most important is that America be given a serious balanced budget amendment as soon as possible.

THE SENIORS COALITION,
*Fairfax, VA, January 26, 1995.*

BALANCED BUDGET AMENDMENT—ALERT

This morning the opponents of a BBA launched a full scale attack on the Balanced Budget Amendment with Social Security bombs. Seniors across the country are watching C-SPAN with renewed and unjustified fear. It is vital that their scare campaign be stopped!

EXEMPTING SOCIAL SECURITY FROM THE BALANCED BUDGET AMENDMENT WILL DESTROY THE SOCIAL SECURITY SYSTEM—NOT PROTECT IT

Balancing the budget will create tremendous pressure and that pressure will blow through any available escape hatch. WHATEVER is exempted from the balanced budget requirement becomes that escape hatch!

As the total force of balancing the budget falls on Social Security, there will be overwhelming pressure to redefine many government programs as Social Security programs. This endangers its original purpose. There would be nothing to stop Congress from ''borrowing'' as much money as it wanted from the trust fund to finance any government program if Social Security is exempted from the Balanced Budget Amendment.

Exempting Social Security from the Balanced Budget Amendment would open a loophole in the requirement that would completely gut its effectiveness by allowing all social welfare and other programs (such as Medicare and Medicaid) to be financed off-budget, in deficit, as the ''New Covenant Social Security.''

FAILURE TO PASS A BALANCED BUDGET AMENDMENT WILL DESTROY SOCIAL SECURITY

Eventually, $400 billion plus will have to be returned to the Social Security trust fund to pay benefits to retired baby-boomers. Without starting a balanced budget process NOW, the battle over Social Security will be like nothing Congress has ever seen thirty years from now.

Without balancing the budget, Social Security benefits will always be subject to cuts, new taxes and means-testing. This permanently erodes any confidence in discussions of systemic reforms for future generations.

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THE SENIORS COALITION,
*Fairfax, VA, January 23, 1995.*

TESTIMONY OF JAKE HANSEN, DIRECTOR OF GOVERNMENT AFFAIRS, THE SENIORS COALITION, FOR THE JOINT ECONOMIC COMMITTEE, U.S. CONGRESS

BALANCED BUDGET AMENDMENT: IMPERATIVE TO SOCIAL SECURITY

Mr. Chairman, this is not a new issue to The Seniors Coalition. Since our inception we have fought for a Balanced Budget Amendment. We have had experts on Social Security and expert economist look at the issue, as well as hearing from thousands of our members. Their conclusion: give us a Balanced Budget Amendment.

During the elections and in recent debate, we have heard from many politicians that a Balanced Budget Amendment will destroy Social Security. However, the question is not ''Will a Balanced Budget Amendment destroy Social Security'', but rather ''Can Social Security survive without a Balanced Budget Amendment?''

As you know, up until 1983, the Social Security system ran on a pay-as-you-go basis. That is, the amount of money going into the Trust Funds from payroll deductions was basically equal to the amount of money being paid to beneficiaries of the day.

In the late seventies, the economy was a disaster. Inflation was up, leading to higher cost of living payments than had been anticipated. Unemployment was up, meaning that less money was being paid into the system than had been anticipated. The result: Social Security was headed for bankruptcy at break-neck speed.

In 1983, a bi-partisan effort saved Social Security by changing the benefit structure and raising Social Security payroll taxes. This effort created a new—and potentially worse—problem: a rising fund balance in the Social Security Trust Funds. For the past ten years, more money has been pouring into the Trust Funds than is needed to meet today's obligations.

This balance has been ''borrowed'' by the federal government. Today, the federal government owes the Trust Funds about $430 billion. By the year 2018, according to the Social Security Board of Trustees, that figure will be a shade over three trillion dollars. At that time, the entire federal debt will be—who knows, eight, ten, twelve trillion dollars?

The point is, how will the government ever pay back the Trust Funds? They could: Turn on the printing presses and monetize the debt, so that a Social Security check would buy a loaf of bread; borrow the money—hurting both the economy and the Federal Budget; make massive cuts in benefits; raise taxes, and thus, destroy the economy for everyone; or simply renege on the debt.

Mr. Chairman, The Seniors Coalition doesn't find any of these alternatives acceptable.

The Chairman of our advisory board, Robert J. Myers (often referred to as the father of Social Security) wrote of his support of a Balanced Budget Amendment last year and said:

''In my opinion, the most serious threat to Social Security is the federal government's fiscal irresponsibility. If we continue to run federal defects year after year, and if interest payments continue to rise at an alarming rate, we will face two dangerous possibilities. Either we will raid the trust funds to pay for our current prolificacy, or we will print money, dishonestly inflating our way out of indebtedness. Both cases would devastate the real value of the Social Security Trust Funds.''

The bottom line, is that if we want to protect the integrity of Social Security the only way is through a Balanced Budget Amendment.

With that said, the question becomes will just any old Balanced Budget Amendment do? The answer is, some are better than others, and some are absolutely not acceptable.

First, some people are suggesting that Social Security should be exempted. That should be something that an organization like ours would leap at. The fact is, we are concerned that such an Amendment would end up destroying Social Security as more and more government programs would be moved to Social Security to circumvent the Balanced Budget Amendment. We believe this would destroy Social Security, and will not support such an Amendment.

Our first choice would be a Balanced Budget Amendment that controls taxes as well as spending—such as the Amendment that has been presented by Congressman Barton. We support tax limitation and would like to see this Amendment voted on. We would urge every Member of Congress to vote for this Amendment.

If, this Amendment does not pass, then we willingly support a Balanced Budget Amendment such as the one offered by Senators Hatch and Craig. While I am concerned about taxes, I believe that last year's elections showed us that we, the people, do have the ultimate power. And, I believe that had we been forced to pay for all the government we

were being given, we would have made massive changes much sooner.

Mr. Chairman, we believe that what is most important is that America be given a serious Balanced Budget Amendment as soon as possible. We will work with you and your colleagues in every way possible to make that happen. Thank you.

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CONGRESSIONAL LEADERS UNITED FOR A BALANCED BUDGET [CLUBB] FACT SHEET, JANUARY 18, 1995

A Balanced Budget Amendment Exemption Would Increase The Threat To Social Security.

A BBA exemption would threaten the revenues for the Social Security Trust Fund. Placing the OASDI/Social Security trust funds outside the Amendment's deficit restrictions would provide a perverse incentive for a future Congress to shift FICA (and related income) taxes out of the trust funds. Portions of those taxes could be transferred to general Treasury accounts to balance the ''operating'' budget covered by the BBA, but at the cost of gutting the OASDI trust funds. The current stable revenue stream for Social Security could be critically diverted in small steps which would add up to disaster for the system. A precedent for this already exists: The income taxes on Social Security benefits in the 1983 ''bailout'' go directly into the trust funds, but higher income taxes imposed on Social Security retirees in 1993 are diverted to general Treasury revenues.

Social Security could easily be overwhelmed by non-Social Security programs moved to Social Security's ledger in an attempt to hide them behind the cloak of its exempt status. It's easy to predict well-meaning efforts to protect a whole range of social programs by arguing they fall under the general intent of Social Security to provide a safety net. Contrary to the claims of those who want an exemption, funding for current Social Security would not be set aside for protection, but would be pilfered by reclassifying more and more programs as Social Security. This is an even greater threat than simply providing a loophole for deficit spending. As other programs intrude on Social Security, its stability will steadily erode.

A Social Security exemption defeats the intent of the BBA by providing the greatest deficit loophole in history. As if the direct threat to Social Security isn't enough, exempting it would create an enclave for additional federal debt while at the same time, government could proudly proclaim a ''balanced budget.'' Projects which risk being assigned a low priority under the BBA could avoid facing scrutiny and be paid for by draining the Trust Funds. The Social Security deficit tomorrow could be bigger than the total deficit today.

The debt is the threat! The greatest threat to Social Security is the federal debt itself. Gross interest payments on the debt already are nipping at the heels of Social Security as the second largest single item in the federal budget. Social Security is in no way immune to the increasing pressure interest payments placed on every single federal spending item as the growing debt forces ever larger debt service costs.

Every current statutory protection for Social Security can continue under BBA. Social Security is the best statutorily protected program in the federal budget. Those laws are perfectly compatible with a BBA and can remain in force, continuing to protect the system. The BBA takes away the major threats to Social Security so existing statutes can do their jobs. But if the federal budget does not have the spending restraint imposed on it by a Constitutional Amendment, we cannot guarantee that the statutes which protect Social Security now can be maintained.

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CONGRESSIONAL LEADERS UNITED FOR A BALANCED BUDGET [CLUBB] FACT SHEET

HOW THE BALANCED BUDGET AMENDMENT PROTECTS SOCIAL SECURITY

The BBA would put an end to the rapid growth in interest payments that threaten to crowd out Social Security spending.

Interest payments on the federal debt have nearly quadrupled since 1980. Net interest payments in 1993 were $200 billion and are expected to exceed $300 billion annually by the end of the decade. Until we balance the budget, spiralling interest payments will continue to crowd out other spending, including Social Security.

Balancing the budget would avert the threat of runaway inflation.

No industrialized nation has reached the level of debt we will face next century without monetizing the debt by printing more dollars. Monetizing the debt would lead to explosive inflation. Huge debt burdens contributed to ruinious inflation in Germany in the 1920's and several Third World nations in the 1980's. Runaway inflation would have a particularly severe impact on senior citizens living on a fixed income. It would not do any good to get a $1,000 retirement check if bread costs $100 a loaf.

The BBA would force Congress to deal with deficits in time to prevent a budget crisis forcing draconian cuts each year just to ''muddle through.''

The General Accounting Office has warned that if the amount of deficit reduction required just to limit the deficit to three percent of GDP would increase exponentially by the year 2005. By the year 2020, Congress would be required to enact a half a trillion dollars of additional deficit reduction each year just to restrain the deficit to three percent of GDP. No program—including Social Security—would be able to escape deep spending cuts under this scenario.

Balancing the budget would promote the economic growth necessary to sustain the Social Security trust funds.

GAO, CBO and most economists warn that continued growth in deficit spending would result in lower productivity and deteriorating living standards. As real wages for taxpaying workers decline, there will be increasing resistance to the taxes necessary to meet the growing commitments of the Social Security program. GAO found that balancing the budget by the year 2001 would lead to the higher productivity and growth in real wages that would be necessary to support our commitments to the growing elderly population.

The amendment would help ensure that Congress takes action before the Social Security trust funds begin running yearly deficits.

Although the Social Security trust funds currently run a surplus, within a generation, they will face cash shortfalls. A balanced budget amendment would provide Congress and the President with the necessary incentive to take corrective action to deal with this threat and provide for the long-term solvency of the trust funds.

The amendment preserve statutory provisions protecting Social Security.

The current statutory protections for Social Security would not be eliminated by the BBA. For example, under current law, any legislation that would change the actuarial balance of the social security trust funds are subject to a point of order which requires a 3/5 vote to waive in the Senate. Under the 1985 Gramm-Rudman-Hollings Act and the 1990 Budget Enforcement Act, Social Security was completely protected from all sequesters. Social Security is not subject to the spending caps in the 1990 budget agreement. Given political realities, Congress would be likely to set budget priorities in such a way that protections for Social Security are maintained or even enhanced.

Exempting Social Security would open up a loophole in the BBA and tempt Congress to defund the trust funds, threatening retirement benefits and the trust fund surplusses.

Exempting the Social Security trust funds from the amendment would create a perverse incentive for Congress to use them as a source to fund new or totally unrelated programs, threatening the ability of the trust funds to fulfill their current obligations to retirees. For example, Congress could pay for current and new non-Social Security spending by simply depositing FICA taxes into general Treasury revenues, instead of into the trust funds. Congress also could pass legislation to shift spending for Medicare, other retirement programs, or any number of programs to the Social Security trust funds to avoid a 3/5 vote to unbalance the budget. Thus, non-Social Security outlays and receipts could be ''balanced'' simply changing program definitions and draining the Social Security trust funds.

The Constitution is not the place to set budget priorities.

A constitutional amendment should be timeless and reflect a broad consensus, not make narrow policy decisions. As noted above, the financial status of Social Security will change drastically, and perhaps quite unpredictably, in the next century. We should not place technical language or overly complicated mechanisms in the Constitution and undercut the simplicity and universality of the amendment.

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SENIORS' SECURITY IN THE BALANCE

(by Larry E. Craig)

SUBMITTED SEPTEMBER 29, 1994, TO UNITED SENIORS OF AMERICA FOR THEIR NEWSLETTER

Early next year, the new Congress will again begin considering the Balanced Budget Amendment to the Constitution (BBA), as well as specific proposals to reduce federal deficit spending. Seniors will be told these efforts are an assault on their rights, economic security, and general well-being.

Don't you believe it.

The BBA and the right package of spending reforms are absolutely critical to preserving not only the well-being of seniors today and tomorrow, but also the American Dream of economic opportunity for our children and grandchildren.

The federal government has spent more than it has taken in for 56 of the last 64 years. The result is a federal debt that now totals $4.6 trillion—more than $18,000 for every man, woman, and child in America—and will reach $9 trillion by the year 2004.

Seniors are paying already, in higher taxes and lower living standards, for the drag this debt puts on our economy. The Federal Reserve Bank of New York estimated that the $3 trillion added to the debt prior to 1990 reduced Americans' standard of living by 5 percent. A General Accounting Office study projected that current trends will reduce our standard of living another 7-to-36 percent by the year 2020.

Gross interest payments on the federal debt now run $300 billion a year, an amount equal to half of all personal income taxes. Every dollar borrowed incurs interest costs that squeeze priority programs—like Medicare—and create pressure for higher taxes—like those raised last year on Social Security benefits. In contrast, if the current federal debt had not been allowed to accumulate,

the savings in interest costs would have produced a balanced budget in 1994 and a $64 billion surplus in 1995.

About 10 percent of the federal debt is owed to the Social Security trust funds and is supposed to be paid out eventually in benefits. The more debt the government piles up, the harder it will be to find the cash to honor its obligations.

If the stakes are so high, why has it been so hard to balance the budget? Our system of government has changed fundamentally. While most Americans want a balanced budget, this general public interest is outgunned by the specific demands of mobilized, organized interest groups. The unlimited ability to borrow leads naturally to unlimited demands to spend. If they don't have to say ''no,'' many elected officials see only political peril in doing so.

There's no way to make it a fair fight until we put a balanced budget rule in place that Congress can't ignore, postpone, or repeal at will—and that will be true only if the rule is in the Constitution.

The United Seniors Association endorses the BBA. Unfortunately, however, some groups with an agenda of ever-expanding social programs have resorted to misleading, mass-mail scare tactics claiming the BBA would force severe cutbacks on Social Security.

Nothing could be farther from the truth. The BBA would not change the current statutory protections and priority budgetary status enjoyed by Social Security. It would not prevent Congress from enacting further protections in the future.

Most important, the BBA would do more to protect Social Security than would any other reform, by reversing and reducing the threat now posed by an ever-growing federal debt. Contrary to the alarmist groups' arguments, exempting Social Security from the BBA would not change the government's overall financing needs—it would just shift IOU's from one pocket to the other.

The BBA would be phased in over several years to ease the adjustment. Total federal spending is growing an average of more than 5 percent a year. If we simply held annual spending growth to 2.8 percent a year, we would balance the budget by the year 2001.

In addition to passing the BBA and sending it to the states for ratification, the next Congress should move toward a balanced budget by doing the following:

Give the President a modified line item veto (''expedited rescission'') authority, so that billions of dollars in narrow-interest ''pork'' cannot be hidden away in massive, must-pass pieces of legislation;

Require honesty in budgeting, so technical rules are no longer manipulated to claim that a program's spending has been cut when it actually has been increased;

Cap the overall growth in federal spending, including both the so-called ''discretionary'' and ''entitlement'' categories.

Balancing the budget is a key to saving our way of life. No one can be exempt from some belt-tightening once we summon up the discipline to move in that direction. But the Idahoans—and other Americans—I've talked to, from school children to seniors, understand the problem and are willing to bear their share, as long as deficit-reduction is spread out fairly and no one group is singled out. Debt multiplies, but so do savings. The sooner we start, the easier it will be.

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U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC, February 14, 1994.*

DEAR COLLEAGUE: Recently, certain interest groups have raised fears that the Balanced Budget Amendment to the Constitution somehow threatens Social Security and other important social programs.

Nothing could be further from the truth. The Balanced Budget Amendment will protect the very programs that I have spent my career fighting for: Social Security, health care, education, job training, and other important programs that help people achieve economic security before and after retirement.

The most serious danger to Social Security is our enormous debt burden. If we continue to spend beyond our means, the temptation to pay for our debts by printing more and more money will become irresistible. That remedy, however, would result in the kind of inflation that would devastate the Social Security Trust Fund. After all, what good is a $1,000 social security check if a loaf of bread costs $100?

Dorcas Hardy, the former commissioner of Social Security, emphasized this point in her book ''Social Insecurity.'' Her number one recommendation for protecting the Social Security Trust Fund: balance the federal budget. That is the objective of the Balanced Budget Amendment.

Unfortunately, we still have a long way to go to meet that goal. The budget deficit is projected to remain over $170 billion in 1995. Interest payments on the debt now exceed $290 billion, only a few billion dollars behind social security payments themselves. How can we possibly hope to adequately invest in vital social programs like health care for the elderly if we keep throwing dollars away on interest? Unless we end this trend, federal support for the sick, the poor, and the elderly, as well as programs like education, will indeed be threatened.

The fact that I have spent my legislative career fighting for seniors, for health care, and for other needed social programs would, I hope, at least cause some to pause enough in their passionate rhetoric to listen, and examine. I would not be sponsoring the Constitutional Amendment if it would hurt the investments we need to build a stronger, better nation.

Only with this Amendment can we be confident that all of us will have a secure economic future.

My best wishes.

Cordially,

PAUL SIMON,
*U.S. Senator.*

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U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC, February 16, 1994.*

DEAR COLLEAGUE: I recently sent you a ''Dear Colleague'' letter explaining how the Balanced Budget Amendment will protect Social Security and other important social programs that help people achieve economic security before and after retirement. Unfortunately, the most serious threat to Social Security is our runaway debt.

Subsequent to that ''Dear Colleague,'' I received a letter from Robert J. Myers, a retired public servant who helped write the legislation that created the Social Security system in the 1930's. He worked in the Social Security Administration for a total of 37 years, including 23 years as Chief Actuary and two years as Deputy Commissioner. He was a member of the National Commission on Social Security from 1978–1981 and served as Executive Director of the National Commission on Social Security Reform from 1982–1983. In the past, Mr. Myers worked as a consultant to the American Association of Retired Persons (AARP) on Social Security Issues.

Robert J. Myers is a renowned expert on Social Security matters and is an informed supporter of a sound Social Security program. He has been referred to in this body as a ''person of legendary integrity and authority'' in this area. His letter succinctly summarizes the real threat to Social Security. Although it speaks for itself, his conclusion bears repeating: ''Regaining control of our fiscal affairs is the most important step that we can take to protect the Social Security trust funds.'' He supports the Balanced Budget Amendment as the appropriate means to exercise that control.

I have enclosed a copy of Mr. Myers letter. I strongly urge you to read it in its entirety.

My best wishes.

Cordially,

PAUL SIMON,
*U.S. Senator.*

Enclosure.

ROBERT J. MYERS,
*Silver Spring, MD, February 15, 1994.*

Hon. PAUL SIMON,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR SIMON: I am pleased to have this opportunity to express my support for the Balanced Budget Amendment.

For 37 years I worked for the Social Security Administration, serving as Chief Actuary in 1947–70, and as Deputy Commissioner in 1981–82. In 1982–83, I served as Executive Director of the National Commission on Social Security Reform. And I continue to do all that I can to assure that Social Security continues to fulfill its promises.

The Social Security trust funds are one of the great social successes of this century. The program is fully self-sustaining, and is currently running significant excesses of income over outgo. The trust funds will continue to help the elderly for generations to come—so long as the rest of the federal government acts with fiscal prudence. Unfortunately, that is a big ''if.''

In my opinion, the most serious threat to Social Security is the federal government's fiscal irresponsibility. If we continue to run federal deficits year after year, and if interest payments continue to rise at an alarming rate, we will face two dangerous possibilities. Either we will raid the trust funds to pay for our current profligacy, or we will print money, dishonestly inflating our way out of indebtedness. Both cases would honestly inflating our way out of indebtedness. Both cases would devastate the real value of the Social Security trust funds.

Regaining control of our fiscal affairs is the most important step that we can take to protect the soundness of the Social Security trust funds. I urge the Congress to make that goal a reality—and to pass the Balanced Budget Amendment without delay.

Sincerely,

ROBERT J. MYERS.

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CRS REPORT FOR CONGRESS—SOCIAL SECURITY: ITS REMOVAL FROM THE BUDGET AND PROCEDURES FOR CONSIDERING CHANGES TO THE PROGRAM

(By David Koitz)

SUMMARY

Social security and other Federal programs that operate through trust funds first were counted officially in the Federal budget in FY 1969. At the time Congress did not have a budget-making process, and the trust fund programs were added to the budget by administrative action of President Johnson. In 1974, Congress began setting budget goals annually through passage of budget resolutions. Like the budgets the President prepared, these resolutions reflected a ''unified budget'' approach that included trust fund programs such as social security in the budget totals.

Beginning in the late 1970s, financial problems plaguing social security and concern

over the program's growing costs and the duplicative role it performed with other programs gave impetus to measure to curtail benefits. Social security cutbacks were included in the Omnibus Budget Reconciliation Acts of 1980 and 1981 and the Social Security Amendments of 1983. However, despite passage of these cost-saving measures, resolution of the program's financial problems, and the eventual buildup of surpluses in the trust fund accounts, interest in other ways to curb social security expenditures continued because of the large Federal budget deficits that arose in the 1980s.

This routine consideration of social security constraints led to concerns that the public's confidence in the program was being eroded and gave impetus to proposals to remove social security from the budget. The result was that although social security continued to be counted in the budget throughout the decade, measures were enacted in 1983, 1985, and 1987 making the program a more distinct component of the budget and imposing potential procedural hurdles for budgetary bills containing social security changes.

Then, in 1990, reacting to criticism that surplus social security taxes were hiding the size of the budget deficits, Congress removed the program from the budget calculations. This was one of the changes in the budget process included in the $500 billion deficit-reduction legislation enacted at the end of the 101st Congress. The legislation also excluded social security from budget procedures designed to discourage tax reductions or spending increases that would increase the size of the deficits. At the same time, however, because of concern that lifting these constraints would encourage proposals that could weaken the financial condition of social security, Congress adopted new procedural hurdles for bills that would erode the balances of the trust fund accounts.

In the House, these procedures permit points of order to be raised against bills that (1) propose more than $250 million in social security spending increases or revenue reductions over a 5-year period or (2) would increase the average cost or reduce the average income of the program over the long run (considered to be 75 years) by at least 0.02 percent of taxable payroll. In the Senate, budget resolutions set specific amounts for social security income and outgo for a 5-year period, and points of order can be raised against measures that would cause income to be lower or outgo to be higher than these amounts. Approval by three-fifths of the Senate is required to waive the objection. These procedures were made effective beginning with FY 1991.

INTRODUCTION

Social security and other Federal programs that operate through trust funds first were counted officially in the Federal budget in FY 1969. This initiative was taken by President Johnson. At the time Congress did not have a budget-making process. Spending and revenue measures were adopted incrementally through appropriations laws and periodic entitlement legislation. In 1974, with passage of the Congressional Budget and Impoundment Control Act (P.L. 93–344), Congress adopted a process for developing budget goals through passage of annual budget resolutions. Like the annual budgets prepared by the President, these resolutions were to reflect a ''unified'' approach that included trust fund programs such as social security in the budget totals.

Beginning in the late 1970s, financial problems plaguing the social security trust funds and concern over the program's growing costs and the duplicative role it performed with other programs gave impetus to a variety of measures to curtail certain benefits. A number of cutbacks were included in the Omnibus Budget Reconciliation Acts of 1980 and 1981 and the Social Security Amendments of 1983. However, despite passage of these cost-saving measures, resolution of the program's financial problems, and the eventual buildup of surpluses in the trust fund accounts, interest in other possible ways to curb social security expenditures continued because of the large Federal budget deficits that arose in the 1980s.

This routine consideration of social security constraints led to concerns that the public's confidence in the program was being eroded and gave impetus to proposals to remove social security from the budget. The result was that although social security continued to be counted in the budget totals throughout the decade, a series of measures were enacted in 1983, 1985, and 1987 making the program a more distinct part of the budget and permitting floor objections to be raised against budgetary bills containing social security changes.

Then, in 1990, reacting to criticism that surplus social security taxes were masking the size of the budget deficits, Congress removed the program from the budget calculations. This step was one of the budget process changes included in the $500 billion deficit-reduction legislation passed at the end of the 101st Congress (P.L. 101–508, the Omnibus Budget Reconciliation Act of 1990). The new law also excluded social security from the new procedural aspects of the budget process designed to discourage tax reductions or spending increases that would increase the size of the deficits. At the same time, however, because of concern that lifting these constraints would encourage proposals that could weaken social security's financial condition, Congress included measures in that same act to permit additional forms of floor objections to be raised against bills that would erode the balances of the social security trust fund accounts.

SOCIAL SECURITY'S BUDGET TREATMENT UNDER THE SOCIAL SECURITY AMENDMENTS OF 1983

The Social Security Amendments of 1983 (P.L. 98–21) required that beginning with the Federal budget for FY 1993, income and expenditures for social security—Old Age, Survivors, and Disability Insurance (OASDI)—and the Hospital Insurance (HI) portion of the medicare program would be excluded from the totals of the budget formulated by the President and Congress and would be ''exempt from any general budget limitation imposed by statute on expenditures. * * *''[1] The Supplementary Medical Insurance (SMI) portion of medicare, although remaining a component of the official budget figures, was to be more prominently displayed in the budget as a separate functional category.

The amendments also required that for FY 1985–1992 the social security and medicare programs be displayed more prominently in both the President's and congressional budgets as separate major functional categories of the budget. Previously social security was displayed in the category labeled *income security*, which included civil service retirement and disability, railroad retirement, unemployment insurance, food stamps, and other public assistance programs. Medicare was displayed in the category for health activities, which included such programs as medicaid, health block grants to the States, biomedical research, and medical education and health training grants.

SOCIAL SECURITY'S BUDGET TREATMENT UNDER THE 1985 GRAMM-RUDMAN-HOLLINGS PROCEDURES

The Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99–177) included several measures further altering social security's budget treatment. This was the original enabling legislation for the Gramm-Rudman-Hollings (GRH) deficit-reduction provisions, the purpose of which was to bring the Federal budget into balance by FY 1991. Among the changes it made to the budget process, the act accelerated the ''off-budget'' treatment of social security to FY 1986 (from FY 1993, as prescribed by the Social Security Amendments of 1983).[2] However, for the purpose of setting a schedule for eliminating the deficits, it stipulated that the receipts and expenditures of the social security trust funds be counted in calculating the budget deficits and enforcing the deficit goals established under the act and subsequent budget resolutions. In effect, the 1985 law appeared to make contradictory statements about how social security was to be viewed in the Federal budget.

After passage, the only notable manifestation of the off-budget status of the program was that the President's budget and other tabulations of the budget began to show what the figures would be with and without social security.

Congress altered the GRH procedures and extended the time period over which the budget deficits would be eliminated to FY 1993 (instead of FY 1991) in passing Title I of P.L. 100–119, cited as the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987. Except for the 2-year extension in arriving at a balanced budget, the treatment of social security under the budget process was not altered.[3]

*Sequestration and reconciliation to enforce the budget targets*

A key element of the GRH procedures was a requirement that the President reduce (or sequester) expenditures if projected budget deficits exceeded the targets set in the law. The idea was that if economic or legislative developments did not lead to meeting the targets, across-the-board spending cuts would be triggered. Social security's income and outgo were counted in determining the deficits; however, social security benefits were exempt from any spending cuts that the President was required to make.[4] Social security's administrative expenses were not exempt.

Congress could take action on its own to bring overall spending and receipts in line with the targets (and avoid sequestration) by enacting so-called budget reconciliation legislation. As part of budget resolutions, specific outlays and/or revenue targets were given to each committee, and if a committee could not meet the targets under present law provisions of the programs under its jurisdiction, it was expected to recommend changes. Recommended changes from the various committees would then be joined together by the budget committees in each House and passed as a single budget reconciliation act.[5] Social security benefits were again protected from potential cutbacks through rules that made it out of order for either the House or Senate to take up social security changes in a reconciliation bill, resolution, or conference report thereon. If an objection were raised (a so-called section 310(g) objection) against a bill that did so, a separate vote, suspending the rules under which the respective bodies operate, was required. In the Senate, this required approval by three-fifths of its Members.[6]

*Procedures to maintain budget discipline*

Also enacted with the GRH procedures were restrictions on bringing up legislative

Footnotes at end of article.

changes that would violate budget resolution totals (including, with respect to the Senate, the GRH deficit target) or the separate spending and revenue allocations made to each committee. Social security was affected by these restrictions in the same way as other programs; points of order (so-called sections 302 and 311 objections) could be raised against social security legislation that violated the resolution totals or committee allocations. These, too, could be overridden only by a vote of three-fifths of the Senate.[7]

SOCIAL SECURITY'S BUDGET TREATMENT UNDER THE 1990 BUDGET ENFORCEMENT ACT

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508) again made substantial changes in the budget process (under Title XIII, entitled the Budget Enforcement Act of 1990). Among them was the removal of the income and outgo of the social security trust funds from all calculations of the Federal budget, including the budget deficit or surplus. This measure applied to the budgets prepared by the President, to the Federal budgets formulated by the Congress (e.g., budget resolutions), and to the budget process provisions designed to reduce and control the budget deficits.[8] In the Senate, budget resolutions were to contain income and outgo targets for social security, but they were to be set separately and not be included in the budget totals themselves.[9]

*Exclusion of Social Security benefits from spending limits and deficit-reduction targets*

A key element of the current budget process put in place by the Budget Enforcement Act is a set of specific limits on discretionary spending (encompassing most programs requiring annual appropriations) and a ''pay-as-you-go'' requirement for direct spending (mostly entitlement programs) and revenues. For FY 1991–93, these limits and the pay-as-you-go requirement, for the most part, took the place of the overall deficit-reduction targets established under the former GRH procedures.[10] For FY 1994–95, overall deficit targets again may become critical limits in the process (although it should be noted that a balanced budget is not set forth as the ultimate target, i.e., for FY 1995). Under the old procedures, the income and outgo of social security were included in estimating the budget deficit to determine if the deficit was expected to fall within the targets set under the law. In contrast, under the current procedures social security's income and outgo are excluded from calculations of the limits (including the pay-as-you-go rule) and overall targets, with the exception of administrative expenditures, which are incorporated in a limit on discretionary spending.

As under the old law, if any of the spending limits or the ''pay-as-you-go'' rule are violated (i.e., breached or exceeded), the President may be required to issue sequestration orders to bring spending down to the prescribed limits. Social security would be exempt as it was under the old law (again, with the exception of administrative expenses).

The 1990 law also continued the old law provision (section 310 (g)) that permits points of order to be raised against reconciliation bills or resolutions that contain social security measures.

*Inclusion of Social Security's administrative expenses under the spending limits and deficit-reduction targets*

Under the pre-1990 law social security's administrative expenses were subject to sequestration of the GRH deficit targets were exceeded. While the 1990 law stated that social security was not be counted as ''budget authority or outlays for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985,'' there was some ambiguity about how the program's administrative costs were to be treated. The accompanying explanatory statement of the conferees reiterated that social security benefits were exempt from sequestration, but made no mention of administrative expenses. However, social security was listed among the programs subject to the limit on discretionary domestic spending with a footnote stating that portions of the social security accounts are ''non-appropriated mandatory.'' One interpretation is that the only reason social security was listed in the discretionary domestic category was to subject its administrative expenses to the limit, since benefit payments, interest, and payments to the trust funds all were explicitly excluded. An alternative interpretation is that the new provision stating that social security is not to be counted for budget act purposes was sufficient language to exempt all aspects of the program from the discretionary limit. The lack of specificity gave the Office of Management and Budget (OMB) latitude to make either interpretation, and early in 1990 OMB chose to include it in the discretionary category of the budget as domestic spending. Hence, social security's administrative expenses are subject to the 1990 budget rules and the process.[11]

*Procedures to protect the Social Security trust funds*

The 1990 law also made changes in House and Senate procedures intended to protect the social security trust funds from benefit liberalizations or revenue reductions that would erode their balances. Under the old law, social security's inclusion in the budget had the potential effect of thwarting attempts to increase social security spending or cut its revenue base. Points of order could be raised against such actions for violating the budget resolution totals or spending and revenue allocations if the action would be effective in the year of the budget resolution. Moreover, these violations would have potentially threatened other programs with sequestration, and posed difficulty for Congress and the President in reaching subsequent budget targets. In effect, the former process imposed a fiscal discipline on social security.

Since social security benefits are now not part of the budget, the fiscal constraints of the budget process technically no longer apply. In their place, the 1990 law established separate rules for the House and Senate that attempt to make it difficult to bring measures for a vote in the respective chambers that would weaken the financial condition of the program by reducing revenue or increasing spending without offsetting changes.

In the House, a point of order can be raised against a bill that proposes more than $250 million in social security spending increases or revenue reductions over the 5-year period consisting of the fiscal year in which the legislation becomes effective and the following 4 years, unless the bill also contains other offsetting spending reductions or tax increases that bring the net impact of the measures within the $250 million limit. In calculating the impact, any costs from prior legislation (i.e., enacted in the current or previous 4 years) that fall within the 5-year period would be counted in calculating whether the pending legislation falls within the limit. A point of order also can be raised against a measure that would increase long-range (75 years) average costs or reduce long-range revenues by at least 0.02 percent of taxable payroll. Hence, a bill whose financial impact fell within the 5-year $250 million limit could still be subject to a point of order if its long-range costs were equal to or greater than 0.02 percent of taxable payroll.

In the Senate, budget resolutions must include separate amounts for social security income and outgo for the first year and 5-year period (cumulatively) covered by the resolution. (They are separate in the sense that they are not counted in the budget resolution totals themselves.) These amounts cannot reflect a narrowing in the surplus of income (or larger deficit) from what is projected under current law. Recommended resolutions or amendments that do so could draw an objection that can be overridden only by approval of three-fifths of the Senate.[12] Simply stated, Senate rules preclude consideration of budget resolutions that would erode the ''near-term'' balances of the social security trust funds. In addition, once a conference agreement on the budget resolution is reached, allocations of the social security amounts included in the resolution must be made to the Finance Committee, and budget act points of order (under sections 302 and 311) can then be brought up against subsequent social security measures that would cause outlays to be increased or revenues to be reduced (without offsetting changes) from those reflected in the allocations to the Committee. To override these objections requires approval by three-fifths of the Senate.

*Report to Congress on the actuarial balance of the trust fund by the trustees*

The 1990 law also added a provision requiring the social security board of trustees to include in its annual report a statement as to whether the OASI and DI trust funds are in ''close actuarial balance.'' Traditionally, close actuarial balance is said to exist if average income over the trustees' estimating period as a whole (which extends 75 years into the future) falls within 95 percent and 105 percent of the average cost of the program. Over the years, it has been considered a primary indicator of the long-range soundness of the program. Although trustees' reports routinely have made a statement about the program's actuarial balance, the practice of doing so was not required by law. In their 1989 report, the trustees declined to make such a statement (the projections themselves showed that the program was slightly outside the lower limit of actuarial balance with average income projected to be 94.9 percent of average costs). Its absence drew an objection from the chief actuary of the Social Security Administration in his legislatively required certification of the report. The 1990 law required a statement by the trustees about close actuarial balance to be included in each trustees' report.

All reports issued since enactment of this provision have included a substantive analysis of the close actuarial balance of the system and a statement about it by the trustees.

*Display of retirement trust fund balances*

The 1990 law further required that budget resolutions display the balances of Federal retirement trust fund programs, presumably including social security. This display must show the amount of the securities expected to be recorded to the trust funds.

FOOTNOTES

[1] This provision became section 710 of the Social Security Act.

[2] The measure did not accelerate the ''off-budget'' treatment of HI (i.e., under the 1983 Social Security Amendments, HI was not to be taken ''off-budget'' until FY 1993).

[3] The law also contained a provision that stated that no legislation enacted after December 12, 1985, could authorize payments from the General Fund of the Treasury to the OASDI and HI trust funds and vice versa (with the exception of appropriation measures for which authority existed on or before that date). This item did not create any practical changes in the process. Basically, it was a statement

of principle that no new provisions should be enacted that would authorize new forms of interfund ''payments'' between the Government's General Fund and the OASDI and HI trust funds.

[4] Interest earned on the holdings of the social security trust funds and appropriated ''payments to the social security trust funds'' for military wage credits and benefits paid to certain uninsured recipients also were exempted.

[5] Special procedures also existed in the Senate under which a reconciliation bill could be initiated to alter a sequestration order issued by the President.

[6] The period in which the three-fifths rule would apply was extended through FY 1993 with enactment of P.L. 100–119 (under prior law, the three-fifths rule applied through FY 1991). An additional technical change was included in P.L. 100–119 altering Senate rules that previously had the effect of permitting waivers of the three-fifths requirement as it pertained to the social security and other potential ''points of order'' authorized in the 1974 and 1985 budget acts.

[7] A section 311 objection existed under the original budget act for violations of the budget resolution totals, although it was modified somewhat by the 1985 act.

[8] It should be noted that removing social security officially from the budget totals does not change how social security funds are actually handled. Social security taxes continue to be deposited in the U.S. treasury (with the appropriate crediting of securities to the trust funds) and social security expenses continue to be paid from the treasury. Hence, those who are interested in the aggregate financial flows of the Government and the impact those flows have on the economy are likely to continue to view the financial affairs of the Government on a unified budget basis (which means they would count social security in computing revenue and spending totals).

[9] These changes did not affect medicare. Although HI is scheduled to be removed from the budget totals in FY 1993 as a result of the 1983 social security amendments, it will be counted in the budget through FY 1995 for purposes of the Budget Enforcement Act rules.

[10] For FY 1991–93, the 1990 law set limits on three categories of discretionary spending: defense, international, and domestic. There is no dollar limit on the ''direct spending'' category, but it is subject to a ''pay-as-you-go'' rule requiring that any new spending increases or revenue reductions be offset with spending reductions or revenue increases enacted by the end of the session. Overall deficit targets, such as existed under the former GRH procedures, also were prescribed for these fiscal years, but adherence to the discretionary spending rules and the ''pay-as-you-go'' requirement, and required economic and technical adjustments to the budget totals made by the Office of Management and Budget (OMB), have basically made them irrelevant.

[11] Note that in FY 1994–1995, the domestic spending portion of the budget is merged with the defense and international spending portions, making a single discretionary category of the budget. Under OMB's 1991 interpretation, social security administrative expenses would be counted in this category.

[12] In its original form, this provision only precluded the Senate Budget Committee from recommending a budget resolution that would reduce the current law balances of the trust funds. It was not out of order to subsequently consider floor amendments to modify the resolution to reflect measures that would reduce the trust fund balances. Such amendments could be passed by a simple majority. In enacting the FY 1992 Budget Resolution, the Senate adopted a rule making it out of order to consider measures (including amendments to budget resolutions) that would erode the balances of the trust funds for the period covered by that resolution (and requiring approval of three-fifths of the Senate to suspend the rules to do so). In enacting the FY 1993 Budget Resolution, the Senate made this a permanent rule.

CHRONOLOGY

1990—P.L. 101–508 enacted, including among its titles, the Budget Enforcement Act of 1990. This law establishes new budget procedures to enforce a 5-year $500 billion deficit-reduction package. It includes provisions officially taking social security out of all calculations of the budget totals and creates new floor procedures (for considering social security legislation) intended to protect the balances of the OASDI trust funds.

1987—P.L. 100–119 enacted, including among its titles, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987. This law makes changes to the Gramm-Rudman-Hollings (GRH) procedures, including extending the point at which a balanced budget would be reached to FY 1993. The financial operations of the social security trust funds remain part of the budget calculations for GRH purposes.

1985—P.L. 99–177 enacted, including among its titles, the Balanced Budget and Emergency Deficit Control Act of 1985, better known as the Gramm-Rudman-Hollings (GRH) deficit reduction law. Although technically removing social security from the budget totals effective for FY 1986, this law includes social security in the budget totals through FY 1991 for GRH purposes.

1983—P.L. 98–21 enacted, the Social Security Amendments of 1983, including a provision calling for removal of the social security and the medicare Hospital Insurance (HI) trust funds from the budget totals beginning in FY 1993.

1974—P.L. 93–344 enacted, the Congressional Budget and Impoundment Control Act of 1974, establishing new procedures to formulate and control the budget that encompass a ''unified'' approach to the budget that includes social security and other trust fund programs in the budget totals.

1968—President Johnson issued a ''unified'' Federal budget for FY 1969.

ADDITIONAL REFERENCES

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MY VOTE ON THE DOLE AMENDMENT

Mr. HOLLINGS. Mr. President, I rise today to make a brief comment on the Dole amendment which the Senate agreed to today by a vote of 87–10. I voted against this amendment and was tempted to call it a fig leaf. But upon reflection, I think the Dole amendment is more accurately an octopus amendment: It squirts out dark ink and obscures what's really going on.

The plain language of House Joint Resolution 1 constitutionally requires that the revenues in the Social Security trust fund be included in the sum of total receipts. Neither a report from the Senate Budget Committee nor any other legislative fix can override this constitutional mandate. The Reid amendment would correct this problem by changing the language of the constitutional amendment and removing Social Security from deficit calculations.

Mr. President, if Members wish to see how a balanced budget can be achieved without raiding Social Security, they should not wait on a report from the Senate Budget Committee, but instead should examine the table that I have included in the CONGRESSIONAL RECORD on January 24 and February 7 of this year. We know that we can balance the budget without looting the Social Security trust fund, but no amount of wishing will allow us to override the Constitution if the Reid amendment is rejected.

THE PROSPECT OF STABILITY, 1993–95

IN OPPOSITION TO H.J. RES. 1: THE BALANCED BUDGET AMENDMENT

Mr. MOYNIHAN. Mr. President, this will be the third and last of the papers I have presented to the Senate in opposition to House Joint Resolution 1, Proposing an amendment to the Constitution of the United States to require a balanced budget.

In the first paper I described the development of fiscal policy in postwar America, following the huge swings of the Great Depression and the Second World War. I described an economic profession growing in understanding and reach. I made the point that I saw this happen. In 1961, I joined the Kennedy administration. I became Assistant Secretary of Labor for policy planning and research. Unemployment that year reached 6.7 percent, the second highest it had been since annual rates were first recorded in 1948. There was a sense of emergency. But also a confidence that we knew what to do. The Federal Government was running a surplus. The result was fiscal drag. We would contrive to spend more and tax less, so as to stimulate the economy toward full employment.

We did and it worked. By 1966, unemployment dropped to 3.8 percent and by 1969, it reached 3.5 percent. A level, incidentally, never reached since.

Those were heady days. In 1965, in an article in ''The Public Interest'' entitled, ''The Professionalization of Reform,'' I noted that the Council of Economic Advisers forecast for GNP for 1964 was off by only $400 million in a total of $623 billion, while the unemployment forecast was on the nose. Recalling events that followed World War II, I noted that in 1964 the unemployment rate in West Germany was 0.4 percent, and not much higher in the rest of Western Europe. Indeed, unprecedented low levels for peacetime.

There had been some social learning. In the first year of the Nixon administration, contractionary fiscal policies were put in place designed to cool off an overheated economy following the buildup for the Vietnam war. Then in 1972 expansionary policies put in place by then-Director of OMB George P. Shultz stimulated the economy following the 1970–71 recession—the first

since that which Kennedy inherited from Eisenhower.

In truth, the record is extraordinary. The great issue of the 19th century—the economic swings accompanied by vast unemployment—the issue which gave rise to the radical totalitarian movements that were to prove the agony of the 20th century—that issue has been resolved. A chart prepared by the Joint Economic Committee illustrates this with great clarity. Between 1890 and 1945, real growth in the economy dropped by 5 percent on three occasions, dropped by 10 percent on two occasions, and on two other occasions dropped almost 15 percent. Since 1945, there have been four tiny declines, and only one serious one, that of the recession of 1982, say 2 to 3 percent. Hardly worth noting in the pre-war economy.

We had ''fine tuned,'' as the phrase went. The contractionary policies of 1969 were, in retrospect, a little too large; while the expansionary policy of 1972 came a little too late. But the theories seemed sound and the timing likely to improve.

Both theory and practice centered on the problem of underconsumption and the avoidance of what was seen as the problem of persistent cyclical surpluses in the Federal budget.

Then came the Reagan Revolution. Earlier doctrines were succeeded by supply side economics. To say again, I saw this happen. Huge deficits appeared which were not cyclical, and which were of no possible use. To the contrary, just yesterday at the Finance Committee, Matthew P. Pink, president of the Investment Company Institute testified:

> Government statistics show that personal saving as a percent of disposable personal income has tumbled over the last decade—from a high of 8.0 percent in 1984, to a low of 4.0 percent in 1993. If government deficits are factored in, the situation appears even more bleak: since the 1960s, ''net national saving'' has dropped from more than 8 percent to less than 2 percent today.

In 1984, the Council of Economic Advisers, then headed by Martin Feldstein, the eminent Harvard economist, now head of the National Bureau of Economic Research, reported the grim news that a structural as against cyclical deficit had appeared and was not going away:

> REDUCING THE BUDGET DEFICIT
>
> Despite the dramatic reduction in the share of national income taken by government domestic spending and the fundamental improvement in the character of our tax system, the Nation still faces the serious potential problem of a long string of huge budget deficits. Vigorous economic growth can eliminate the cyclical component of the deficit. But without legislative action, the structural component is likely to grow just as fast as the cyclical one shrinks. The Administration's economic projections imply that the budget deficit will remain roughly $200 billion a year—or about 5 percent of GNP—for the rest of the decade unless there is legislative action to reduce spending or raise revenue. Deficits of that size would represent a serious potential threat to the health of the American economy in the second half of this decade and in the more distant future.
>
> DEFICIT PROJECTION
>
> The cyclical component of the budget deficit is the party of the deficit that occurs because the unemployment rate exceeds the inflation threshold level of unemployment, i.e., the minimum level of unemployment that can be sustained without raising the rate of inflation. This excess unemployment raises the deficit by depressing tax revenues and by increasing outlays on unemployment benefits and other cyclically sensitive programs.
>
> The remaining part of the budget deficit, known as the structural component, is the amount of the deficit that would remain even if the unemployment rate were at the inflation threshold level. The Administration estimates that the inflation threshold level of unemployment is now 6.5 percent and will decline in the coming years as the relative number of inexperienced workers declines and as the Administration's employment policies are enacted and take effect.
>
> Table I–2 presents the cyclical and structural components of the budget deficit for 1980 through 1989. The 1983 deficit of $195 billion was divided about evenly between the cyclical and structural components. Because of the lower level of unemployment projected for 1984, a much larger share of the current year's deficit is structural. The projected deficit of $187 billion includes a cyclical component of $49 billion and a structural component of $138 billion. By 1989, the entire projected budget deficit is structural.

TABLE I–2—CYCLICAL AND STRUCTURAL COMPONENTS OF THE DEFICIT, FISCAL YEARS 1980–1989

[In billions of dollars]

| Fiscal year | Total | Cyclical | Structural |
|---|---|---|---|
| Actual: | | | |
| 1980 | 60 | 4 | 55 |
| 1981 | 58 | 19 | 39 |
| 1982 | 111 | 62 | 48 |
| 1983 | 195 | 95 | 101 |
| Estimates (current services): | | | |
| 1984 | 187 | 49 | 138 |
| 1985 | 208 | 44 | 163 |
| 1986 | 216 | 45 | 171 |
| 1987 | 220 | 34 | 187 |
| 1988 | 203 | 16 | 187 |
| 1989 | 193 | −4 | 197 |

And so the idea of making it go away by amending the Constitution gained greater strength.

This idea was already part of the public discourse. The new economics was hard to understand. It seemed to contradict common sense. To cite the work of Thomas Kuhn, many or most Americans lived within an economic paradigm in which countercyclical spending made no sense whatever. Would it not be agreed that Herbert Hoover had the most practical and governmental experience in national and international economics of any American President? And yet, he did not grasp the new economics. Mind, the new economics had not yet evolved, but the point is that much of President Hoover's instinctive response to the Depression of the 1930's only worsened that Depression. President Roosevelt had more of an excuse, in that he knew nothing of economics, or as near as makes no matter. But his instincts were almost exactly those of his predecessor, even denouncing in 1932 the few countercyclical measures that Hoover has instituted.

In the 1970's a grassroots movement got underway to call a constitutional convention to adopt a balanced budget amendment. In the event, some 30 State legislatures joined in this call, only four fewer than the required two-thirds. Note that the final four were not forthcoming: The prospect of hanging concentrates the minds of legislators along with other folk. But I, for one, grew alarmed. At a meeting of the Budget Committee, I asked the newest Chairman of the Council, the estimable Charles L. Schultze, if he would run the 1975 recession on their computer. He agreed and reported back a while later. They had carried out the simulation. The computer ''blew up.'' I, in turn, reported this in an article in the Wall Street Journal of March, 1981. In specific terms, Dr. Schultze reported that Federal spending dropped something like $100 billion, and GNP dropped 12 percent. Back, that is to the wild swings of the last century. Save. that there might be no upswing.

In the Wall Street Journal, I asked if we really wanted to write algebra into the Constitution.

Obviously, a majority, but not yet two-thirds of the Members of the U.S. Senate are disposed to do just that, And so I have now asked Dr. David Podoff, sometime Chief Economist of the Senate Committee on Finance and now Chief Minority Economist, if he would construct an example of what might occur if we attempted to balance the budget in the middle of a recession.

Dr. Podoff was well trained at M.I.T. by a distinguished faculty, including three Novel laureates, Professors Paul Samuelson, Robert Solow, and Fransisco Modigliani. Not surprisingly, Podoff's analysis brings Schultze's up-to-date, and quite conforms the professional judgment of, well, the profession. It is as follows:

Assume that for 1995 our $7 trillion economy is roughly at full employment—which it is—and that under the requirements of the Constitution the budget is balanced. The economy is then buffeted by external or what economists call exogenous shocks. These shocks, which could be due to financial dislocation in international currency markets which disrupt trade—a second run on the Mexican peso—oil price shocks, or world-wide natural disasters are assumed to result in an increase in the unemployment rate from 5.5 to 8.5 percent. At the height of the 1981-82 recession the unemployment rate reached 9.7 percent, so this is not an implausible level for unemployment.

Most economic models suggest that a 3 percentage point increase in the unemployment rate in associated with a 7.5 percent reduction in GDP. In turn, sensitivity analysis published by CBO in its Economic and Budget Outlook indicate that a reduction in GDP of about $500 billion leads to an increase

in the deficit of $150 billion, as tax collections fall and outlays for unemployment compensation and other income maintenance programs increase.

But now the budget must be balanced. Outlays are reduced and/or taxes are increased by a total of $150 billion. This reduction in the deficit leads to further decreases in output which again increase the deficit which cause another round of budget cuts and on and on.

When this so-called multiplier process is finally completed, the downward spiral in economic activity will leave the economy in a new low level equilibrium, with output 18 percent below its potential and an unemployment rate of 12 percent.

Note the symmetry between Schultze's simulation of 1975 and Podoff's of 1995. Schultze projected 12-percent drop of GDP in an economy operating at less than full potential, off about 5 percentage points. In 1995, we are close to full employment, which is a sufficient shorthand for producing at potential GDP. Podoff suggests a drop of 18 percentage points. We may be onto an important economic insight here, but let us hope this remains in the realm of theoretical economics!

Another distinguished economist, Laura D'Andrea Tyson, current Chair of the Council of Economic Advisers, in the Washington Post, February 7, reinforced the perverse nature of balancing the budget in a recession. As she put it:

> A balanced budget amendment would throw the automatic stabilizers into reverse. Congress would be required to raise tax rates or cut spending programs in the face of a recession to counteract temporary increases in the deficit. Rather than moderating the normal ups and downs of the business cycle, fiscal policy would be required to aggravate them.

Monetary policy could moderate the swing in economic activity described in the simulations above. But as Dr. Tyson further notes in her op-ed piece:

> In a balanced-budget world—with fiscal policy enjoined to destabilize rather than stabilize the economy—all responsibility for counteracting the economic effects of the business cycle would be placed at the doorstep of the Federal Reserve.

Compared to fiscal actions, the Federal Reserve monetary actions could be constrained. Concerns about inflation, interest rates and exchange rates may prevent the Fed from acting quickly and forceful. For example, over the last year the Fed has increased short-term interest rates in seven small measured steps; and many analysts believe that the full impact of these contractionary actions have not yet been felt.

However, under the constitutional amendment, required fiscal actions to balance the budget would come quickly, unless waived by a three-fifths vote. The amendment (section 6) states:

> The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outlays and receipts.

In the absence of a waiver, what legislator would dare not vote quickly to balance the budget using the most up-to-date estimates of outlays and receipts? Indeed, respect for the Constitution, irrespective of the economic consequences, would require quick action.

On February 3, our revered sometime President pro tempore, Senator ROBERT C. BYRD, invited Senator PAUL S. SARBANES, formerly chairman of the Joint Economic Committee, and this Senator to join him in the Mansfield room to hear a number of economists, led by Jeff Faux of the Economic Policy Institute, present their views on the inadvisability and peril of a balanced budget amendment. Dr. Faux, incidentally, correctly predicted the devaluation of the Mexican peso in the course of the debate over the North American Free Trade Agreement. Among those who spoke, for himself and his fellow Nobel laureate at M.I.T., was Robert M. Solow, who stated in part:

> Many economists have pointed out how perverse the Amendment can be when the economy falls into recession. Then the appearance of a cyclical deficit is a desirable, functional event, not an undesirable one. At such a moment, the higher taxes or reduced transfers or lower expenditures that would be needed to restore balance will worsen the recession and do relatively little to reduce the budget deficit. Of course some escape mechanisms will be built into the amendment. But they will inevitably be slow, uncertain in their scope, and subject to manipulation by a minority. (This would be an obvious occasion for dissidents to challenge the accounting conventions in use.)

As I have remarked earlier, in the early 1980's, deficits were not viewed as a tool to stabilize the economy. Rather, they were used as a way to reduce the size of government. A debt in excess of $4 trillion is the legacy of the misuse of fiscal policy. We should not use the legacy of the 1980's as an excuse to abdicate control of fiscal policy by passing a constitutional amendment to balance the budget. Abdication would, in the words of a statement issued February 3 by several hundred economists of every political persuasion, who joined Senator BYRD, lead to the following results:

> When the private economy is in recession, a constitutional requirement that would force cuts in public spending or tax increases could worsen the economic downturn, causing greater loss of jobs, production, and income.

And, as noted in the examples of Dr. Schultze and Dr. Podoff, that is surely what will happen in a recession if we have a balanced budget amendment.

Not only were the budget policies of the early 1980's an aberration, which should not be used as a justification for adopting a constitutional amendment to balance the budget, but in the last two years we have been making progress toward achieving a balanced budget.

In the ''Economic and Budget Outlook: Fiscal Years 1994–1998'' report of January 1993, CBO projected that, by the year 2000, the deficit would reach $455 billion and exceed 5 percent of GDP.

In the ''Economic and Budget Outlook: Fiscal Years 1996–2000,'' issued last month, CBO now projects a deficit of $284 billion or about 3 percent of GDP. The proposals recently submitted by the President in his fiscal year 1996 budget message would reduce the deficit below 3 percent of GDP.

What accounts for this remarkable turnaround in the budget?

Two inter-related factors explain the reduction in the deficit. First, the Administration proposed, and Congress adopted a sizable deficit reduction package. Second, the economy performed better than expected, in part, because Congress adopted a creditable deficit reduction plan. In part, also, because, as Secretary of the Treasury Rubin remarked to the Finance Committee this Wednesday, the deficit reduction program squeezed the deficit premium, as he put it, out of real long-term interest rates. If financial markets do not believe the deficit is under control, they will levy a deficit premium on capital lending. In 1993 and 1994, we clearly persuaded the markets that we were finally serious.

I do not wish to be partisan in these remarks, and I hope I have not been. But will not forebear to note that the 1993 deficit reduction program was enacted with Democratic votes and only Democratic votes. I understand that Republican Senators are committed to House Joint Resolution 1, all but one that is, and I do not expect that to change. But I would hope Democratic Senators will recognize what I believe to be the error of the views of the other side of the aisle.

CBO estimated that the deficit reduction package enacted by Congress in August 1993 would reduce the deficit by more than $400 billion over five years. The budget resolution adopted by Congress in 1993—which required enactment of the deficit reduction package—anticipated a decrease in the fiscal year 1994 deficit of $33 billion, from an estimated baseline deficit of $287 billion to $254 billion. The actual deficit turned out to be $203, in part because of higher economic growth than projected. CBO estimates that a stronger economy reduced the fiscal year 1994 deficit by $21 billion.

The vigorous expansion was not unrelated to the adoption of a creditable deficit reduction program, which led to a reduction in real interest rates. Again, as Secretary Rubin stated, ''the deficit premium—on interest rates * * * is in my judgement largely gone.''

As a result of the deficit reduction policies we have had three straight years of deficit reduction—the first such string of declines since the administration of President Harry S. Truman. Here are the numbers:

| Fiscal year: | *Deficit in billions* |
|---|---|
| 1992 | $290.4 |
| 1993 | 255.1 |
| 1994 | 203.2 |
| OMB 1995 est. | 192.5 |
| CBO 1995 est. | 176 |

But the legacy of debt for the 12 year period 1980–92 will not go away quickly and can be seen in three aspects of fiscal and budget policy.

First, net interest on the increase in the publicly held debt—accumulated during the 12 year period 1980–1992—is about $180 billion or roughly the size of the annual deficit.

Second, even without a balanced budget amendment fiscal policy remains paralyzed—as long as we are running deficits of $200 billion, for whatever reason, it is difficult to deliberately increase the deficit as an anti-inflationary measure. The public will just not accept that.

Third, the legacy of annual deficits of almost $300 billion must be reduced gradually, so as not to depress the economy. Consequently, we will continue to add to the debt. By the end of the century the gross Federal debt will approach $7 trillion.

But it can be done. Note once more. Spending on Government programs is less than taxes for the first time since the 1960s. If we keep at it, do more, the deficit could start declining in 5 years surely. The decline accelerates as smaller debt leads to lesser borrowing for interest which leads to smaller debt. But can we not do this on our own, of our own free will? I say to Senators that it won't happen otherwise. The Courts, to which all disputes under that misbegotten amendment will be referred, are not capable of making even remotely sensible decisions on fiscal policy.

Some 40 years ago, Guthrie Birkhead, professor, later dean of the Maxwell School of Citizenship and Government at Syracuse University, remarked that Americans are gadget-minded about government. The proposed balanced budget amendment is nothing if not a gadget. Allow me to offer a cautionary tale from New York history. On March 3, 1858, the New York Times reported from Albany that 86 State senators had presented a petition so brief and so explicit that it was given in its entirety:

> The undersigned, citizens of the State, would respectfully represent: That owing to the great falling off of the Canal revenue, as well as the increasing drafts upon the State Treasury, and the large expenses of carrying on the several departments of the State Government, thereby swelling up the taxes; therefore, with the view of relieving the people from the large amount now unnecessarily expended to sustain the Executive and Legislative Departments, and to secure the *honest* and better administration thereof: your petitioners respectfully ask that your Honorable body pass an act for calling a Convention to so alter the Constitution as to abolish both the Executive and Legislative Departments, as they now exist, and to vest the powers and duties thereof on the President, Vice President, and Directors of the New York Central railroad Company.

The Times special correspondent, an early advocacy journalist, explained that the proposal, while intended as a joke, nonetheless conveyed a bitter satire, a satire which is deserved and just, such were the depredations of the ruling Democrats. The time would come, he concluded, when ''after long suffering'' the people would rise and ''retaliate.''

They almost did and not long thereafter. Joke or not, the proposal passed the legislature, went on the ballot the next fall, and failed by only 6,360 votes.

The amendment failed, but retaliation came even so. The New York Democrats scarcely held office for the rest of the century. But retaliation has pursued us into the twentieth century, even to this time. The New York Democrats have controlled the New York State legislature for a total of 4 years in the whole of the twentieth century so far. Let Republicans beware. This amendment could pass.

Mr. HATCH. Mr. President, I see the distinguished Senator from Oklahoma is here. I am hoping that after he speaks, we will be able to close out the Senate for the day.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. NICKLES. I ask unanimous consent to proceed as if in morning business.

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

## FOSTER NOMINATION OBJECTION

Mr. NICKLES. Mr. President, over the last 9 days, a firestorm has erupted over President Clinton's announcement that he intends to nominate Dr. Henry W. Foster as the Surgeon General of the United States.

I believe that the President erred when he chose Dr. Foster as Surgeon General, and I believe the President should withdraw his nomination. I would also recommend to Dr. Foster that he withdraw his name from consideration.

Mr. President, much has been made about the fact that Dr. Foster, by his own admission, has performed abortions. President Clinton said yesterday when he was defending Dr. Foster that the only people who are fighting this nomination are people who oppose abortion. I believe the President is wrong.

Mr. President, I might mention that I do oppose abortion. I do not make any qualms about that. I do believe it is the deliberate taking of a human life, and I think it is a mistake to have as our Surgeon General a person who routinely performs abortions. To be named as Surgeon General, you are named as the Nation's No. 1 public health officer.

Some people say, should a person be totally disqualified because of that? I would not vote for him, but that does not mean that this body would not. Likewise, I could not help but think of the reaction of many people in this body and what they would say if the medical researcher for American Tobacco Institute was appointed as Surgeon General. Smoking, like abortion, is legal, but I expect that there would be significant opposition because that is probably, again, not the right person to have as the Surgeon General.

Mr. President, my reason for speaking today and my reason for saying that the President should withdraw the nomination, is not just because Dr. Foster has performed a lot of abortions. It is because in this period of 9 days, there has been a real lack of candor from Dr. Foster. There has been a real misleading of the American people and the American Congress to the facts. I think that alone disqualifies him for this office.

The office of Surgeon General has been referred to as a bully pulpit, and it is. It is an office which gives the Surgeon General the ability to educate and to lead. And it is an office that, if one is going to educate and to lead by speaking, one has to have credibility. I think Dr. Foster has lost that credibility.

Mr. President, this morning's New York Times, in the lead editorial, calls on President Clinton to withdraw the Foster nomination. The editorial states:

> Although Dr. Foster is a highly respected obstetrician, his lack of candor about his abortion record disqualifies him from serious consideration. Misleading statements by candidates for high position cannot be condoned.

The editorial concludes:

> President Clinton promises to fight for his nominee and Dr. Foster pledges to stay the course. But this is a fight that neither the White House nor Congress really wants over a crippled candidacy. It is time to withdraw the nomination.

Mr. President, I ask unanimous consent to have the New York Times editorial printed in the RECORD at this point.

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

[From the New York Times, Feb. 10, 1995]

### THE TAINTED FOSTER NOMINATION

The nomination of Dr. Henry Foster Jr. to be surgeon general has been so badly bungled, by the White House and by Dr. Foster himself, that there is little choice but to hope it dies quickly. Although Dr. Foster is a highly respected obstetrician, his lack of candor about his abortion record disqualifies him from serious consideration. Misleading statements by candidates for high position simply cannot be condoned.

Of course the chief blame for this debacle lies with the White House, which once again put forth in a nominee without adequately vetting the person's background or knowing the answers to potentially explosive questions. As a result, the Administration put out false information on the number of abortions performed by Dr. Foster. In this as in earlier episodes, White House bungling makes it difficult for President Clinton's natural allies to support him fully. The situation moves from difficult to impossible for

pro-choice Republicans like Senator Nancy Kassebaum of Kansas, who cannot reasonably be expected to take a political gamble amid such swirling incompetence.

That is a shame because Dr. Foster, based on his past record, is a good choice to succeed Dr. Joycelyn Elders, who was pushed from the job after her repeated intemperate language made her a target for conservative attacks. Dr. Foster, the acting director of Meharry Medical College in Tennessee, is deeply committed to delaying child-bearing among adolescents, one of the most pressing social issues confronting the nation. He developed a highly successful program, called ''I Have a Future,'' in Nashville that was honored by President Bush as one of his ''points of light.''

During a 30-year practice Dr. Foster, like many obstetricians, performed a number of abortions. In doing so he was providing a legal, constitutionally protected medical service. If the latest numbers put forth are correct, he performed 39 surgical abortions during his 38-year medical career, a once-a-year rate that seems modest for a very busy practitioner serving a needy population. He was also the titular head of a federally sanctioned test of a potential abortion suppository.

This record would in any case have probably inflamed America's anti-choice minority, which is fierce and well organized and has good friends in Congress. But since most Americans believe that women should retain the right to choose, Dr. Foster's nomination might well have been pushed through the Senate had his record been forthrightly presented. Instead both he and the Administration made it look as if there accounts were unreliable or designed to mask a more troubling history.

President Clinton promises to fight for his nominee and Dr. Foster pledges to stay the course. But this is a fight that neither the White House nor Congress really wants over a crippled candidacy. It is time to withdraw the nomination.

Mr. NICKLES. Mr. President, I do not often agree with the New York Times editorial page, but I think this editorial is correct. President Clinton should withdraw this nomination immediately because Dr. Foster has serious credibility problems.

The New York Times editorial says Dr. Foster is guilty of lack of candor in making misleading statements about his abortion record. They are correct.

In less than a week, he has given three different estimates on the number of abortions he has performed. Initially, he told the administration officials he had performed just one abortion. Then, last Friday, he issued a statement that said:

> As a private practicing physician, I believed that I performed fewer than a dozen pregnancy terminations.

Mr. President, I ask unanimous consent that a statement by Dr. Henry Foster on February 3, 1995, be printed in the RECORD.

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

PRESS RELEASE: STATEMENT BY DR. HENRY FOSTER, NOMINEE FOR U.S. SURGEON GENERAL, FEB. 3, 1995

My specialty in the practice of medicine is obstetrics/gynecology. I have personally delivered more than 10,000 babies in nearly 30 years of practice including my service in the military.

In that period of almost three decades as a private practicing physician, I believed that I performed fewer than a dozen pregnancy terminations. None were in out-patient settings; all were in hospitals and were primarily to save the lives of the women or because the women had been the victims of rape or incest.

I was also Chief of Service at two major teaching institutions where many physicians held hospital privileges. A wide variety of medical procedures and research was performed at both. To my knowledge, all were in accordance with the law and educational requirements.

I have dedicated my life's work to improving access to medical care and improving quality of life for women and children, a passion rooted in my early years of practice in the rural South. I have placed particular emphasis on prevention, especially in such areas as teen pregnancy, drug abuse and smoking cessation in children. In my work with teenagers, abstinence has always been stressed as my first priority.

Through my long affiliation with Planned Parenthood Federation of America, my person goal has always been to provide education, counseling, preventive health care and contraceptive access to patients needing such services. If abortion is provided, my wish is that it be safe, legal and rare.

I am proud of my affiliation with Planned Parenthood just as I am of my affiliation with many other prestigious organizations such as the March of Dimes Foundation, the American Cancer Society, the Y.W.C.A. and my church.

Mr. NICKLES. Mr. President, on Wednesday, on ABC's ''Nightline,'' Dr. Foster recanted an earlier estimate and provided a new estimate of the number of abortions he has performed.

Dr. Foster said:

> I have worked at George W. Hubbard Hospital. At Meharry Medical College, all of my patient records and all of the operative logs from the time I went to Meharry in 1973 until tonight have revealed that I was listed as the physician of record on 39 of those cases, in 38 years of practice, in 22 years at Meharry.

Dr. Foster's statement on ''Nightline'' indicates he performed a grand total of 39 abortions in 38 years of medical practice, and all of those abortions were performed since 1973. But the Associated Press today reports that Dr. Foster performed an undetermined number of abortions prior to 1973, abortions that are not included in the 39 abortions he admitted on ''Nightline'' to having performed.

The article quotes Dr. Calvin Dowe, general practitioner and then a colleague of Dr. Foster at John A. Andrew Hospital in Tuskegee, AL, with William Hill, Dr. Foster's uncle, as saying Dr. Foster performed abortions in Alabama during the period from 1965 to 1973.

The article states:

> Dowe and William Hill, Foster's uncle, said they do not know how many abortions he performed at Andrew Hospital, which closed in 1987. But both said Foster did only what was medically necessary.

The article also quotes Dr. Dowe as saying:

> I don't see how any obstetrician has said he has never done an abortion. It's the nature of the business.

Mr. President, I ask unanimous consent to have printed in the RECORD the article I just referred to.

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

[From the Associated Press, Feb. 10, 1995]

FOSTER WAS LONE OBSTETRICIAN FOR EAST ALABAMA'S BLACK WOMEN

(By Jay Reeves)

BIRMINGHAM, AL.—As the lone obstetrician at a black hospital during the days of racial segregation, Dr. Henry Foster was the only source of health care for thousands of poor, pregnant women in rural east Alabama.

Foster delivered hundreds of babies at John A. Andrew Hospital in Tuskegee from 1965 to 1973. When complications left him no other choice, he sometimes did abortions, a colleague and a relative say.

''Back then the medical treatment for Negroes was just deplorable,'' Dr. Calvin Dowe, a former colleague of Foster, recalled Thursday. ''Hospitals in the surrounding areas didn't even consider them people.''

While medical services were not segregated by law, Foster cared for almost every pregnant black woman in at least five counties.

Dowe, a general practitioner who is black, said he never referred women to Foster for abortions and did not know anyone who did. Women simply went to him because there was nowhere else to turn.

''Realistically, I don't see how any obstetrician can say he never has done an abortion. It's the nature of the business,'' Dowe said.

Abortions performed by Foster over his 38-year medical career have become a source of controversy since President Clinton nominated him to replace fired Surgeon General Joycelyn Elders. Foster, 61, initially acknowledged fewer than a dozen of the procedures but now says he did 39.

Dowe and William Hill, Foster's uncle, said they do not know how many abortions he performed at Andrew Hospital, which closed in 1987. But both said Foster did only what was medically necessary.

''He had to perform some for medical emergencies. He wasn't an abortion doctor,'' said Hill, 90, who still lives in Tuskegee.

Foster moved to Tuskegee in 1965 after completing his residency at Meharry Medical College in Nashville, Tenn. Dowe said the head of obstetrics at Andrew died about the same time, and Foster agreed to take over.

''With the training he had, he could have gone a lot of places. It was a form of mission work,'' Dowe said.

Foster was a member of a Baptist church in Tuskegee, and he took flying lessons under Charles A. Anderson, leader of the famed Tuskegee Airmen, an all-black squadron during World War II.

Foster also developed what became a national model for regional perinatal health systems. The White House was drawn to Foster by programs he started later in Nashville combatting teen-age pregnancy.

Mr. NICKLES. These statements by Dr. Foster's former colleague and Dr. Foster's uncle indicate he has done more than 39 abortions in his 38-year career.

Again, we are talking about credibility. They indicate that Dr. Foster misrepresented his abortion record three times in the last week, and we still do not know, despite three different estimates supplied by the nominee, how many abortions Dr. Foster has performed.

Mr. President, there is a record that was made on Friday, November 10, 1978, at the Federal Building in Seattle, WA, before the Department of Health, Education, and Welfare, Office of the Secretary, an ethics advisory board.

A list of participants included: Henry W. Foster, M.D., professor and chairman, department of obstetrics and gynecology, Meharry Medical College, Nashville, TN.

Mr. President, on page 180 of this record, under Dr. Foster's name, it says:

I have done a lot of amniocentesis and therapeutic abortions, probably near 700.

There is a lot in this transcript, Mr. President. There is a lot in this transcript, but this one line, Dr. Foster's words, ''probably near 700.'' Initially from the White House we heard maybe the transcript was a forgery. Then we heard it probably was not this Dr. Foster, maybe it was a different Dr. Foster; maybe he was not there. I think they have recanted those statements and they said this probably is a legitimate transcript and it probably is the same person they nominated to be Surgeon General, but he did not say what the official transcript of the meeting says he said.

Again, credibility. Was it 1 or was it 12 or was it 39 or was it a lot more before 1973? So we do not know how many.

And, oh, yes, in his original comments he forgot that he was chief investigator of a drug, a suppository that would induce abortion that they gave to 60 people that he has written a report on, and I will include that for the RECORD as well. Out of the 60 pregnant women who participated in the study, 55 had their pregnancies aborted by the drug, and those abortions were not medically necessary. I think 58 of those who participated in the study were black women, ages 15 to 32; in 55 of the 60 cases, the drug successfully induced abortion; in 4 other cases, they had to go ahead and complete a surgical abortion procedure; and in one case, the mother changed her mind and carried the baby to term.

There are other things in this report. I am going to include this for the RECORD, not the entire report but I will include about 40 pages.

This transcript includes a discussion about research, trying to do research to determine whether the fetus has a disease called sickle cell anemia and whether or not they can detect that disease prenatally or find out whether the fetus is affected in time so there could be a therapeutic abortion; in other words, abort a fetus because it happens to have sickle cell anemia.

Mr. President, there are millions of Americans, I think it is estimated 2 or 3 million Americans who today have sickle cell anemia, and yet in this research proposal that they are talking to HEW about, they want to determine whether the fetus has sickle cell anemia so it would be in time to find out if the mother, I guess, would like to have an abortion, a therapeutic abortion. Not very therapeutic for the fetus, I might mention.

It even goes on further, and I do not even like talking about this. It talks about research on human ova fertilized in a laboratory setting. Dr. Foster is saying, ''Well, if we have spares that are not used for insemination, they could be used for research.''

It happens to be against the law right now, but he was advocating they would use fertilized ovum for research. That bothers me. This is a report, this is a transcript of a hearing. Maybe a lot of us speak at hearings and we forget we are recorded. I do not know. But these are statements.

Mr. President, I would like to keep the CONGRESSIONAL RECORD very short, but this is a very controversial nominee and I think people are entitled to find out what the facts are. So I ask unanimous consent this portion of a copy of the ethics advisory board meeting dated November 10, 1978, be printed in the RECORD.

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

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, OFFICE OF THE SECRETARY, ETHICS ADVISORY BOARD, MEETING V, NOVEMBER 10, 1978

MEMBERS OF THE ETHICS ADVISORY BOARD

Gaither, James C., J.D., Chairman, Cooley, Godward, Castro, Huddleson and Tatum, San Francisco, California.

Hamburg, David A., M.D., Vice Chairman, President, Institute of Medicine, Washington, D.C.

Conway, Jack T., Senior Vice President, Government and Labor Movement Relations, United Way of America, Washington, D.C.

Foster, Henry W., M.D., Professor and Chairman, Department of Obstetrics and Gynecology, Meharry Medical College, Nashville, Tennessee.

Henderson, Donald A., M.D., Dean, The Johns Hopkins School of Hygiene and Public Health, Baltimore, Maryland.

Lazarus, Maurice, Chairman, Finance Committee, Federated Department Stores, Inc., Boston, Massachusetts.

McCormick, Richard A., S.T.D., Professor of Christian Ethics, Kennedy Institute for the Study of Reproduction and Bioethics, Washington, D.C.

Spellman, Mitchell W., M.D., Dean for Medical Services and Professor or Surgery, Harvard Medical School, Boston, Massachusetts.

Williams, Agnes N., LL.B., Potomac, Maryland.

Zwieback, Eugene M., M.D., Surgeon, Omaha, Nebraska.

STAFF MEMBERS

Dr. Charles McCarthy, Staff Director, EAB.

Ms. Barbara Mishkin, Deputy Staff Director, EAB.

Ms. Roberta Garfinkle, Assistant to EAB.

Mr. William Dommel, Special Assistant to Staff Director, EAB.

Mr. Philip Halpern, Special Counsel to Chairman, EAB.

EXCERPTS FROM HEARING

. . . given the risk benefit ratio and whatever—it would not be ethical and moral for the government to pay for that process.

Dr. LEIMAN. So long as we are leaving the conceptus out of the discussion, I think so.

Mr. GAITHER. Dr. Henderson, one last question.

Dr. HENDERSON. Just an observation. I wonder if we are really looking at proceeding on the assumption that there is no additional risk. As one looks at the whole field of medicine, almost any procedure one does, any drug one takes, there is some minimal additional risk. Acceptable minimal additional risk I think is the way we are really looking at this and to say there is probably no additional risk I think is probably not the way we can look at this. I think we must say minimally acceptable additional risk.

Mr. GAITHER. I think the acceptable is still at issue. But I think that the point is well taken.

Rabbi Leiman, thank you very much. We appreciate it.

Let's take a short break and figure out how we can get back to our schedule.

(Brief recess.)

Mr. GAITHER. Needless to say, we have fallen a bit behind schedule, and I would suggest that we postpone for the time being the legal discussion regarding in vitro fertilization, and proceed at this time to a consideration of the research application involving fetoscopy, submitted by the Charles Drew Postgraduate Medical School.

I would like to note at the outset that Dr. Spellman, formerly Dean at that medical school has asked that he be excused from the deliberation on this issue. I hope that you will stay with us and listen to it, but I understand your reluctance to become involved, and we will assume that you will not be involved in either the discussion or the decision on this issue.

Dr. HAMBURG. However, as a point of personal privilege, you may respond to insulting remarks. (Laughter.)

Mr. GAITHER. Mrs. Mishkin, we will let you describe the issue before us, and I would ask that you start by describing why the application is before us and what we are expected to do with it.

Ms. MISHKIN. The HEW regulations governing research involving the human fetus lay down certain conditions which must be met in order for an institutional review board to approve that research. If the institutional review board is not able to determine that all of the conditions have been met, and if it considers that the research nevertheless is important, it may refer that research proposal to this Board for review. And if the Board determines that the research should go on, it may recommend to the Secretary that he waive those parts of the regulations that the research proposal cannot meet.

Now, the proposal before the Board at this point is a proposal to perform fetoscopy on mothers who have elected to have abortions for reasons totally unrelated to the research, in order to discover and to document what the risk to mothers and fetuses might be from the procedure of fetoscopy. The purpose of developing the fetoscopy is to be able to diagnose prenatally certain conditions for which the parents are at risk. In this particular research proposal the focus is primarily on prenatal diagnosis of sickle cell disease.

Now, the reason that this proposal is before the Board is that it cannot meet or at least cannot clearly meet provisions of the HEW regulations set forth in sections 46.206(a), 46.207(a), and 46.208(a) which briefly, taken together, require that the activities in the research proposal be designed to meet the health needs of either the mother or the particular fetus involved, or, if that is not the case, that the procedures present no more than minimal risk to the fetus.

Now, the problem in this proposal is that it is not designed, as written, to provide therapy for the mother, nor is it designed to provide therapy for the fetus, because the purpose is to assess safety of a technique and to do it in mothers who have already elected to undergo abortion. So there is no question as to whether or not it is or not so-called therapeutic research. It clearly is not. Therefore, it does not meet that first condition.

It does not seem to meet the second condition because the risks, I think, must be considered undetermined. Although the HEW regulations do not define minimal risk, it is possible to go and look behind those regulations to the Commission's discussion of what they intended, because the regulations were an attempt by the Department fully to implement the Commission's recommendations on research involving the fetus.

So I am going to offer to you for your guidance what the Commission's intentions were when they made their recommendations to the Secretary. That does not mean that you must follow the Commission's intentions; it is only to elucidate for you somewhat what the Commission had in mind, because the regulations themselves give this Board no guidance. The only guidance in the regulations is to the institutional review boards.

Mr. GAITHER. Let me interrupt for just one second, because I think it is important that we understand the standards which we are to apply. I gather what you are saying is that this particular application is not therapeutic and not clearly within the category or at least so determined by the institutional review board, as involving no more than minimal risk.

Ms. MISHKIN. That is correct.

Mr. GAITHER. Therefore, it can only be funded if this Board determines that it is ethically acceptable? Is that the standard?

Ms. MISHKIN. Essentially, yes. If we recommend to the Secretary that he waive those provisions that we just mentioned because we feel the research is important and justified by the benefits to be obtained from the—the anticipated benefits.

Mr. GAITHER. So there is no particular standard other than for us to say to the Secretary whether or not we feel that he should go ahead despite that provision in the regulations?

Mr. HALPERN. Mr. Gaither, if I could be of help, if you look at subpart 5 under Tab I in our book, giving us the regulation, Section 46.211 provides some guidance as to the standard, at least which will guide the Secretary in his decision to accept our recommendation.

Ms. MISHKIN. At Tab I of your book, we have reproduced the applicable provisions of 45 CFR 46, and it simply says if this Board feels that the risk is justified by the sum of the benefit to the subject, which is not in question here, or the importance of the knowledge to be gained.

Mr. CONWAY. And you are referring us to 46.211?

Ms. MISHKIN. Yes.

Mr. HALPERN. In fact, it doesn't say that the Board should be guided by the risk benefit analysis, it says that the Board should consider whether waiver, which is what we are talking about, is appropriate in this particular instance. Then it says in making the decision the Secretary will consider whether the risks to the subject are so outweighed by the sum of the benefit to the subject and the importance of the knowledge to be gained as to warrant such a modification or a waiver.

Mr. GAITHER. But it seems to me that it is important for us to note that .211 states that the Secretary can only waive, unlike the other situation before us, with our approval. So that is the question, whether we would approve a modification or waiver of these regulations to permit this research to continue. And basically there are no specific standards imposed upon us. Is that correct?

Ms. MISHKIN. That is correct.

Mr. GAITHER. And what you are giving us is the background, now, for these particular regulations why the Commission suggested that a body such as ours be involved in the deliberations.

Ms. MISHKIN. And what the Commission coped with when it discussed the problem of research on fetuses to be aborted, and what standard might be appropriate in considering acceptable risk to fetuses about to be aborted or whose mothers intend to go through with an abortion. It was a very, very difficult problem for the Commission. Any of you who followed the Commission's activities in this area will know they spent a long time on this, and this was one of the areas in which there was not a full consensus among the Commission members.

First of all, let me say that this particular application underwent six reviews prior to coming before this Board. That included reviews by the appropriate IRB at the Drew Center; a review by the community board which is a separate community representative board at the Drew Center; review by the appropriate study section at HEW; review by a site visit team from study section, members ad hoc; review by the National Advisory Council under whose auspices this particular application came—if that is not six I have left one out, but they are all listed there anyway.

The staff of the Board then shipped the whole thing out to two additional people for independent reviews, and those have been mailed to you and are reproduced in your book. Dr. Haig Kazazian at Johns Hopkins University Hospital, and Dr. Dwayne Alexander at the National Institute of Child Health and Human Development.

Dr. Kazazian has done fetoscopy himself; he no longer does so. Dr. Alexander has not done fetoscopy. He was a member of the staff of the Commission and he ran the amniocentesis collaborative research program, and is very familiar with questions of prenatal diagnosis, and the risks of various procedures associated with prenatal diagnosis.

All of the review boards and the individual reviewers have recommended approval of this research application based on the importance of being able to diagnose prenatally certain conditions which, up until now, have not been diagnosable through amniocentesis. Fetoscopy has been the only possible way to diagnose sickle cell disease, among other diseases, in fetuses prior to birth.

Now, there was one problem that we had in reviewing this particular proposal, and that was it was not entirely clear from the proposal, because we had conflicting statements—the site visit review said one thing, and the proposal said something else—as to whether or not the investigators planned to delay abortion for more then 24 hours after fetoscopy. The point of the research is to do the fetoscopy, monitor the women after fetoscopy, and look for complications as a result of fetoscopy. Complications include possible infection of the woman, possible bleeding of the fetus, and subsequent abortion prior to the induced abortion which is anticipated.

What is present in the research application is a plan to perform the fetoscopy, monitor the woman for 24 hours, and then go ahead with the abortion as planned. What is present in the site visit's review, however, is a plan to continue monitoring, if they are satisfied that a 24 hour delay poses no risk, to increase that delay step by step, until they reach, finally, a two-week delay during which they would monitor the woman for two weeks following fetoscopy before going ahead with the abortion.

I called the principal investigator to find out what in fact was their intent, and he said that this does seem—that it is his intent to go incrementally if they are satisfied at any one stage as to the risk to mother and fetus, to go incrementally up to a two-week delay. This raises a very important concern that their subject population is women who are in their 16th to 20th week of gestation. A two-week delay in a woman who presents at 20 weeks would take that woman past 20 weeks gestation before her abortion, and this then would run into the possibility of a viable fetus being aborted, or of having a viable product of the abortion. This is one problem that the Commission was very much concerned about. That is why the staff recommendation on this particular proposal includes the provision that no abortion be postponed for reasons of this research that would then have to be performed after the 20th week of gestation. This is compatible with the regulations that no timing or methodological change be introduced for reasons of research that would add additional risk to the mother or the fetus. And surely the risk of having a viable product of abortion is an additional risk.

The current regulations note that viability is possible at 20 weeks, and that is why the staff recommends that no procedure be delayed beyond the 20th gestational week for purposes of this research.

Now, the whole thing was complicated by an article in the Washington Post that appeared on Saturday, November 4th, while we were in the process of preparing this memorandum of recommendations to you. That article indicates that a physician at the University of California at San Francisco believes he has developed a procedure to diagnose sickle cell disease through amniocentesis, thus avoiding the necessity to go to fetoscopy in order to diagnose sickle cell disease. These findings are supposed to have been in the most recent issue of the journal Lancet. We were unable to find whatever issue that was. It must not be out yet. If it is out it is not available in any of the libraries we had access to in Washington.

We tried very hard to call the investigator at the University of California at San Francisco, and we were unable to reach him. We do, however, have some further information on that. Dr. Alexander was able to reach Dr. Michael Kaback, who is Assistant Professor of Pediatrics and Medical Genetics at the University of California at Los Angeles, and who is familiar with the work of the investigators at San Francisco.

What I am going to give you now is my understanding of Dr. Alexander's understanding of Dr. Kaback's understanding of what they are doing in San Francisco. If all of that is clear, you will know how far we are removed from firsthand information. But nevertheless I will give it to you, because I think it is important.

It goes as follows: 85 percent of sickle cell carriers have an extra large piece of DNA on the gene that has the sickle cell trait. Now, this condition of having the extra large clump of DNA material is calling polymorphism. Thus, it is possible assuming the test works as reported, to diagnose approximately two-thirds or more of sickle cell babies through amniocentesis and looking for this enlarged DNA clump.

Now, let me break that out for you. What they have to do if they identify both parents as carriers, they then look for this polymorphism, in other words, the extra clump of DNA in the parents. If those parents have that extra clump of DNA, that is, if they fall within the 85 percent of sickle cell carriers

who have that polymorphism, then it is possible to perform amniocentesis—yes?

Dr. FOSTER. I should clarify something at this point. You are using a medical term, and I am not sure—you are saying ''carriers.'' do you really mean carriers, or do you mean sickle cell disease?

Ms. MISHKIN. No, I mean carriers.

Dr. FOSTER. That is not a person with sickle cell disease.

Ms. MISHKIN. That is correct.

Dr. FOSTER. Okay.

Ms. MISHKIN. But again, this is my understanding from Dr. Alexander through Dr. Kaback. That is the best we can give you.

Dr. FOSTER. Go ahead and let me hear you out, then.

Ms. MISHKIN. My understanding is this is carriers.

Dr. FOSTER. Okay, go ahead. I will hear you out.

Ms. MISHKIN. So if both parents are carriers, either with or without the disease—

Dr. FOSTER. It is the previous I am concerned about.

Ms. MISHKIN. Right. If both parents are carriers and have this trait of the polymorphism, and it is possible to be a—15 percent of carriers do not show this trait. If they are among the 85 percent of carriers who show this trait, then through amniocentesis they can look for the segments in the fetus. If the fetus has two segments showing the polymorphi, that is a child with sickle cell disease. If the fetus has one segment that child is a carrier. If the fetus has no segments, that is a normal child.

Now, I went back and asked again whether that child could be one of the 15 percent that do not show the polymorphism, and the answer was that Dr. Alexander believes not. The answer is if they have done this whole procedure and the child does not carry that polymorphism, that child is not a carrier or a diseased child with respect to sickle cell.

Now, if either parent is not polymorphic, does not have this additional clump, is within that 15 percent of parents who are carriers but do not have this change of the DNA, then it is impossible to diagnose the sickle cell disease in the fetus through this amniocentesis procedure, and that would mean that for those parents the only way to diagnose the sickle cell disease in the fetus would be through fetoscopy, which brings us back to the Drew application.

Now, what all this means is there has been a shift in the risk benefit analysis that all of the reviewers performed on the Drew application, because when they looked at the Drew application fetoscopy was the only method for diagnosing sickle cell disease prenatally. Now it appears, although we do not have the documentation to give you, that it is possible in 85 percent of sickle cell carrier parents to diagnose the presence or absence of sickle cell disease by anmniocentesis which is agreed to be a safer procedure than fetoscopy.

So your job is somewhat more difficult, but I don't think it is impossible. One is left with the question of whether it is appropriate for the investigators at Drew to do the research, to assess the risks of fetoscopy as a tool for prenatal diagnosis of sickle cell disease in their subject population, and the reason I am emphasizing this is that if it were the case that all sickle cell disease could be diagnosed prenatally through any other method, amniocentesis or any other, then the board would have to face the question of whether the subject population which the Drew Medical Center serves is an appropriate population to develop the methods of fetoscopy. Fetoscopy is useful for prenatal diagnosis of other disorders, but not disorders which are disorders of the black population, which is the subject population which the Drew Center serves. So then one would have to question whether the black population is an appropriate subject population for developing fetoscopy if they are not going to be the population which will benefit from the development of that diagnostic tool.

In other words, one wants to have the population that will benefit from the research, participate as subjects and accept the risks of that research if possible.

Mr. HALPERN. Just related to this, are we not also in the position of asking whether or not we should remand this issue to Drew and the community that Drew serves for them to make the risk benefit analysis again, in light of this new data?

Ms. MISHKIN. Absolutely. That is a very viable option, and it certainly has a great deal of merit. I think one might reasonably ask for a total reassessment, by that IRB or by any number of other people, even including the study section that reviewed it, in the light of the new information. But I think we would want to get the actual information documented before we remanded it.

I don't know if this has been clear, and if you want more elucidation of the Commission's intent or of my understanding of the regulations, I would be glad to go forward with more.

Mr. GAITHER. Hank, would you say something about the science of this?

Dr. FOSTER. Yes, I am going to say something about the science and the sociology, if you will indulge me.

I heard of Kan's work just a few days ago, and I knew clearly like a shock wave that it was inevitably going to affect what we have to do, or what we recommended. But I want to say some things as we go through all of this deliberation, which may take me a few moments, but I really want to run through these steps that I have written down here. Some food for thought.

I just have one question. The genetic polymorphism that is necessary in the parents—is it required in both parents? In other words, you know, both parents may be carriers, but only one may show the polymorphism and the other may not. Is it a requirement for both parents? Do you recall?

Ms. MISHKIN. My understanding is that it is not going to be a reliable test through amniocentesis unless both parents show the polymorphism.

Dr. FOSTER. Now, the next question I have—and then I will make my comments—now, I read the research proposal, and I missed this delay. That bothers me a little bit, first. I have got to really clear that in my mind.

I have done a lot of amniocentesis and therapeutic abortions, probably near 700. As I read the protocol, the patient would be brought in the hospital, and that would be a 24 hour delay, which was not inordinate, based on the information that we have. It is very reasonable. But the clinical part, catheter is introduced into the amniotic cavity, and that is the time when the fetus is studied, the blood vessels, and the sample is taken. Then the fetoscope is withdrawn, but the catheter is left in place, which is quite acceptable. In fact, this is one of the techniques we use for continuous prostaglandin infusion.

But there gets to be a real question with regard to infection after a 24 hour period with an indwelling connection to the outside. I missed the entire reviewer's section about some extension beyond 24 hours, and if there is an extension of observation beyond 24 hours, does it involve the catheter being in place? This would be critical in my mind.

Dr. MCCARTHY. Yes, it certainly does.

Dr. FOSTER. I think that is something that really needs to be addressed in terms of the details of the research.

Ms. MISHKIN. I am frankly bothered by anything coming as far as to the Ethics Advisory Board through all those reviews without this being quite clear. It was in the site visit review, and it was because of the ambiquity that I called the principal investigator.

Now, Dwayne Alexander was working on the application in front of him, and so he really addressed only the 24 hour delay. But because of the ambiguities I did call, and the investigators do intend to go to two weeks. I think it might not be inappropriate for the Board to make some strong statement about wanting to be clear on what the procedures proposed are here.

Mr. LAZARUS. I wasn't clear either on the consent procedures.

Dr. FOSTER. That doesn't come through. But the one thing I do want to say, and then I will get to the other points I want to make about what all of the implications of fetoscopy are as I see it. I do think a longer observational period is an acceptable research modality provided safeguards are there. We have already talked about extending beyond the 20 weeks. That can be controlled for fairly well with ultrasonography for establishing fetal age, and a few other things. But I think you might want to consider the observation period without the catheter in place, because repeated amniocentesis has proven to be relatively safe in terms—the danger is in leaving a conduit for bacterial migration.

So what I am really saying is I can see the investigators making a justification for an observation period of longer than 24 hours, but I find it a little difficult at this point to see that justification with an indwelling catheter in beyond this point.

And now I think the things we need to be concerned about irrespective of what we ultimately recommend in terms of going back or whatever. There was very, very strong community support for this proposal. Anyone who read the type of support, and the rather incisive and critical questions, I thought, that the community asked in regard to many of the social and medical implications. I think it is keen that we remember that there have been so many charges of disregard for ethic makeups of our research, genocide and all the issues, if this is an indigenous decision by a community, I think we need to give that great respect, because it is a justification for us to say this is a decision that you made. If we say to the community no, we shouldn't do this, the community in a sense has a right to say you are willing to impose certain things on us externally that we feel are an abridgment, but here when we see something clearly directing us, you deny it. So that is something that has to be considered strongly in terms of sociology.

I think another thing that is very important from what I know about this—Drew has been one of the few centers that had federal support prior to the moratorium in 1973, I believe, involving aborted fetal subjects on the research, has gone through the steps of animal experiments. They have used the ovine model very well with sheep and I think we certainly have to give that some accord. They have gone through all the steps prior to using humans.

Now, the implications of Kan's work I don't need to go over. You have made that very clear. So I will move on to my fourth point.

Mitch Spellman makes this point a lot, and it is a good point. There is a basis for basic research with regard to doing fetoscopy, irrespective of Kan's work. There

is a basic need. Now, I am going to go slowly and really try to make this point.

Kan's approach right now is the acceptable one. It is a reaction. It is an after-the-fact approach. It gives us an option simply to abort a defective pregnancy. Basic research will afford us a much broader and brighter horizon, might I add. And that is the possibility of diagnosing the defective fetus and then preventing the development of sickle cell disease in that fetus.

Now, I will try and paint a picture. In utero, for all of us normally, there is a different set of protein in two of the chains of our hemoglobin in early fetal life. The normal hemoglobin molecule has four chains, two upper alpha chains, which are proteins in a set sequence, and two lower, somewhat larger, beta chains in a set sequence.

The only difference between one who has sickle cell hemoglobin and a normal person is out of 184 amino acids in one of those chains, and that is in set sequence, there is an exchange of valine for glutanic acid, in the sixth position from the end. One of 184 chains. That is the only difference. But because of this change in the chain, certain physical and chemical defects, as you may call them, are imparted into the hemoglobin. It makes it less stable. Its ability to hold and release oxygen is affected. The stability of the red cell membrane is affected. It changes its pattern of migration in an electrical field. This is how we do our hemoglobin electrophoresis.

Back to in utero, none of us has these beta chains when we are developing. We have another chain called a gamma chain, and that gamma chain is provided for through a mechanism which we yet do not fully understand, and this is where our basic research should continue. There are repressor genes and activator genes. Rarely, through chance, some people who were destined to have sickle cell disease never develop it. But they continue to make the gamma chains which make fetal hemoglobin throughout life, even in the postnatal period. And these people have absolutely no trouble. That is the ideal situation for the sickle cell person, is to be able to find that mechanism that will prevent the turning on of the activator genes from going from gamma chains to defective beta chains. So there is a clear need for this kind of research in spite of the work by Kahn and his group.

It is at this basic step where not only will we be able to diagnose the child destined to have sickle cell disease, but indeed, to prevent it. So I think that alone justifies continuation of this basic research approach.

Lastly—well, that includes—I wanted to say something about the basic science of the molecule. So there is a real horizon out there that has to be untapped, and that is the ability to diagnose the abnormal hemoglobin but not by default to get rid of the fetus. That is the thinking that if you want to prevent forest fires, cut down all the trees. I want to take a different approach. I want to see can we afford this fetus that was destined to be one thing, that our basic research will continue to allow us to do something about it.

So I just wanted these thoughts to be in the back of our minds, particularly in light of Kan's recent work as to the obsoleteness of this continued basic research approach.

Ms. MISHKIN. Is the research to develop that therapy now ready for pursuing through fetoscopy now, or does one have to wait for more development in animals and other methods before you actually go to fetuses in utero?

Dr. FOSTER. I think I understand your question, Barbara. Are you saying is our technique to such a point that we can go ahead with just the technique of amnioscopy?

Ms. MISHKIN. No, I am asking whether one would endorse the Drew application today on the basis of the need to develop the prenatal therapy, or are we not yet there with respect to the therapy, with the animal work and so forth?

Dr. FOSTER. I think the animal work has been done. I think that has been satisfied.

Ms. MISHKIN. There is one other thing I forgot to mention on the risk benefit analysis, and that is the concern about using fetuses to be aborted. There is not much direction in the HEW regulations on this matter, but the Commission came down to a guideline that may or may not be useful for you, but I think it has some merit. That is, they felt that it was ethically acceptable to perform procedures on a fetus to be aborted if one would feel ready to perform those procedures on a fetus intended to go to term.

In other words, if one had done all of the animal work, including primate work, which they have done in this case, and if they were unable to do it on fetuses to be aborted to further assess the risk, if they would be willing then to go forward therapeutically with it on fetuses going to term. That condition has been met in this case, because there are apparently several groups who are performing amniocentesis on fetuses intended to go to term.

Father MCCORMICK. Fetoscopy, you mean?

Ms. MISHKIN. In fetoscopy, yes.

Mr. GAITHER. In somebody's judgment.

Ms. MISHIKIN. I mean the condition of its being performed on fetuses going to term has been met, and the question is whether or not that meets your feeling of acceptability for performing the procedure on fetuses to be aborted. But this procedure is being performed on fetuses going to term.

Mr. GAITHER. Can I just ask for some clarification, first? One, what are the purposes of this particular protocol? Is it particularly experience and safety, or does it get into the basic research questions that Dr. Foster was mentioning?

Ms. MISHKIN. My understanding of the protocol is that it is to assess the risks of infection, of bleeding, of premature abortion, and so forth, that are attendant with fetoscopy. Now, Dr. Alexander also sees an additional benefit, which is developing the competence of the investigators to perform the procedure prior to trying to do it on fetuses going to term. That also is included. That is not the primary purpose of the application as written. The application is to determine with somewhat better certainty the risks involved to mother and fetus.

Dr. FOSTER. And a part of that is improving the technique. It is not basically designed to go into a specific basic research question. As I understand it, it is what Barbara says, to assess the safety and to improve the technique. That is going to evolve from that. And that is one of the reasons I feel they are asking for a somewhat longer observation period, because if you do the procedure and then proceed directly to the termination, you would deny some of the longer term effects, delayed bleeding and the like.

Mr. GAITHER. Two further points of clarification, and then I will open the discussion. The work that is presently going on at Yale and the University of California, has that been subjected to these regulations and approved, the distinction being that it was therapeutic, that is, regarded to be of benefit to a possible child, and that is why it is different, or not? Do you know what the status is?

Ms. MISHKIN. I am not entirely clear. My understanding is probably not with respect to the Yale group, because I do not think that is funded by HEW. I believe that is the information we got from Jerry Mahoney just recently. But as you know, the regulations are somewhat ambiguous with respect to whether or not research conducted at an institution but not funded by HEW must be reviewed by the IRB, and also subject to the same review standards. So it is a somewhat unclear point with respect to the Yale group.

Dr. MCCARTHY. It is perfectly clear that the Yale group felt obliged under Section 474(b) of the Public Health Service Act to have Dr. Mahoney's research involving fetoscopy reviewed by the IRB. They also made the interpretation, which I think is a reasonable one, although not the only possible one—they made the interpretation that they need not review according to HEW standards. And in fact, there is some question in my mind as to whether Dr. Mahoney's work would have been acceptable under HEW standards, because I think they regard this as more than minimal risk—not a great deal more, but somewhat more than minimal risk. Therefore, if they had followed our standards, his work would have had to come to the Board. Because it is not funded by HEW, they decided they could make that decision and they have made it and are carrying out that work.

Mr. GAITHER. There would not have been a distinction based on their work being therapeutic and this work not, because of the abortion?

Dr. MCCARTHY. No. As I understand it, initially they—and I am not quite sure at what phase they are in. They have planned a series of steps, the later stages of which they intend to be therapeutic. As I understand it, they are still in the diagnostic phase of those steps, but I believe their approval goes all the way to—assuming all the other stages are carried out with no untoward events—they intend to go all the way to applying fetoscopy to therapeutic interventions to try to assist fetuses that are in one way or another abnormal.

Mr. GAITHER. Mr. Lazarus?

Mr. LAZARUS. I think one of the key issues in this request is the problem of risk and how it is presented to the patient. Barbara says in her note that the risk presented by research cannot be characterized as minimal. Rather, it should be considered undetermined. And yet, the patient consent states that "I have been advised that these risks are minimal to me and to my fetus."

I think that one of the items that must be clarified is the whole consent procedure, and the nature of the risk must be spelled out a lot more consistently than they are spelled out under the present consent procedure that has been presented by Drew.

Ms. MISHKIN. I think one of the problems is that minimal risk, as I pointed out, is not defined in the HEW regulations, and in the Commission's report and its deliberations, that was a problem in two areas. At one point they indicate—and they indicate more strongly in subsequent reports—that risk which has not yet been determined should not be classified as minimal, but should remain under the categorization of undetermined.

On the other hand, there were some Commissioners although not all of them—there was a difference of opinion on this point, as to whether when you are talking about a fetus to be aborted, one can consider risk of abortion as a minimal risk to that fetus, whereas one would not consider risk of abortion a minimal risk to a fetus intended to go to term. This was one of the very difficult points where there was a lack of consensus among the Commission members.

So I think that when the IRB and the various people who reviewed the Drew application determined that it was minimal risk, that was not a clearly unacceptable determination. It was simply their interpretation,

given very little guidance from the Department as to how to assess and categorize that risk.

Mr. LAZARUS. It would seem to me, though, that a patient's consent is very important with the nature of the risk, which is undetermined. It should be very carefully spelled out.

Mr. GAITHER. Particularly when one is conducting the research for the purpose of finding out how risky the procedure is.

Mr. LAZARUS. Right.

Mr. HALPERN. Underlining the illogic of the word ''minimal'' where you are saying we don't know what it means, well, the problem is it is in our HEW regulations, and if in fact the risk is minimal as the patient is told, it wouldn't be here.

Ms. MISHKIN. That is right. It would not be before this Board if the risk were minimal. Then the IRB could have approved the project by themselves, although there is another provision that would need a waiver, so it probably would come here anyway. That is, the regulations currently provide that there be no change in timing or procedure of an abortion for research purposes that would add any additional risk, and that provision does not say ''that would add more than minimal risk,'' but that ''would add any additional risk.'' So it might have had to come here even so.

Dr. MCCARTHY. But the determination, the very point that Mr. Lazarus made, was picked up in the Office for Protection from Research Risks, which refused to—even though it had been reviewed by all of the subsidiary bodies—refused to go ahead and fund until and unless it has been approved by this Board.

So it is that very point: If you are doing research to assess risk, it does not seem possible then to prejudge the outcome by calling it minimal. It may turn out to be minimal, but there is no justification for the research if you already know it is minimal.

Mr. LAZARUS. And you are getting your consents under a false clause.

Dr. MCCARTHY. Yes, and I think the Office for Protection from Research Risks was correct in making the judgment that it should come before this Board to comply with HEW regs.

Mr. GAITHER. Yes, Dr. Henderson?

Dr. HENDERSON. Let me just carry that a little further. One of the important criteria here is that the research is important and justified. I think this is what is indicated. Clearly we have got investigators who are very competent people and they have obviously proceeded step by step in reaching the point they have.

I guess there are a couple of things in my own mind that are rather unclear. There are two centers where the work is being done now, Toronto and New Haven, where the risks now appear to be rather small. I think this is perhaps where the statement is that it is probably a minimal risk, that experienced people following along with two other centers, and doing what I interpret or what I understand is the same procedure that they are doing in New Haven and Toronto.

The question I guess I have, then is is it necessary to fund yet a third center? Should HEW fund a third center to be doing this? What are the advantages?

The initial point here, as they say, initially it is limited to an assessment of the safety. I find that fully justified to go—initially one is doing a study to assess the safety. But then I ask what is the ultimate objective, because we want research which is important and justified. What is it leading to? Obviously there is an objective here.

I believe, as I interpret it, that they would hope to be defining sickle cell disease. Now, I think in talking with you earlier, the question is can you identify either the sickle cell trait or sickle cell disease before 30 weeks? Can you define it at this period in time?

Perhaps we are talking about, as you mentioned earlier, longer term basic research, which requires this technique to be used. Is it enough to say that it is important that we do longer term basic research employing this technique without defining what is that basic long term research, and are we at the point now to approve of this sort of application which is based on safety, for some sort of ill-defined subsequent future, when in fact we are supposed to be judging this that the research is important and justified.

Now, it is obvious that there are a lot of very good people who have looked at this, and I am asking the questions, I would say, out of ignorance, because I found some contradictions here which I am having trouble with.

Father MCCARTHY. Do you want to respond to that, because I have got a different point I want to raise.

Dr. FOSTER. Well, yes. I tried to make some of them and I will try again. I think there are quite a number of justifications, Don, for continuing. One of the biggest reasons—I think the assumption is not completely correct that this work is being done at the other centers. I don't think there is anywhere the proportionate interest in sickle cell disease at either other center, nor is there the particular population base in either other center to be able to address this effectively.

Even if Kan's work proves to be what it is purported to be, based on what Ms. Mishkin has said, we are still left with 15 percent of a large population that is at great need, as you are probably aware. About eight percent of the blacks in this country harbor the sickle cell trait, and that is 2.5 million people, and 15 percent of that is a large port of the population.

So I think there is still in our current state of the art to continue to try and be able to diagnose sickle hemogloginopathies prior to the 30th week. I think there may be ways that we can do it. As yet we can't do it very reliably.

So I think the justification for continuing this work is clearly there. The justification may not be as strong as it was, but I certainly think it is within the realm of acceptability. This is what I personally feel.

Let me say one other question while I have the microphone. Let me address one other question regarding therapy versus research. I have not seen the research proposals that John Hobbins had at Yale, or what Kan has done at USC. But I do know that a lot of their fetoscopy work was therapeutic. The work on thalassemia was clearly therapeutic. It was done for the same reasons that we do amniocentesis, to decide whether or not the pregnancy should continue, and to provide a therapeutic abortion. In fact, I know much of that.

Hobbins' most recent article, which I believe was December of last year where he had, as I recall, about six or seven patients with sickle cell disease which he was working with. These were all therapeutic. He had tried to make a determination as to what type of hemoglobinopathy, whether it would be homozygous or heterozygous around the 22nd week, and the results were just inconclusive. His conclusion at the end of the article was that at this point we still can't do it. But that was clearly done to be therapeutic. Had he felt that he could have made the determination, he would have offered therapeutic abortion. So I do know that some of the work has been therapeutic.

Dr. MCCARTHY. That is correct. I should amend what I said. I think what Mahoney is doing is now tending to move into the preventive therapy and not—so I would like to amend what I said before about therapy, because it was clearly for the purpose of giving parents the option of a therapeutic abortion. But now they hope to move into preventive therapy, which is the sense in which I was using ''therapeutic.''

Mr. GAITHER. Is there an answer to Dr. Henderson's question, though? Do we know whether this technique will enable the researcher to determine the presence of the sickle cell disease?

Dr. FOSTER. We never know that until we do the research. I mean, no, I don't think we know it beforehand.

Mr. GAITHER. I think that is kind of a fundamental point here, because implicit in all of these papers, it seems to me, is precisely that, that this technique will enable the discovery of whether or not the disease is present. The question is whether it can be safely done. Now, if that is wrong, my whole reading of all of these papers is very much mistaken. I think it is a very fundamental point.

Either we are dealing with something that we know can help, and the question is whether it is safe, or we are dealing with something that we don't know much about.

Dr. HENDERSON. I am puzzled by your statement that the sickle cell trait is not identifiable before the 30th week. This is what is concerning me at the moment. And if it isn't identifiable before the 30th week, because you do have fetal hemoglobin present, I am not quite sure where this technique leads. I think this is information which we do have a reasonable body of knowledge on, do we not?

Dr. FOSTER. I don't know. The only thing that I do know is that the struggle has been to try and be able to diagnose sickle cell—homozygous sickle cell disease at a point at which therapeutic abortion could be offered. Right now we don't have that capability, and it was my understanding that one of the thrusts of this research proposal was to help to try and find that capability.

I would certainly think that this is an issue that again could be raised with the team, the basic research team who conducted the site visit. I think that these might be some issues that Jim and the staff might wish to bring up.

Mr. HALPERN. Dr. Henderson, it might be helpful.

Mr. NICKLES. Mr. President, we have the nominee saying a week ago Friday he performed less than 12 abortions. On the ''Nightline'' show, Dr. Foster said he did 39. Now we have the AP report saying that other physicians said he did many more than that in the years prior.

We have a transcript of a meeting where he said he did about 700 amniocentesis and therapeutic abortions. There are a lot of inconsistencies.

Again, I say, this nominee should be withdrawn or he should withdraw himself because of these inconsistencies, because I think there has been a deliberate attempt to mislead Congress.

Finally, I will say a couple of other things. Dr. Foster's credibility has been called into question, not only because of his inconsistent statements about abortion, but also because of other public statements. For example, during the same ''Nightline'' appearance, Dr. Foster said,

We have a responsibility in training residents to maintain our accreditation, a very

difficult job. I maintained an accredited residence program for 17 years.

But as today's Washington Times reports, the obstetrics residency program at Meharry Medical College lost accreditation in May 1990 when Dr. Foster was department chairman.

I watched a tape of that program, and I heard him say he maintained accreditation for 17 years. He kind of forgot to say that it lost accreditation when he was department chairman. Maybe he just forgot to say that. I do not know why it lost accreditation. I have heard, but I am not even going to mention that. I am not even faulting him for that. I am just saying his record before the public is misleading because he lost accreditation in that program. As a matter of fact, that accreditation, according to this article, has not been recovered, meaning Meharry Medical College cannot place students in hospital residency programs in obstetrics.

I ask unanimous consent to print the Washington Times article in the RECORD.

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

[From the Washington Times, Feb. 10, 1995]

MED SCHOOL FALTERED WITH FOSTER AT HELM

(By Paul Bedard)

The obstetrics and gynecology residency program at Meharry Medical College in Nashville, Tenn., permanently lost its accreditation when surgeon general nominee Henry W. Foster Jr. ran the department—countering his characterization that he kept it operational.

Senate critics of President Clinton's nominee said Dr. Foster misled them on his administration of the department and the college and said it was another example of the gynecologist hiding his record, especially on the number of abortions he has performed.

''He is not being straightforward with the American people and the administration is trying to cover up,'' said Sen. Dan Coats, Indiana Republican.

Mr. Coats and other Senate Republicans joined Sen. Don Nickles, Oklahoma Republican, in calling on Mr. Clinton to withdraw the nomination because of the differing accounts by Dr. Foster and the White House on the number of abortions he has done in a 37-year medical career.

The growing chorus of GOP voices demanding the withdrawal muted the support for Dr. Foster stated yesterday by six Senate Democrats.

Meanwhile, White House officials vented their frustration with Dr. Foster's inability to settle on a concrete figure on the number of abortions he has performed.

On the same ''Nightline'' show Wednesday night, the 61-year-old former Planned Parenthood board director said he had done 39 abortions since 1973, but he didn't address his eight-year stint as chief of obstetrics and gynecology at John A. Andrew Memorial Hospital at Tuskegee University in Alabama.

Asked if the White House was satisfied with Dr. Foster's answer that he had performed 39 abortions, White House spokesman Michael McCurry said: ''No, we're not satisfied. We will continue to work with Dr. Foster. Many of the records he described last night are only available to him because he's the only person that can request those records.''

Dr. Foster had previously said he performed one, then ''fewer than a dozen'' abortions. He also headed a study on an abortion pill that led to 55 more abortions. And he has disavowed an official government transcript in which he indicates he may have done hundreds more abortions.

Officials at historically black Meharry said that Dr. Foster's obstetrics-gynecology residency program lost accreditation in May 1990 and the withdrawal took place a year later—after Dr. Foster had been promoted to the dean of medicine and vice president of health services.

Several efforts to restore the accreditation have failed. Without accreditation, medical schools can't place students in hospital residency programs, according to the American Medical Association.

Meharry spokeswoman Martha Robinson said the program failed because there weren't enough patients to sustain a residency internship. ''It was clearly a numbers problem. It wasn't a quality issue,'' she said.

Dr. Edward R. Hill, who was vice chairman of Dr. Foster's program from 1982 until it ended in 1991, explained that black patients chose suburban hospitals in the late 1980's. ''We lost a very significant market share among the poor who now had a ticket, Medicaid, to more affluent areas,'' he said in an interview.

But a prominent Nashville doctor familiar with the program and Dr. Foster said the University of Arkansas-trained physician was a poor administrator.

''He's a great idea guy but not with following through or getting the job done,'' said the doctor, who requested anonymity.

Senate Republicans and a White House team are studying Dr. Foster's management at Meharry, which twice received government financial bailouts while Dr. Foster was associated with the school.

''One day after he goes on 'Nightline' to brag about running his department we learn it crashed on his watch and he failed to get it accredited. He has a very deep credibility problem,'' said an aide with the Senate Republican Conference.

Mr. Nickles said that termination of the obstetrics-gynecology program clashed with the impression Dr. Foster left ''Nightline'' viewers with when he explained the reason for accepting a grant to do a study on an abortion pill in the early 1980s.

On that show, Dr. Foster said, ''We have a responsibility in training residents to maintain our accreditation. It's a very difficult job. I maintained an accredited residency program for 17 years [1973 to 1990]. We have a responsibility to teach all residents how to manage the complications of abortion.''

Dr. Foster's changing stories on the number of abortions he did along with concerns about his management of the Meharry obstetrics-gynecology program sparked moves by Republicans to kill the nomination. Dr. Foster is to replace outspoken former Surgeon General Joycelyn Elders, fired for controversial statements on child masturbation and sexual conduct.

''In the wake of Dr. Joycelyn Elders' discordant and failed tenure, I believe that America deserves to have a surgeon general capable of inspiring Americans on a broad range of public health issues. Plainly, Dr. Henry Foster's background and the White House's mishandling of his nomination renders him incapable of achieving that goal,'' said Sen. Phil Gramm, Texas Republican.

''As a result, I intend to strenuously oppose the confirmation of Dr. Foster to become surgeon general of the United States,'' he said.

Mr. Coats, a member of the Labor and Human Resources Committee, which will vote on the Foster nomination said, ''There is a litmus test here and it is not abortion. It's the truth.''

Liberal groups supporting Dr. Foster have charged that the ''radical right'' is using the Foster nomination to push its anti-abortion agenda.

But Mr. Coats said that Dr. Foster simply hasn't told the truth about his past. ''You make the same accident three or four times and you begin to wonder if it's an accident.''

After watching the nominee get hit for eight straight days, Senate Democrats finally began to rally behind Mr. Clinton's choice. The president also used a press conference with German Chancellor Helmut Kohl to speak in favor of Dr. Foster.

''I think he's a good man, I think he'll be a good surgeon general, and I think that that ought to be the issue,'' he said.

The president also joined with Dr. Elders in bashing Dr. Foster's opponents as ardent anti-abortion radicals.

''Now, I know that those who believe that we should abolish the right to choose and make conduct which is now legal criminal will try to seize upon this nomination to negate the work of a man's life and define him in cardboard-cutout terms, but I think that is wrong,'' he said.

Sen. Frank Lautenberg, New Jersey Democrat, said, ''This is a vendetta, this is a witch hunt.''

A day after giving Dr. Foster a 50–50 chance of winning approval by the Senate, Sen. Barbara Mikulski, Maryland Democrat, said: ''Unfortunately, the White House did not do the best job in putting doctor Foster's nomination forward. Maybe that's the way the White House does such things.''

Mr. NICKLES. Mr. President, Dr. Foster became dean of Meharry Medical College later in 1990. The following year, according to the June 26, 1991, edition of USA Today, two other residency programs at Meharry also lost accredition—pediatrics and surgery. So while he was dean of the medical school, they lost pediatrics and surgery accreditation.

I ask unanimous consent to print the USA Today article in the RECORD.

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

[From USA Today, June 26, 1991]

PROGNOSIS: POOR—MED SCHOOL'S CRITICAL ROLE IS IN PERIL

(By Mark Mayfield)

For 115 years, Meharry Medical College has trained more black doctors than any other school in the nation, earning a reputation for excellence.

But now Meharry's doctors are facing their toughest case: the school itself.

Lack of patients at Meharry's modern, 12-story training hospital is jeopardizing the school's medical residency programs.

And that means trouble for the national health-care system because Meharry is a top provider of doctors for low-income rural areas and medically starved inner cities.

''If the Meharrys and other minority medical schools slide into a crisis situation, it will have a serious long-term impact on health care in low-income areas around the country,'' says Thomas W. Chapman, president of Greater Southeast Community Hospital in Washington, D.C.

''They play a critical role in continuing to sustain a appropriate levels of health care in low-income communities.''

This week, Meharry's obstetrics-gynecology residency program loses its accreditation; residents in pediatrics must transfer to a New York hospital to finish their training.

The same problem cost Meharry its surgical training program.

''When you don't have enough patients, you don't have enough cases and not enough experience for your residents,'' says Dr. Washington Hill, Meharry's chairman of obstetrics and gynecology.

Loss of the school's teaching hospital programs could limit its ability to attract minorities to medical careers.

''When Meharry has a serious problem, that obviously has an impact on the opportunity of black students to go to medical school,'' says David Denton of the Southern Regional Education Board, which has just completed a study of minority medical student education.

''In absolute terms, if you don't have residency programs in pediatrics or obstetrics-gynecology, two primary health-care fields, * * * it affects the whole teaching atmosphere of a medical school.''

But Denton says the school's overall quality isn't a problem.

''People shouldn't confuse the residency problems with the quality of teaching at Meharry. It has been very effective in getting its graduates licensed,'' he says.

Nearly 40% of the nation's practicing black doctors and dentists are Meharry graduates. Most of them work where doctors are needed the most—poor urban areas and under-served rural towns.

''Our graduates are working in inner cities, in New York, in downtown Detroit, here in downtown Nashville,'' Hill says. ''Nobody wants to practice in inner cities. But our graduates do.''

Meharry also has produced four of every 10 black faculty members in the nation's 126 medical schools.

Until the 1970s, Meharry and Howard University School of Medicine in Washington, D.C., trained nearly 80% of the nation's black doctors. But with desegregation of what were once all-white schools, just 20% of the nation's black doctors now graduate from any one of the four black medical schools.

Nevertheless, under 7% of all first-year medical students nationally are black, so educators say Meharry gives opportunity to those who would not otherwise have it. More than 50 of the 80 first-year students enrolled at Meharry this year were accepted nowhere else.

''We take kids knowing they bring (academic) baggage,'' says Dr. Henry Foster, Meharry's medical school dean. ''We know they can catch up. It's not how they enter that counts, it's how they exit. We'll put our graduates up against anybody.''

Administrators and students cite a ''cultural sensitivity'' that graduates may not get elsewhere, based partly on the school being located in a poor, mostly black section of north Nashville.''

''Being here is like being in the giant arms of a loving mother,'' says fourth-year student Andi Coleman, 28, of Greenville, Miss. ''Meharry * * * sends its students out to take care of the poor, of the homeless. There is a warmth here you don't find in other programs.''

Says Dr. David Satcher, Meharry's president: ''African-Americans face a chronic health problem when you look at life-expectancy rates, infant mortality, death rates from treatable health problems. Meharry is not just a black institution. It's the leading hospital for the care of the poor and indigent. In all of our history, we have been involved with people who are disproportionately poor.''

Meharry's patient shortage stems from a combination of politics, tough competition for patients in one of the nation's best medically served cities and financial woes inherent to black colleges.

Nashville, with 510,000 residents, has one of the highest per-capita number of hospital beds: 6,000 in 17 hospitals. It is home to the largest private hospital corporation in the nation, HCA, and Vanderbilt University Medical Center, which employs 10,000 people.

To solve Meharry's residency problem, administrators have proposed merging two hospitals—Meharry-Hubbard, where most patients are black, and Metro General, a dilapidated downtown hospital where most patients are white.

Meharry-Hubbard, with 235 beds, rarely has more than 100 patients at a time. ''We have a relatively modern, empty plant,'' says Dr. Rupert Francis, chairman of family and preventive medicine. ''We have to get patients back.''

The 200-bed Metro General also rarely has more than half its beds filled.

A merger ''will benefit people who are using a very antiquated facility, and it will provide more patients in which to train medical students,'' Hill says.

Among those supporting the merge is Vanderbilt, which now provides most of the doctors at Metro General.

But Nashville's Metro Board of Hospitals, in a 4–2 vote, rejected the merger in February, citing economic reasons.

''Some of us call (the vote) racism. The more dignified way is to call it Southern politics,'' Francis says.

Meharry administrators are confident they'll get the merger and re-establish accreditation for residency programs.

''Every hospital located in a low-income community is having a problem,'' Satcher says. ''If you're in that business, you take a beating. You're punished for your commitment. We'll struggle to hold on, until one's ability to pay does not control access to health care in this country.''

Says Dr. Tim Holcomb, a white Meharry resident in family medicine: ''We have an emphasis on care for the poor. If I went to a big-city type of residency, I'd see sniffles and colds. Here, I see people who haven't seen a doctor in 20 years. I have absolutely no regrets coming here.''

Mr. NICKLES. Mr. President, in my opinion, this raises further questions concerning Dr. Foster's credibility. On ''Nightline,'' he presented himself as someone who had maintained accreditation at Meharry obstetrics residency program. He neglected to mention that he was department chairman when that accreditation was lost.

In my opinion, this nomination should not go forward. Some people say, ''Let's wait until we have a hearing and get all the facts out.'' But these are statements that came from Dr. Foster himself. This statement came from Dr. Foster himself before a committee. It directly contradicts the statement he made on ''Nightline.'' The ''Nightline'' statement directly contradicts a statement that he made and gave to the press, which I inserted in the RECORD, that he gave a week ago. Dr. Foster's statements are totally inconsistent. They have been misleading. His statement about the accreditation of Meharry was misleading.

So, Mr. President, I do reluctantly—I do not do this often—but reluctantly, I urge Dr. Foster to withdraw his name from consideration or urge the President to withdraw his name from consideration to be the next U.S. Surgeon General.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## SENATOR WILLIAM FULBRIGHT

Mr. DASCHLE. Mr. President, the British poet John Donne said that ''every person's death diminishes us.'' That is certainly true, and it is especially true today, for yesterday America and, indeed, the world said goodbye to a man whose death diminishes us all, Senator William Fulbright.

He served in the Senate for 30 years. He served with distinction. Some in this Chamber had the privilege of working with him. But whether or not we knew Senator Fulbright personally, we were all touched by him. Our Nation and our world are better for him having passed through it.

Senator Fulbright understood that the most powerful deterrent to war is not bombs, not some mysterious shield we might try in vain to erect, but simply understanding.

The cornerstone of his legacy, the Fulbright scholars program, has created more than 200,000 ambassadors for peace and for progress throughout the world. These are bright young men and women who have traveled from America to study in 130 nations as well as men and women from around the globe who have come here to our Nation to learn. Our world is safer for the work of these Fulbright scholars and for the vision of the man who made their studies possible.

He was a son of Arkansas, but his influence was felt throughout the world, and it will be, I suspect, for generations to come.

Today, as we remember Senator Fulbright, it is easy to feel diminished by his passing. But let us also remember how enlarged we are by his life. As we struggle to find America's place in the post-cold war world, let us remember the lesson Senator Fulbright taught us about the formidable power of understanding. Let us also remember that America has a responsibility to be not only a military leader in this world, but a moral leader as well. And we must never shrink from either role.

William Fulbright, the ''Chairman,'' as he was fondly known, was a diplomat, an idealist with a strong heart, an uncommon vision, a dogged fighter for what he believed was right. He was unafraid to stand against public opinion when his conscience told him he must.

To the Senator's family, his wife Harriet, his daughters, his grandchildren, and to his great grandchildren, and certainly to all of his many, many friends, we offer our sympathy and our prayers. William Fulbright truly was a gentleman, a scholar, a statesman, a national leader who made a positive and indelible mark on this country. We will never forget him.

## THE NOMINATION OF DR. HENRY FOSTER

Mr. DASCHLE. Mr. President, I would like to talk for just a moment about the nomination of Dr. Henry W. Foster, Jr., to be Surgeon General of the United States. No one could deny that Dr. Foster has had a distinguished career both in terms of his service as a practicing physician as well as his contributions as a medical educator and community leader. No one can deny that.

For the last two decades now, Dr. Foster has served in the department of obstetrics and gynecology at Meharry Medical College where he has helped to train some of our Nation's finest doctors. At Meharry, Dr. Foster has demonstrated his vast leadership abilities by serving not only as professor and chairman of the department, but also as dean of the school of medicine and the acting president of the college.

Throughout his distinguished career, Dr. Foster has been a clear voice for personal responsibility. His work on teen pregnancy prevention has been a valuable contribution at a time when we are struggling desperately to identify effective solutions to this nationwide problem.

The ''I Have A Future'' program which Dr. Foster developed and directed was chosen by President Bush as one of his ''thousand points of light.'' The program stresses abstinence. It engages communities in helping teenagers make positive decisions about their future.

Dr. Foster is endorsed by the American Medical Association, the Association of Schools of Public Health, the National Medical Association, the American College of Obstetricians and Gynecologists. He has been endorsed by Dr. Sullivan, Secretary of Health and Human Services under President Bush.

I have no doubt that this man's background makes him well qualified to be Surgeon General. It is a shame that his distinguished career and many contributions to society have now been clouded by his opponents' attempts to turn this nomination into a debate about abortion. But this debate is not about abortion. No doctor in this country should be disqualified from consideration for the post of Surgeon General for performing a legal medical procedure.

This debate is about qualifications. Dr. Foster is the President's choice for the position of Surgeon General. He is qualified for this position and I daresay most people know that today. Of course, the Senate has a constitutional advice and consent role. Any remaining questions about this nominee should be dealt with during the confirmation process where they belong. This is what we do with every nomination, and it is critically important.

I must say, this town can be pretty mean. I hope, as we consider this nomination, we remember that Dr. Foster is a man who has come forward to serve his country at the request of the President of the United States to serve in an important role. It is a role to help children, to help families, to make as positive a contribution as possible in what time he may have to do it.

We ought to respect that. We ought to be careful about what we say and about asking people to join in public service if every time they accept the call to public service they are beaten down, and ultimately characterized as people they are not. Let us be careful about that.

Let us also recognize if we are going to deal in a bipartisan manner, as we have attempted to do on a whole array of issues, it must be a two-way street.

Democrats and Republicans need to work with one another. But if this becomes a one-way street, if this becomes a partisan issue, that sends a clear message, it seems to me, about what expectations the majority may have as they look to us for cooperation on many issues in the future.

This man deserves confirmation. This man deserves our support. And I hope we will all give it to him.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

## MORNING BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak for not exceeding 10 minutes each.

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

## MEASURES REFERRED

The following bill, pursuant to the order of February 9, 1995, was read the first and second times by unanimous consent and referred as indicated:

S. 381. A bill to strengthen international sanctions against the Castro government in Cuba, to develop a plan to support a transition government leading to a democratically elected government in Cuba, and for other purposes; to the Committee on Foreign Relations.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. THURMOND (for himself, Mr. KYL, Mr. SMITH, Mr. LOTT, Mr. INHOFE, Mr. MCCAIN, and Mr. KEMPTHORNE):

S. 383. A bill to provide for the establishment of policy on the deployment by the United States of an antiballistic missile system and of advanced theater missile defense systems; to the Committee on Armed Services.

By Mr. BROWN (for himself and Mr. HELMS):

S. 384. A bill to require a report on United States support for Mexico during its debt crises, and for other purposes; to the Committee on Foreign Relations.

By Mr. GREGG:

S. 385. A bill to amend title 23, United States Code, to eliminate the penalties imposed on States for failure to require the use of safety belts in passenger vehicles, and for other purposes; to the Committee on Environment and Public Works.

By Mr. MCCONNELL:

S. 386. A bill to amend the Internal Revenue Code of 1986 to provide for the tax-free treatment of education savings accounts established through certain State programs, and for other purposes; to the Committee on Finance.

By Mr. EXON:

S. 387. A bill to encourage enhanced State and Federal efforts to reduce traffic deaths and injuries and improve traffic safety among young, old, and high-risk drivers; to the Committee on Commerce, Science, and Transportation.

By Ms. SNOWE (for herself, Mr. COHEN, Mr. CAMPBELL, Mr. GRASSLEY, Mr. INHOFE, Mr. ROTH, Mr. GREGG, Ms. MOSELEY-BRAUN, Mr. MURKOWSKI, Mr. KOHL, Mr. BENNETT, Mr. LUGAR, Mr. GRAMS, Mr. THOMAS, Mr. COATS, and Mr. HATCH):

S. 388. A bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes; to the Committee on Environment and Public Works.

By Mr. JOHNSTON (for himself, Mr. BENNETT, Mr. HATFIELD, Mr. NICKLES, Mr. SHELBY, and Mr. SPECTER):

S. 389. A bill for the relief of Nguyen Quy An and his daughter, Nguyen Ngoc Kim Quy; to the Committee on the Judiciary.

By Mr. BIDEN (for himself, Mr. SPECTER, Mr. KOHL, Mr. KERREY, and Mr. D'AMATO) (by request):

S. 390. A bill to improve the ability of the United States to respond to the international terrorist threat; to the Committee on the Judiciary.

By Mr. CRAIG (for himself, Mr. HEFLIN, Mr. BURNS, Mr. DOMENICI, Mr. GORTON, Mr. KEMPTHORNE, Mr. MURKOWSKI, and Mr. PACKWOOD):

S. 391. A bill to authorize and direct the Secretaries of the Interior and Agriculture to undertake activities to halt and reverse the decline in forest health on Federal lands, and for other purposes; to the Committee on Energy and Natural Resources, that when reported the bill be referred jointly to the Committees on Agriculture, Nutrition and Forestry and Environment and Public Works, for a period not to exceed 20 days of session to report or be discharged.

By Mr. GLENN (for himself and Mr. DEWINE):

S. 392. A bill to amend the Dayton Aviation Heritage Preservation Act of 1992 with regard to appointment of members of the Dayton Aviation Heritage Commission, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. BOXER:

S. 393. A bill to prohibit the Secretary of Agriculture from transferring any national forest system lands in the Angeles National

Forest in California out of Federal ownership for use as a solid waste landfill; to the Committee on Energy and Natural Resources.

By Mr. D'AMATO:

S. 394. A bill to clarify the liability of banking and lending agencies, lenders, and fiduciaries, and for other purposes; to the Committee on Environment and Public Works.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THURMOND (for himself, Mr. KYL, Mr. SMITH, Mr. LOTT, Mr. INHOFE, Mr. MCCAIN, and Mr. KEMPTHORNE):

S. 383. A bill to provide for the establishment of policy on the deployment by the United States of an antiballistic missile system and of advanced theater missile defense systems; to the Committee on Armed Services.

### BALLISTIC MISSILE DEFENSE LEGISLATION

Mr. THURMOND. Mr. President, I rise today to introduce legislation that would establish as U.S. policy the goal of developing and deploying as soon as practical defenses to defend the American people and our forces overseas against ballistic missile attack. This bill is identical to a provision recently passed by the House National Security Committee, which will soon be considered by the full House of Representatives.

The administration has proposed a ballistic missile defense program that focuses almost exclusively on theater missile defense. While I strongly support a robust theater program, as reflected in this bill, I believe that the administration's program is not well balanced.

It is my belief that the administration has failed to put together an adequate national missile defense program to defend the American people against the emerging threat posed by long-range ballistic missiles. Today, the United States faces ballistic missile threats, but has no defense. In the future, there will be more countries which will be able to pose such threats to our country. Therefore, we must begin today to plan for the creation of a highly effective national defense that initially will be able to defend against a limited ballistic missile attack.

In the coming months, the Senate Armed Services Committee will be examining a wide range of options for a national missile defense system. Our decisions will become apparent in the fiscal year 1996 defense authorization bill. The purpose of the bill I am introducing today, is to establish a general policy and to require the Secretary of Defense to establish a plan for developing and deploying a national missile defense system.

I would like to thank Senator KYL for his work in this area and for being a principal cosponsor of this bill. A number of my colleagues from the Armed Services Committee are also joining me in introducing this important legislation, and I thank them all for their support and hard work on this issue.

Mr. KYL. Mr. President, today, along with Senator THURMOND and other Senate Armed Services Committee members, I am introducing the Ballistic Missile Defense Revitalization Act of 1995, for the purpose of requiring the Secretary of Defense to develop for deployment, at the earliest practical date, national and theater ballistic missile defense systems. The companion legislation, section 201 of H.R. 7, has passed the House National Security Committee and will soon be voted on by the full House.

I am submitting this legislation in an effort to get the Pentagon's current ballistic missile defense program back on track. Currently, and in the forseeable future, the United States continues to be woefully unprepared to cope with the threat of ballistic missile attack. This must end; and the bill I have introduced today will help end our vulnerability.

Twelve years ago during his State of the Union Address, former President Ronald Reagan posed a simple challenge to America's scientific community: Find a way to make ballistic missiles impotent and obsolete. Because, he asked, ''Is it not better to save lives than to avenge them?'' With those words, President Reagan chartered one of the most important and controversial defense programs of the modern age—the strategic defense initiative.

Through the years the SDI program was pushed and pulled in many different directions by both the Congress and administration. No push, however, equalled the shove the Clinton administration gave the program in 1993. With the elimination of key ballistic missile defense programs, the United States is now almost exclusively focused on theater ballistic missile defenses which, hopefully, will be able to defend our troops deployed overseas. But, this limited protection comes at the expense of the development and deployment of national missile defenses.

Focusing only on theater defenses and the threat that is here and now, the administration completely ignores analysis from our Nation's best intelligence experts about the potential future threat to the continental United States.

Intelligence experts have repeatedly warned that terrorism is on the rise, that the quest for nuclear weapons in the Third World has not subsided, and that Russian nuclear materials have shown up on the black market. But, the administration has failed to heed those warnings.

Even the headlines lay bare the future vulnerability faced by the American people.

The Washington Times recently carried the headline ''Yeltsin Can't Curtail Arms Spread.''

A Clinton administration official recently stated, ''The out-of-control weapons of mass destruction industries in Russia are the No. 1 national security issue facing the United States.''

China has sold to Saudi Arabia the CSS–2, a medium-range missile capable of reaching any place in Europe.

Iran is desperately shopping the blackmarket for the technology to develop nuclear weapons, and Russia wants to sell to Iran.

The threat is real. As former Director of the CIA, Bob Gates, said, ''History is not over. It was merely frozen and is now thawing with a vengeance.''

The CIA claims that 25 nations could acquire chemical, biological, and nuclear weapons by the end of the decade. That's 20 more than we have today. And, potentially, 20 nations that are lead by despots who see it as their duty to annihilate the United States. One of those leaders could be Abul Abbas, head of the Palestinian Liberation Front, who promised revenge on the United States for attacking Iraq. He said, ''Revenge takes 40 years. If not my son then the son of my son will kill you. Someday we will have missiles that can reach New York.''

In day-to-day terms, the proliferation of weapons of mass destruction among the Third World and the lack of defenses against those weapons could radically alter the manner in which the United States carries out its foreign policy. Would we have deployed 15,000 troops in Haiti if General Cedras had a weapon of mass destruction and a missile that could reach Florida? Probably not. Would America stand up for human rights and democracy in a starving nation if warlords had stolen nuclear weapons from Russia? Probably not. Would the Persian Gulf war have been fought if Hussein had succeeded in his quest, and acquired a deliverable nuclear weapon? Probably not.

The world will be dramatically different in the 21st century. We cannot predict the future. We don't know who will do it or when it will happen. But, it will happen. Some day, someone, somewhere will launch a ballistic missile at the United States.

When the warning comes, most Americans will believe that we will be able to defend ourselves. We can't. When the codes to launch a nuclear ballistic missile are entered and the keys are turned, there is no way to prevent the missile from reaching its target.

We cannot intercept it. We cannot interfere with its guidance system. We cannot make it self-destruct. There is nothing we can do to stop even one single missile from reaching the United States of America. Nothing.

The Clinton administration won't change the situation either. In fact, it's getting worse. The Clinton administration and congressional opponents have destroyed any future strategic capability to defend the United States and are on their way to destroying potential theater defenses as well.

This is being done by their decision to clarify the ABM Treaty to define

our next theater defense missile as an illegal missile. The ABM Treaty, recall, was signed in 1972 by Leonid Brezhnev and Richard Nixon. It shouldn't have been endorsed in 1972, and it shouldn't be reendorsed in 1995, 23 years later. It most certainly should not be redefined.

The threat has changed. Technology has improved. And the Soviet Union doesn't even exist. But, the Clinton team insists on deliberately drawing a distinction between strategic and theater ballistic missiles, something that was left undefined in 1972.

What the administration's negotiators have accomplished is not only to negotiate away strategic systems—which came as no surprise—but, also to negotiate away the only advanced theater systems in research and development in the United States. The Clinton administration has done this by arbitrarily placing speed limits on interceptors. If an interceptor breaks 3km/sec, it is defined as a strategic ABM interceptor and would not be deployable as a theater missile under the new terms of the ABM Treaty. Key theater defense systems, including THAAD and Navy Upper Tier, have capabilities beyond 3km/sec. and, thus, could not be further developed as designed.

Over the last 2 years, the opponents have won significant budget cuts in ballistic missile defenses and have succeeded in canceling all space-based options. This is especially disturbing because space-based sensors and interceptors are critical to the success of any global strategic defense system. They provide worldwide, instanteous detection of and protection against missiles launched from anywhere in the world, and are both cheaper and more effective than their ground-based counterparts.

During Operation Desert Shield, it took the United States 6 months and 400 airlifts to put in place the Patriot interceptors that were used to shoot down some of the Iraqi Scuds. With space-based interceptors, coverage would be instanteous. Yet, all systems capable of accomplishing that mission have been zeroed. Zeroed, because using space for military purposes is politically unpopular.

This narrowmindedness and refusal to view space for what it is—the high frontier, boundless in opportunity—will have serious consequences for our future military successes. Like earlier forays into the air and the sea, the use of space will change the course of warfare. It's already happening. The United States should not deny itself that capability.

The Ballistic Missile Defense Revitalization Act restores the focus of the BMD program to development and deployment of defenses capable of protecting a theater as well as the continental United States. This is an important step in establishing a firm basis for a national response to the growing threat from Third World ballistic missiles.

In closing, I will note that 12 years of ballistic missile defense research has produced a series of successes. There is no longer any doubt that defense against ballistic missiles is feasible. It is my hope that the next few years of ballistic missile defense research will achieve President Reagan's original goal—to make nuclear weapons impotent and obsolete. The moral imperative is, as President Reagan said, that it is better to save lives than to avenge them.

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By Mr. McCONNELL:

S. 386. A bill to amend the Internal Revenue Code of 1986 to provide for the tax-free treatment of education savings accounts established through certain State programs, and for other purposes; to the Committee on Finance.

THE TRUST FUND SAVINGS ACT

• Mr. McCONNELL. Mr. President, I introduce a bill that will help Americans defray the costs of a college education. For many, the dream of a college education can never be fulfilled simply because they can not meet the skyrocketing costs. I am sure all of my colleagues will agree that this Nation's future success is dependent on the education of our children today.

Mr. President, the facts are clear. Education costs are outpacing average wages and this has created a barrier to attending college. Throughout the 1980's education costs have risen 8 percent per year. At this pace, an average tuition bill of $5,000 will be $11,700 in the year 2000. In 1994, the average tuition in America rose by 6 percent. It was also the smallest since 1989 according to the College Board.

In Kentucky last year tuition rocketed 11.2 percent at the University of Kentucky and the University of Louisville. For other regional schools, students and parents only saw their costs rise by 5.3 percent. The largest increase, however, was felt by the students attending community colleges where costs rose 14.3 percent.

As tuition continues to increase, so does the need for assistance. In 1990, over 56 percent of all students accepted some form of financial assistance. The statistic was even higher for minority students. Also on the rise are need-based scholarships and grants. In Kentucky, between 1984 and 1992, need-based scholarships rose by 160 percent.

It is increasingly common for students to study now and pay later. In fact, more students than ever are forced to bear the additional loan costs in order to receive an education. Between 1993 and 1994 Federal loan volume rose by 57 percent from the previous year. On top of that, students have increased the size of their loan burden by an average of 28 percent. So, not only are more students taking out loans, but they are taking out bigger loans as well. Next May at graduation time, nearly half the graduates will hit the pavement with their diplomas and stack of loan repayment books.

I believe that we need to reverse this trend by boosting savings and to help parents meet the education needs of their children. The bill I am introducing today, will make changes to the Tax Code maximizing the scope and the investment in State-sponsored education savings plans.

This legislation will permit parents to contribute up to $3,000 annually in after-tax dollars to a State-sponsored plan. Also this amount will be indexed to match the annual growth in education costs. The real benefit of this program will allow earnings to accumulate tax-free when used to meet educaiton costs. Any earnings not used for educational purposes will be taxed at the students individual rate. I believe this will provide a significant benefit to families and correct, at least in this instance, the unfair tax discrimination toward savings.

For those States that have established programs, whether they are prepared, savings or bond programs this legislation will provide tax-exempt status to those organizations that administer these programs. In November 1994, the U.S. Appeals Court in Cincinnati ruled that the Michigan Education Trust is not subject to Federal income tax. This language would also remove any misunderstanding regarding the taxation of these investments.

This tax designation will serve two purposes. Once, it will send a clear message regarding each organization's mission to help families finance a child's education. Second, it will reduce the administrative expenses, thus increasing the investment in education.

Mr. President, this is not another unfunded mandate. This legislation merely provides States with an option to invest in their most important resource, their children. I am confident that following the passage of this legislation more and more States will seek to establish similar programs to stimulate both education savings and reduce the need for State assistance in the future.

Lastly, this bill would make corporate and individual endowments to the trust fund exempt from Federal taxation when distributed among participants. This will allow corporations to help finance the education of our Nation's future leaders.

This legislation is not a funding cure but is a serious effort to encourage long-term savings. Participants don't have to be rich to participate. In fact, the average monthly contribution in Kentucky is just $47.22. This program will reward an individuals long term investment in education.

The alternative funding option is to continue in our futile attempt to outpace the rising cost of education through subsidies and aid. More that likely this would exacerbate the dollar chase driving costs even higher. I am confident, that my legislation will take the burden off the Federal and State government to subsidize students.

I hope my colleagues will join me in creating this viable and affordable means of helping families provide for their children's higher education. 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. 386

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

**SECTION 1. TAX TREATMENT OF STATE EDUCATION SAVINGS ACCOUNTS.**

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by redesignating section 137 as section 138 and by adding after section 136 the following new section:

**"SEC. 137. EDUCATION SAVINGS ACCOUNTS.**

''(a) GENERAL RULE.—Gross income shall not include any qualified education savings account distribution.

''(b) QUALIFIED EDUCATION SAVINGS ACCOUNT DISTRIBUTION.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified education savings account distribution' means any amount paid or distributed out of an education savings account which would otherwise be includible in gross income to the extent such payment or distribution is used exclusively to pay qualified higher education expenses incurred by the designated beneficiary of the account.

''(2) ROLLOVERS.—The term 'qualified education savings account distribution' includes any transfer from an education savings account of one designated beneficiary to another such account of such beneficiary or to such an account of another designated beneficiary.

''(3) SPECIAL RULES.—The determination under paragraph (1) as to whether an amount is otherwise includible in gross income shall be made in the manner described in section 72, except that—

''(A) all education savings accounts shall be treated as one contract,

''(B) all distributions during any taxable year shall be treated as one distribution,

''(C) contributions to an account described in subsection (c)(4)(B)(i) shall not be included in the investment in the contract with respect to the account, and

''(D) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

''(c) EDUCATION SAVINGS ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—The term 'education savings account' means a trust created or organized in the United States—

''(A) pursuant to a qualified State educational savings plan, and

''(B) exclusively for the purpose of paying the qualified higher education expenses of the designated beneficiary of the account.

''(2) QUALIFIED STATE EDUCATIONAL SAVINGS PLAN.—The term 'qualified State educational savings plan' means a plan established and maintained by a State or instrumentality thereof under which—

''(A) participants may save to meet qualified higher education expenses of designated beneficiaries,

''(B) planning and financial information is provided to participants about current and projected qualified higher education expenses,

''(C) education savings account statements are provided to participants at least quarterly, and

''(D) an audited financial statement is provided to participants at least annually.

''(3) QUALIFIED HIGHER EDUCATION EXPENSES.—The term 'qualified higher education expenses' means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965).

''(4) LIMITATIONS.—A trust shall not be treated as an education savings account unless the following requirements are met:

''(A) No contribution will be accepted unless it is in cash, stocks, bonds, or other securities which are readily tradable on an established securities market.

''(B) Contributions will not be accepted for any taxable year in excess of the applicable limit. The preceding sentence shall not apply to—

''(i) contributions to the qualified State educational savings plan which are allocated to all education savings accounts within the class for which the contribution was made, or

''(ii) rollover contributions described in subsection (b)(2).

''(C) The trust may not be established for the benefit of more than one individual.

''(D) The trustee is the qualified State educational savings plan or person designated by it.

''(E) The assets of the trust may be invested only in accordance with the qualified State educational savings plan.

''(5) APPLICABLE LIMIT.—For purposes of paragraph (4)(B)—

''(A) IN GENERAL.—The applicable limit is $3,000.

''(B) INDEXING.—In the case of taxable years beginning after December 31, 1995, the $3,000 amount under subparagraph (A) shall be increased by the education cost-of-living adjustment for the calendar year in which the taxable year begins.

''(C) EDUCATION COST-OF-LIVING ADJUSTMENT.—For purposes of subparagraph (B), the education cost-of-living adjustment for any calendar year is the percentage (if any) by which—

''(i) the higher education cost index for the preceding calendar year, exceeds

''(ii) such index for 1994.

''(D) HIGHER EDUCATION COST INDEX.—For purposes of subparagraph (C), the higher education cost index for any calendar year is the average qualified higher education expenses for undergraduate students at both private and public institutions of higher education for the 12-month period ending on August 31 of the calendar year. The Secretary of Education shall provide for the computation and publication of the higher education cost index.

''(d) TAX TREATMENT OF ACCOUNTS AND STATE PLANS.—

''(1) EXEMPTION FROM TAX.—An education savings account shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, any such account or plan shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

''(2) LOSS OF EXEMPTION OF ACCOUNT WHERE INDIVIDUAL ENGAGES IN PROHIBITED TRANSACTION.—

''(A) IN GENERAL.—If the designated beneficiary of an education savings account is established or any individual who contributes to such account engages in any transaction prohibited by section 4975 with respect to the account, the account shall cease to be an education savings account as of the first day of the taxable year (of the individual so engaging in such transaction) during which such transaction occurs.

''(B) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—In any case in which any account ceases to be an education savings account by reason of subparagraph (A) as of the first day of any taxable year, an amount equal to the fair market value of all assets in the account shall be treated as having been distributed on such first day.

''(3) EFFECT OF PLEDGING ACCOUNT AS SECURITY.—If, during any taxable year, the individual for whose benefit an education savings account is established, or any individual who contributes to such account, uses the account or any portion thereof as security for a loan, the portion so used shall be treated as distributed to the individual so using such portion.

''(e) REPORTS.—The Secretary may require the trustee of an education savings account to make reports regarding such account to the Secretary, to the individual who has established the account, and to the designated beneficiary of the account with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.''

(b) TAX TREATMENT OF QUALIFIED STATE EDUCATIONAL SAVINGS PLAN.—

(1) TREATMENT AS SECTION 501(C)(3) ORGANIZATION.—Section 501(c)(3) of such Code is amended by inserting ''or which is a qualified State educational savings plan (as defined in section 137(c)(2)),'' after ''animals,''.

(2) CHARITABLE CONTRIBUTIONS.—

(A) Subparagraph (B) of section 170(c)(2) of such Code is amended by inserting '', or which is a qualified State educational savings plan (as defined in section 137(c)(2)),'' after ''animals''.

(B) Section 170(b)(1)(A) of such Code is amended by striking ''or'' at the end of clause (vii), by inserting ''or'' at the end of clause (viii) and by inserting after clause (viii) the following new clause:

''(ix) a qualified State educational savings plan (as defined in section 137(c)(2)).''

(c) CONTRIBUTION NOT SUBJECT TO GIFT TAX.—Section 2503 of such Code (relating to taxable gifts) is amended by adding at the end the following new subsection:

''(h) EDUCATION SAVINGS ACCOUNTS.—Any contribution made by an individual to an education savings account described in section 137 shall not be treated as a transfer of property by gift for purposes of this chapter.''

(d) TAX ON PROHIBITED TRANSACTIONS.—Section 4975 of such Code (relating to prohibited transactions) is amended—

(1) by adding at the end of subsection (c) the following new paragraph:

''(4) SPECIAL RULE FOR EDUCATION SAVINGS ACCOUNTS.—An individual for whose benefit an education savings account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an education savings account by reason of the application of section 137(d)(2)(A) to such account.'', and

(2) by inserting '', an education savings account described in section 137(c),'' in subsection (e)(1) after ''described in section 408(a)''.

(e) FAILURE TO PROVIDE REPORTS ON EDUCATION SAVINGS ACCOUNTS.—Section 6693 of such Code (relating to failure to provide reports on individual retirement accounts or annuities) is amended—

(1) by inserting ''or on education savings accounts'' after ''annuities'' in the heading of such section, and

(2) by adding at the end of subsection (a) the following new sentence: ''Any person required by section 137(e) to file a report regarding an education savings account who fails to file the report at the time or in the manner required by such section shall pay a penalty of $50 for each failure, unless it is shown that such failure is due to reasonable cause.''

(f) SPECIAL RULE FOR DETERMINING AMOUNTS OF SUPPORT FOR DEPENDENT.—Subsection (b) of section 152 of such Code (relating to definition of dependent) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

''(6) A distribution from an education savings account described in section 137(c) to the individual for whose benefit such account has been established shall not be taken into account in determining support for purposes of this section to the extent such distribution is excluded from gross income of such individual under section 137.''

(g) CLERICAL AMENDMENTS.—

(1) The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking out the item relating to section 137 and inserting the following new items:

''Sec. 137. Education savings accounts.

''Sec. 138. Cross references to other Acts.''

(2) The table of sections for subchapter B of chapter 68 of such Code is amended by striking out the item relating to section 6693 and inserting the following new item:

''Sec. 6693. Failure to provide reports on individual retirement accounts or annuities or on education savings accounts.''

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 1994.●

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By Mr. EXON:

S. 387. A bill to encourage enhanced State and Federal efforts to reduce traffic deaths and injuries and improve traffic safety among young, old, and high-risk drivers; to the Committee on Commerce, Science, and Transportation.

THE HIGH-RISK DRIVERS ACT OF 1995

Mr. EXON. Mr. President, I rise to introduce the High-Risk Drivers Act. Senator Danforth and I worked very hard on this legislation in the last Congress and I hope it can be passed quickly this year.

This is indeed a most appropriate time for introduction and swift passage.

While we have made significant progress in reducing death and injury on America's highways, it is time to build on that success and focus Federal resources on those areas which will produce the highest return on safety for each dollar invested. At this time of scrutiny for all Federal spending, the high-risk drivers bill gives taxpayers a great value.

Three groups of drivers need special attention in our continuing efforts to make the Nation's highways safer. They are young drivers, high-risk drivers or repeat offenders and older drivers.

This legislation encourages the States and the Federal Government to focus attention on all three groups. Even with the great need to reduce the Federal budget deficit, this is one area where we must recognize and take action on the fact that a small investment will yield significant returns. When I chaired a hearing on this important legislation last year, one expert testified that if this legislation were enacted, there would be at least a tenfold return on investment due to reduced costs of death, injury, and loss of productivity.

Of course, no economist can measure the cost of the sorrow, pain, and suffering incurred by parents, friends, and families of those killed and injured in traffic accidents. No economist can measure the value of relief parents feel each and every time their young sons and daughters return home safely.

Even with the long-term decline in traffic fatality rates, too many lose their lives in traffic accidents. In 1993, according to the National Safety Council, over 42,000 Americans died in auto crashes. That's like losing a city the size of Grand Island, NE and its surrounding area.

This legislation focuses attention where it is most needed to reduce the carnage on America's highways.

Motor vehicle crashes are the leading cause of death among teenagers. Teen drivers comprise 7.4 percent of the U.S. population but are involved in 15.4 percent of the fatal motor vehicle crashes. The simple problem is that it takes a great deal of experience, judgment, and maturity to master the operation of a vehicle. Unfortunately, many young drivers are not getting the training they need to master the safe operation of automobiles. In addition, the temptations and pressures faced by today's teenagers sometimes run counter to the skills and the values needed to safely operate a motor vehicle. The high-risk drivers bill attempts to temper those temptations and impulses by putting at risk what many teens value the most, their driver's license, or, in the vernacular, their ''wheels.''

The High-Risk Drivers Act encourages States through incentive grants to conduct youth-oriented traffic-safety enforcement, education, and training programs, and to adopt a graduated license system where a full unrestricted license is not obtained until a young driver has had a clean driving record for at least 1 year.

The bill focuses heavy attention on drinking and driving. States are encouraged to adopt a zero tolerance policy for underage drinking and driving by adopting, as the State of Nebraska has, a blood alcohol threshold level of .02 percent for drivers under the age of 21. In addition, the bill encourages States to adopt a minimum $500 fine for anyone who sells alcohol to minors, a 6-month suspension for drivers under the age of 21 caught drinking and driving and a prohibition against open containers of alcohol inside automobiles.

The high-risk drivers bill also attempts to get parents involved by providing them with information about the effect that at-fault accidents and traffic violations have on young drivers insurance rates before any tragic and expensive accidents occur.

The second focus area of this legislation is on repeat offenders and high-risk drivers. This section of the bill uses incentive grants to encourage States to maintain better records of serious drivers offenses, to improve the sharing of driver information, and to establish remedial programs for young high-risk drivers.

Perhaps most innovative and effective is an effort to encourage States to adopt vehicle confiscation schemes for repeat drunk drivers. This provision, with appropriate protection for family members, will help crack down on that hard core group of repeat offenders drunk drivers who so endanger every citizen, including themselves.

This legislation also establishes an aggressive research agenda for older drivers. Our Nation's transportation policies must anticipate the mobility needs of the Nation's senior population. This include strategies which use technology and licensing plans which help older drivers keep their independence. I am pleased to report that the American Association of Retired Persons supports the older driver provisions of this act.

Finally, this important legislation boosts the authorization level for the important Anti-Drunk Driving Enforcement Program known as the 410 Program.

This bill embraces the bipartisan compromise Senator Danforth and I crafted last year. Both the House and Senate voted for this legislation but the House-passed vehicle for this bill was blocked in the Senate during the closing hours of the last Congress for reasons unrelated to this important safety program.

To put it another way, Mr. President, this measure has already passed both Houses of Congress and has agreed to, but, because of a technicality at the last minute, it failed to get passage.

Mr. President, I am pleased that my own home State of Nebraska is seriously looking at a number of the proposals included in this and the original high risk-drivers bill Senator Danforth and I introduced in the last Congress.

Mr. President, I ask my colleagues to support swift passage of this important piece of legislation.

I ask unanimous consent that the articles outlining some of Nebraska's efforts and the text of the High-Risk Drivers Act of 1995 be printed in the RECORD at the conclusion of my remarks.

I would simply specify, Mr. President, if I might, the articles that I would like to have printed: ''Nebraska Leads in Drunken Driving Control,'' ''Panel Seeks Tougher DWI Law,'' and ''MADD Founder Faults Drunk-Driving Bill.''

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

S. 387

*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 ''High-risk Drivers Act of 1995''.

TITLE I—HIGH-RISK AND ALCOHOL-IMPAIRED DRIVERS

**SEC. 101. FINDINGS.**

The Congress makes the following findings:

(1) The Nation's traffic fatality rate has declined from 5.5 deaths per 100 million vehicle miles traveled in 1966 to an historic low of an estimated 1.8 deaths per 100 million vehicle miles traveled during 1992. In order to further this desired trend, the safety programs and policies implemented by the Department of Transportation must be continued, and at the same time, the focus of these efforts as they pertain to high risk drivers of all ages must be strengthened.

(2) Motor vehicle crashes are the leading cause of death among teenagers, and teenage drivers tend to be at fault for their fatal crashes more often than older drivers. Drivers who are 16 to 20 years old comprised 7.4 percent of the United States population in 1991 but were involved in 15.4 percent of fatal motor vehicle crashes. Also, on the basis of crashes per 100,000 licensed drivers, young drivers are the highest risk group of drivers.

(3) During 1991, 6,630 teenagers from age 15 through 20 died in motor vehicle crashes. This tragic loss demands that the Federal Government intensify its efforts to promote highway safety among members of this high risk group.

(4) The consumption of alcohol, speeding over allowable limits or too fast for road conditions, inadequate use of occupant restraints, and other high risk behaviors are several of the key causes for this tragic loss of young drivers and passengers. The Department of Transportation, working cooperatively with the States, student groups, and other organizations, must reinvigorate its current programs and policies to address more effectively these pressing problems of teenage drivers.

(5) In 1991 individuals aged 70 years and older, who are particularly susceptible to injury, were involved in 12 percent of all motor vehicle traffic crash fatalities. These deaths accounted for 4,828 fatalities out of 41,462 total traffic fatalities.

(6) The number of older Americans who drive is expected to increase dramatically during the next 30 years. Unfortunately, during the last 15 years, the Department of Transportation has supported an extremely limited program concerning older drivers. Research on older driver behavior and licensing has suffered from intermittent funding at amounts that were insufficient to address the scope and nature of the challenges ahead.

(7) A major objective of United States transportation policy must be to promote the mobility of older Americans while at the same time ensuring public safety on our Nation's highways. In order to accomplish these two objectives simultaneously, the Department of Transportation must support a vigorous and sustained program of research, technical assistance, evaluation, and other appropriate activities that are designed to reduce the fatality and crash rate of older drivers who have identifiable risk characteristics.

**SEC. 102. DEFINITIONS.**

For purposes of this title—

(1) The term ''high risk driver'' means a motor vehicle driver who belongs to a class of drivers that, based on vehicle crash rates, fatality rates, traffic safety violation rates, and other factors specified by the Secretary, presents a risk of injury to the driver and other individuals that is higher than the risk presented by the average driver.

(2) The term ''Secretary'' means the Secretary of Transportation.

**SEC. 103. POLICY AND PROGRAM DIRECTION.**

(a) GENERAL RESPONSIBILITY OF SECRETARY.—The Secretary shall develop and implement effective and comprehensive policies and programs to promote safe driving behavior by young drivers, older drivers, and repeat violators of traffic safety regulations and laws.

(b) SAFETY PROMOTION ACTIVITIES.—The Secretary shall promote or engage in activities that seek to ensure that—

(1) cost effective and scientifically-based guidelines and technologies for the nondiscriminatory evaluation and licensing of high risk drivers are advanced;

(2) model driver training, screening, licensing, control, and evaluation programs are improved;

(3) uniform or compatible State driver point systems and other licensing and driver record information systems are advanced as a means of identifying and initially evaluating high risk drivers; and

(4) driver training programs and the delivery of such programs are advanced.

(c) DRIVER TRAINING RESEARCH.—The Secretary shall explore the feasibility and advisability of using cost efficient simulation and other technologies as a mans of enhancing driver training; shall advance knowledge regarding the perceptual, cognitive, and decision making skills needed for safe driving and to improve driver training; and shall investigate the most effective means of integrating licensing, training, and other techniques for preparing novice drivers for the safe use of highway systems.

TITLE II—YOUNG DRIVER PROGRAMS

**SEC. 201. STATE GRANTS FOR YOUNG DRIVER PROGRAMS.**

(a) ESTABLISHMENT OF GRANT PROGRAM.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

**''§ 411. Programs for young drivers**

''(a) GENERAL AUTHORITY.—Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement programs for young drivers which include measures, described in this section, to reduce traffic safety problems resulting from the driving performance of young drivers. Such grants may only be used by recipient States to implement and enforce such measures.

''(b) MAINTENANCE OF EFFORT.—No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate estimated expenditures from all other sources for programs for young drivers at or above the average level of such expenditures in its 2 fiscal years preceding the fiscal year in which the High Risk Drivers Act of 1994 is enacted.

''(c) FEDERAL SHARE.—No State may receive grants under this section in more than 5 fiscal years. The Federal share payable for any grant under this section shall not exceed—

''(1) in the first fiscal year a State receives a grant under this section, 75 percent of the cost of implementing and enforcing in such fiscal year the young driver program adopted by the State pursuant to subsection (a);

''(2) in the second fiscal year the State receives a grant under this section, 50 percent of the cost of implementing and enforcing in such fiscal year such program; and

''(3) in the third, fourth, and fifth fiscal years the State receives a grant under this section, 25 percent of the cost of implementing and enforcing in such fiscal year such program.

''(d) MAXIMUM AMOUNT OF BASIC GRANTS.—Subject to subsection (c), the amount of a basic grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e) shall equal 30 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title. A grant to a State under this section shall be in addition to the State's apportionment under section 402, and basic grants during any fiscal year may be proportionately reduced to accommodate an applicable statutory obligation limitation for that fiscal year.

''(e) ELIGIBILITY FOR BASIC GRANTS.—

''(1) IN GENERAL.—For purposes of this section, a State is eligible for a basic grant if such State—

''(A) establishes and maintains a graduated licensing program for drivers under 18 years of age that meets the requirements of paragraph (2); and

''(B)(i) in the first year of receiving grants under this section, meets 3 of the 7 criteria specified in paragraph (3);

''(ii) in the second year of receiving such grants, meets 4 of such criteria;

''(iii) in the third year of receiving such grants, meets 5 of such criteria;

''(iv) in the fourth year of receiving such grants, meets 6 of such criteria; and

''(v) in the fifth year of receiving such grants, meets 6 of such criteria.

For purposes of subparagraph (B), a State shall be treated as having met one of the requirements of paragraph (3) for any year if the State demonstrates to the satisfaction of the Secretary that, for the 3 preceding years, the alcohol fatal crash involvement rate for individuals under the age of 21 has declined in that State and the alcohol fatal crash involvement rate for such individuals has been lower in that State than the average such rate for all States.

''(2) GRADUATED LICENSING PROGRAM.—

''(A) A State receiving a grant under this section shall establish and maintain a graduated licensing program consisting of the following licensing stages for any driver under 18 years of age:

''(i) An instructional license, valid for a minimum period determined by the Secretary, under which the licensee shall not operate a motor vehicle unless accompanied in the front passenger seat by the holder of a full driver's license.

''(ii) A provisional driver's license which shall not be issued unless the driver has passed a written examination on traffic safety and has passed a roadtest administered by the driver licensing agency of the State.

''(iii) A full driver's license which shall not be issued until the driver has held a provisional license for at least 1 year with a clean driving record.

''(B) For purposes of subparagraph (A)(iii), subsection (f)(1), and subsection (f)(6)(B), a provisional licensee has a clean driving record if the licensee—

''(i) has not been found, by civil or criminal process, to have committed a moving traffic violation during the applicable period;

''(ii) has not been assessed points against the license because of safety violations during such period; and

''(iii) has satisfied such other requirements as the Secretary may prescribe by regulation.

''(C) The Secretary shall determine the conditions under which a State shall suspend

provisional driver's licenses in order to be eligible for a basic grant. At a minimum, the holder of a provisional license shall be subject to driver control actions that are stricter than those applicable to the holder of a full driver's license, including warning letters and suspension at a lower point threshold.

''(D) For a State's first 2 years of receiving a grant under this section, the Secretary may waive the clean driving record requirement of subparagraph (A)(iii) if the State submits satisfactory evidence of its efforts to establish such a requirement.

''(3) CRITERIA FOR BASIC GRANT.—The 7 criteria referred to in paragraph (1)(B) are as follows:

''(A) The State requires that any driver under 21 years of age with a blood alcohol concentration of 0.02 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated for the purpose of (i) administrative or judicial sanctions or (ii) a law or regulation that prohibits any individual under 21 years of age with a blood alcohol concentration of 0.02 percent or greater from driving a motor vehicle.

''(B) The State has a law or regulation that provides a mandatory minimum penalty of at least $500 for anyone who in violation of State law or regulation knowingly, or without checking for proper identification, provides or sells alcohol to any individual under 21 years of age.

''(C) The State requires that the license of a driver under 21 years of age be suspended for a period specified by the State if such driver is convicted of the unlawful purchase or public possession of alcohol. The period of suspension shall be at least 6 months for a first conviction and at least 12 months for subsequent conviction; except that specific license restrictions may be imposed as an alternative to such minimum periods of suspension where necessary to avoid undue hardship on any individual.

''(D) The State conducts youth-oriented traffic safety enforcement activities, and education and training programs—

''(i) with the participation of judges and prosecutors, that are designed to ensure enforcement of traffic safety laws and regulations, including those that prohibit drivers under 21 years of age from driving while intoxicated, restrict the unauthorized use of a motor vehicle, and establish other moving violations; and

''(ii) with the participation of student and youth groups, that are designed to ensure compliance with such traffic safety laws and regulations.

''(E) The State prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway or the right-of-way of a public highway; except as allowed in the passenger area, by persons (other than the driver), of a motor vehicle designed to transport more than 10 passengers (including the driver) while being used to provide charter transportation of passengers.

''(F) The State provides, to a parent or legal guardian of any provisional licensee, general information prepared with the assistance of the insurance industry on the effect of traffic safety convictions and at-fault accidents on insurance rates for young drivers.

''(G) The State requires that a provisional driver's license may be issued only to a driver who has satisfactorily completed a State-accepted driver education and training program that meets Department of Transportation guidelines and includes information on the interaction of alcohol and controlled substances and the effect of such interaction on driver performance, and information on the importance of motorcycle helmet use and safety belt use.

''(f) SUPPLEMENTAL GRANT PROGRAM.—

''(1) EXTENDED APPLICATION OF PROVISIONAL LICENSE REQUIREMENT.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 10 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State requires that a driver under 21 years of age shall not be issued a full driver's license until the driver has held a provisional license for at least 1 year with a clean driving record as described in subsection (e)(2)(B).

''(2) REMEDIAL DRIVER EDUCATION.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State requires, at a lower point threshold than for other drivers, remedial driver improvement instruction for drivers under 21 years of age and requires such remedial instruction for any driver under 21 years of age who is convicted of reckless driving, excessive speeding, driving under the influence of alcohol, or driving while intoxicated.

''(3) RECORD OF SERIOUS CONVICTIONS; HABITUAL OR REPEAT OFFENDER SANCTIONS.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is eligible for a basic grant and in addition such State—

''(A) requires that a notation of any serious traffic safety conviction of a driver be maintained on the driver's permanent traffic record for at least 10 years after the date of the conviction; and

''(B) provides additional sanctions for any driver who, following conviction of a serious traffic safety violation, is convicted during the next 10 years of one or more subsequent serious traffic safety violations.

''(4) INTERSTATE DRIVER LICENSE COMPACT.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State is a member of and substantially complies with the interstate agreement known as the Driver License Compact, promptly and reliably transmits and receives through electronic means interstate driver record information (including information on commercial drivers) in cooperation with the Secretary and other States, and develops and achieves demonstrable annual progress in implementing a plan to ensure that (i) each court of the State report expeditiously to the State driver licensing agency all traffic safety convictions, license suspensions, license revocations, or other license restrictions, and driver improvement efforts sanctioned or ordered by the court, and that (ii) such records be available electronically to appropriate government officials (including enforcement, officers, judges, and prosecutors) upon request at all times.

''(5) For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State has a law or regulation that provides a minimum penalty of at least $100 for anyone who in violation of State law or regulation drives any vehicle through, around, or under any crossing, gate, or barrier at a railroad crossing while such gate or barrier is closed or being opened or closed.

''(6) VEHICLE SEIZURE PROGRAM.—For purposes of this section, a State is eligible for a supplemental grant for a fiscal year in an amount, subject to subsection (c), not to exceed 5 percent of the amount apportioned to such State for fiscal year 1989 under section 402 of this title if such State has a law or regulation that—

''(A) mandates seizure by the State or any political subdivision thereof of any vehicle driven by an individual in violation of an alcohol-related traffic safety law, if such violator has been convicted on more than one occasion of an alcohol-related traffic offense within any 5-year period beginning after the date of enactment of this section, or has been convicted of driving while his or her driver's license is suspended or revoked by reason of a conviction for such an offense;

''(B) mandates that the vehicle be forfeited to the State or a political subdivision thereof if the vehicle was solely owned by such violator at the time of the violation;

''(C) requires that the vehicle be returned to the owner if the vehicle was a stolen vehicle at the time of the violation; and

''(D) authorizes the vehicle to be released to a member of such violator's family, the co-owner, or the owner, if the vehicle was not a stolen vehicle and was not solely owned by such violator at the time of the violation, and if the family member, co-owner, or owner, prior to such release, executes a binding agreement that the family member, co-owner, or owner will not permit such violator to drive the vehicle and that the vehicle shall be forfeited to the State or a political subdivision thereof in the event such violator drives the vehicle with the permission of the family member, co-owner, or owner.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $9,000,000 for the fiscal year ending September 30, 1996, $12,000,000 for the fiscal year ending September 30, 1997, $14,000,000 for the fiscal year ending September 30, 1998, $16,000,000 for the fiscal year ending September 30, 1999, and $18,000,000 for the fiscal year ending September 30, 2000.''.

(b) CONFORMING AMENDMENT.—The analysis of chapter 4 of title 23, United States Code, is amended by inserting immediately after the item relating to section 410 the following new item:

''411. Programs for young drivers.''.

(c) DEADLINES FOR ISSUANCE OF REGULATIONS.—The Secretary shall issue and publish in the Federal Register proposed regulations to implement section 411 of title 23, United States Code (as added by this section), not later than 6 months after the date of enactment of this Act. The final regulations for such implementation shall be issued, published in the Federal Register, and transmitted to Congress not later than 12 months after such date of enactment.

**SEC. 202. PROGRAM EVALUATION.**

(a) EVALUATION BY SECRETARY.—The Secretary shall, under section 403 of title 23, United States Code, conduct an evaluation of the effectiveness of State provisional driver's licensing programs and the grant program authorized by section 411 of title 23, United States Code (as added by section 101 of this Act).

(b) REPORT TO CONGRESS.—By January 1, 1997, the Secretary shall transmit a report on the results of the evaluation conducted under subsection (a) and any related research to the Committee on Commerce, Science, and Transportation of the Senate

and the Committee on Public Works and Transportation of the House of Representatives. The report shall include any related recommendations by the Secretary for legislative changes.

TITLE III—OLDER DRIVER PROGRAMS

**SEC. 301. OLDER DRIVER SAFETY RESEARCH.**

(a) RESEARCH ON PREDICTABILITY OF HIGH RISK DRIVING.—

(1) The Secretary shall conduct a program that funds, within budgetary limitations, the research challenges presented in the Transportation Research Board's report entitled ''Research and Development Needs for Maintaining the Safety and Mobility of Older Drivers'' and the research challenges pertaining to older drivers presented in a report to Congress by the National Highway Traffic Safety Administration entitled ''Addressing the Safety Issues Related to Younger and Older Drivers''.

(2) To the extent technically feasible, the Secretary shall consider the feasibility and further the development of cost efficient, reliable tests capable of predicting increased risk of accident involvement or hazardous driving by older high risk drivers.

(b) SPECIALIZED TRAINING FOR LICENSE EXAMINERS.—The Secretary shall encourage and conduct research and demonstration activities to support the specialized training of license examiners or other certified examiners to increase their knowledge and sensitivity to the transportation needs and physical limitations of older drivers, including knowledge of functional disabilities related to driving, and to be cognizant of possible countermeasures to deal with the challenges to safe driving that may be associated with increasing age.

(c) COUNSELING PROCEDURES AND CONSULTATION METHODS.—The Secretary shall encourage and conduct research and disseminate information to support and encourage the development of appropriate counseling procedures and consultation methods with relatives, physicians, the traffic safety enforcement and the motor vehicle licensing communities, and other concerned parties. Such procedures and methods shall include the promotion of voluntary action by older high risk drivers to restrict or limit their driving when medical or other conditions indicate such action is advisable. The Secretary shall consult extensively with the American Association of Retired Persons, the American Association of Motor Vehicle Administrators, the American Occupational Therapy Association, the American Automobile Association, the Department of Health and Human Services, the American Public Health Association, and other interested parties in developing educational materials on the interrelationship of the aging process, driver safety, and the driver licensing process.

(d) ALTERNATIVE TRANSPORTATION MEANS.—The Secretary shall ensure that the agencies of the Department of Transportation overseeing the various modes of surface transportation coordinate their policies and programs to ensure that funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 1914) and implementing Department of Transportation and Related Agencies Appropriation Acts take into account the transportation needs of older Americans by promoting alternative transportation means whenever practical and feasible.

(e) STATE LICENSING PRACTICES.—The Secretary shall encourage State licensing agencies to use restricted licenses instead of canceling a license whenever such action is appropriate and if the interests of public safety would be served, and to closely monitor the driving performance of older drivers with such licenses. The Secretary shall encourage States to provide educational materials of benefit to older drivers and concerned family members and physicians. The Secretary shall promote licensing and relicensing programs in which the applicant appears in person and shall promote the development and use of cost effective screening processes and testing of physiological, cognitive, and perception factors as appropriate and necessary. Not less than one model State program shall be evaluated in light of this subsection during each of the fiscal years 1996 through 1998. Of the sums authorized under subsection (i), $250,000 is authorized for each such fiscal year for such evaluation.

(f) IMPROVEMENT OF MEDICAL SCREENING.—The Secretary shall conduct research and other activities designed to support and encourage the States to establish and maintain medical review or advisory groups to work with State licensing agencies to improve and provide current information on the screening and licensing of older drivers. The Secretary shall encourage the participation of the public in these groups to ensure fairness and concern for the safety and mobility needs of older drivers.

(g) INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.—In implementing the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note), the Secretary shall ensure that the National Intelligent Vehicle-Highway Systems Program devotes sufficient attention to the use of intelligent vehicle-highway systems to aid older drivers in safely performing driver functions. Federally sponsored research, development, and operational testing shall ensure the advancement of night vision improvement systems, technology to reduce the involvement of older drivers in accidents occurring at intersections, and other technologies of particular benefit to older drivers.

(h) TECHNICAL EVALUATIONS UNDER INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT.—In conducting the technical evaluations required under section 6055 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2192), the Secretary shall ensure that the safety impacts of older drivers are considered, with special attention being devoted to ensuring adequate and effective exchange of information between the Department of Transportation and older drivers or their representatives.

(i) AUTHORIZATION OF APPROPRIATIONS.—Of the funds authorized under section 403 of title 23, United States Code, $1,250,000 is authorized for each of the fiscal years 1995 through 1997 to support older driver programs described in subsections (a), (b), (c), (e), and (f).

TITLE IV—HIGH RISK DRIVERS

**SEC. 401. STUDY ON WAYS TO IMPROVE TRAFFIC RECORDS OF ALL HIGH RISK DRIVERS.**

(a) IN GENERAL.—Within 1 year after the date of enactment of this Act, the Secretary shall complete a study to determine whether additional or strengthened Federal activities, authority, or regulatory actions are desirable or necessary to improve or strengthen the driver record and control systems of the States to identify high risk drivers more rapidly and ensure prompt intervention in the licensing of high risk drivers. The study, which shall be based in part on analysis obtained from a request for information published in the Federal Register, shall consider steps necessary to ensure that State traffic record systems are unambiguous, accurate, current, accessible, complete, and (to the extend useful) uniform among the States.

(b) SPECIFIC MATTERS FOR CONSIDERATION.—Such study shall at a minimum consider—

(1) whether specific legislative action is necessary to improve State traffic record systems;

(2) the feasibility and practicality of further encouraging and establishing a uniform traffic ticket citation and control system;

(3) the need for a uniform driver violation point system to be adopted by the States;

(4) the need for all the States to participate in the Driver License Reciprocity Program conducted by the American Association of Motor Vehicle Administrators;

(5) ways to encourage the States to cross-reference driver license files and motor vehicle files to facilitate the identification of individuals who may not be in compliance with driver licensing laws; and

(6) the feasibility of establishing a national program that would limit each driver to one driver's license from only one State at any time.

(c) EVALUATION OF NATIONAL INFORMATION SYSTEMS.—As part of the study required by this section, the Secretary shall consider and evaluate the future of the national information systems that support driver licensing. In particular, the Secretary shall examine whether the Commercial Driver's License Information System, the National Driver Register, and the Driver License Reciprocity program should be more closely linked or continue to exist as separate information systems and which entities are best suited to operate such systems effectively at the least cost. The Secretary shall cooperate with the American Association of Motor Vehicle Administrators in carrying out this evaluation.

**SEC. 402. STATE PROGRAMS FOR HIGH RISK DRIVERS.**

The Secretary shall encourage and promote State driver evaluation, assistance, or control programs for high risk drivers. These programs may include in-person license reexaminations, driver education or training courses, license restrictions or suspensions, and other actions designed to improve the operating performance of high risk drivers.

TITLE V—ENHANCED AUTHORIZATION FOR 410 PROGRAM

**SEC. 501. FUNDING FOR 23 USC 410 PROGRAM.**

In addition to any amount otherwise appropriated or available for such use, there are authorized to be appropriated $15,000,000 for each of the fiscal years 1995, 1996, and 1997 for the purpose of carrying out section 410 of title 23, United States Code.

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[From the Omaha World-Herald, Dec. 3, 1994]

NEBRASKA LEADS IN DRUNKEN DRIVING CONTROL

Statistics sometimes are deceiving. Such was the case with a recent federal report on drunken driving fatalities. From 1982 to 1993, the report indicated, some neighboring states reduced alcohol-related traffic deaths much faster than did Nebraska.

Does that mean Nebraska has fallen behind? Officials in the State Office of Highway Safety say the answer is no. They say Nebraska was ahead and other states are catching up.

Fred Zwonechek, the state's traffic safety administrator, said that in 1980, Nebraska had 159 alcohol-related traffic fatalities. In 1981, the number rose to 189. At about that time, groups such as Mothers Against Drunk Driving were demanding better enforcement. Attitudes about drinking and driving began to change. In 1982, drunken driving fatalities in Nebraska dropped to 102—a one-year plunge of 46 percent. Since then, the number has remained at around the same level.

Moreover, the percentage of accidents in which alcohol was involved has hovered in the mid-30s in Nebraska, Zwonechek said. Nationwide, the comparable figure was 57 percent in 1982 and 43 percent in 1993.

Zwonechek said all the indicators point to further progress in reducing such deaths.

Even Nebraska's lower drunken driving fatality rate, of course, is still much too high. But it's good to know that progress has been made. It's especially reassuring that the state's top traffic safety official sees further progress ahead.

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[From the Omaha World-Herald, Dec. 20, 1994]

PANEL SEEKS TOUGHER DWI LAW

(By Paul Hammel and Bill Hord)

LINCOLN.—A task force of state legislators and law enforcement officials Monday joined Gov. Nelson in calling for tougher laws on drunken driving.

The task force, however, went beyond ideas endorsed by Nelson last week and proposed a stricter standard for legal intoxication and repeal of a law that wipes out drunken-driving convictions after eight years.

''There are some people who are ticking time bombs out there. We want to be more certain that we'll get them off the road,'' said State Sen. LaVon Crosby of Lincoln, who organized the task force.

Two key proposals adopted by the 26-member Task Force on Driving While Intoxicated were lowering the minimum blood-alcohol standard for legal intoxication from .10 percent to .08 percent and eliminating the eight-year rule on use of prior drunken-driving convictions.

Neither was among the proposals endorsed last week by Nelson.

''There ought to be some point where someone who hasn't had a problem for a period of time doesn't have it hanging over his or her head,'' Nelson said Monday.

''I don't want to see us overreach what is necessary to address the problem,'' he told reporters during his weekly teleconference call.

The Legislature will get a chance to debate drunken-driving laws after it convenes Jan. 4 for a 90-day session.

Drunken-driving convictions that occurred eight years ago or longer cannot be considered when bringing new charges. Thus, a person who had multiple convictions would still be charged with first-offense drunken driving if the other offenses were at least 8 years old.

A 33-year-old Lincoln man, Michael Fogarty, was recently convicted of second-offense drunken driving even though it was his eighth conviction.

Lancaster County Attorney Gary Lacey said the eight-year rule was frustrating.

''It limits a prosecutor's ability to enhance penalties without any logical reason,'' he said.

''We don't make an exception for habitual criminals, so why should we make an exception for habitual drunk-driving criminals?''

Dropping the minimum blood-alcohol level to .08 percent—the standard in 11 states, including Kansas—has been defeated in Nebraska during the past several legislative sessions.

Sen. Crosby and Sen. Carol Hudkins of Malcolm said the public was beginning to realize that people become impaired by alcohol at levels well below the current .10 percent.

Sen. Crosby said social drinkers would be unaffected by dropping the minimum standard to .08.

''It takes a lot (of drinking) to get to .08,'' she said. ''The average social drinker isn't at .08.''

Nelson said there was much disagreement on where to sett the threshold. Some people want it at zero, he said.

''Before we move downward to .08, there must be hard and convincing evidence that our streets will, in fact, be safer.'' Nelson said, ''Why don't we go to .05?''

Nelson said last week that he would not push for a .08 level but would sign such legislation if senators passed it.

Sen. Crosby said her task force's work would probably result in proposals to increase treatment of drunken drivers, reinstitute mandatory driver-education courses in high school and levy higher alcohol taxes, among other possible bills.

Some task force members suggested that taxes should rise 5 cents per drink to help fund enforcement and treatment efforts.

''The people who are causing the problems . . . need to be responsible to pay some of the costs,'' said Sen. Hudkins, who headed the task force's legal committee.

Other recommendations include tougher penalties for procuring alcohol for minors and for third-, fourth- and fifth-offense drunken-driving convictions, as well as making alcohol-dependency treatment mandatory for offenders.

Task force member Diane Riibe of Hooper, past state director of Mothers Against Drunken Driving, said the group's study was the most comprehensive look at drunken-driving laws in recent years.

Ms. Riibe questioned the recommendation of Sen. Don Wesely of Lincoln that drunken drivers undergo and finance mandatory alcohol-counseling programs.

While treatment can be helpful, she said, the primary concern should be getting these drivers off the streets.

''We want to make sure that the policy discussion focuses on the safety of the public,'' Ms. Riibe said.

Nelson has called for, among other provisions, tougher penalties for minors in possession of alcohol and for first-time drunken-driving offenders.

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[From the Omaha World-Herald, Feb. 8, 1995]

MADD FOUNDER FAULTS DRUNK-DRIVING BILL

(By Paul Hammel)

LINCOLN.—The national founder of Mothers Against Drunk Driving told Nebraska lawmakers Tuesday that dropping the legal blood-alcohol level for intoxication does not reduce drunken driving.

Candace Lightner of Alexandria, Va., told the Legislature's Transportation Committee that dropping the legal level of intoxication targets casual drinkers while ignoring the real problem: alcoholics and repeat drunken drivers.

''If I ruled the world, I would make sure that punishment is much swifter and much more sure,'' she said. ''That will be more effective than passing a politically correct bill that is nothing more than a feel-good, do-nothing law.''

Ms. Lightner founded MADD in 1980 while living in California after her 13-year-old daughter was killed in an accident caused by a drunken driver. She was one of a handful of opponents during a public hearing on a package of bills designed to toughen Nebraska's drunken-driving laws.

The bills were introduced following a summerlong study headed by State Sen. LaVon Crosby of Lincoln.

Sen. Crosby has fought unsuccessfully to lower the state's legal blood-alcohol level for intoxication from .10 to .08, a level now recognized in 11 states, including Kansas.

Legislative Bill 150, introduced this year, is Sen. Crosby's fourth attempt at reducing the level. Previous bills have failed to advance from the transportation committee.

A parade of speakers disagreed with Ms. Lightner's stand Tuesday, instead urging Nebraska to add the .08 standard to its arsenal of weapons to combat drunken driving.

James Fell of Washington, D.C., chief of the science and technology office for the National Highway Traffic Safety Administration, said the .08 standard is one of three legislative steps that have proved effective in cutting down on drunken-driving accidents.

Nebraska, he said, has already adopted the others: a ''zero-tolerance'' law on drinking by teen-age drivers and an administrative license revocation act, which takes drivers' licenses immediately from suspected drunken drivers.

''Why don't you go for the hat trick and go for all three,'' Fell said, ''because it will make a difference.''

Fell and other LB 150 supporters said that although alcohol consumption and accidents involving drunken drivers have fallen nationally, it is clear that drivers are impaired well before reaching the .10 level for alcohol in the blood.

A typical 170-pound man would require four drinks in an hour to reach the .08 level, he said. A 130-pound woman would need three drinks, Fell said.

''At the .08 level, there's no doubt you're impaired,'' said Omaha Police Officer Chuck Matson, who also testified in support of the bill.

However, opponents of the bill, which included the state's liquor and restaurant industries, said that no one wants drunken drivers on the state's roads but that dropping the level to .08 was unreasonable and would be ineffective.

''This is fixing the basement when the roof is leaking,'' said Mike Kelley, an Omaha bar owner and lobbyist for the United Retailers Liquor Association of Nebraska. ''This isn't traffic safety, it's temperance.''

Brent Lambi, an Omaha businessman, told committee members that he was an alcoholic who would not have been deterred from driving by LB 150.

''I think you need to take away their cars,'' said Lambi.

Ms. Lightner said better enforcement of existing laws was the answer.

The committee took testimony on several other drunken-driving bills, including a measure that would prohibit drivers on suspension from obtaining provisional licenses to drive to work.

Members took no action on the bills following the hearing.

Sen. Doug Kristensen of Minden, the committee's chairman, said he was unsure whether the .08 proposal would be advanced this year. Kelley gave it a 50–50 chance.

Kristensen said he expected the committee to advance some anti-drunken-driving bills. He said he must be convinced they would be effective before he would support them.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I was not present to hear the entire presentation by Senator EXON from Nebraska but I heard enough to spark my interest. I came here today to speak about the constitutional amendment to balance the budget, especially the Reid amendment on Social Security.

To the Senator from Nebraska, if he is working on issues dealing with drunk driving, I applaud him for it, and I am very interested in working with him on it. I will reintroduce legislation in the Senate that I have introduced previously on the subject of drunk driving.

Two members of my family have been killed by drunk drivers. I expect there is not anyone in this Chamber who has not received a call to tell them a loved one, a neighbor, a relative, or a close

acquaintance has been in a tragic accident and has been killed because of a drunk driver.

It is unforgivable in this country that today, in February 1995, there are still nearly 10 States in which a person can get behind a wheel of a car, grab the neck of a fifth of whiskey, put the key in the ignition, drive off and drink, and it is perfectly legal. There ought not to be one instance, anywhere in America, where it should be legal to drink and drive at the same time.

I have tried for 5 years and will try until I get it done to prescribe all across this country one simple proposal: Alcohol and automobiles do not mix. Alcohol turns automobiles into instruments of murder.

We should not tolerate the fact that there are nearly 10 States where a person can drink and drive, and it is legal in another 20 States that, if the driver cannot drink, the rest of the folks in the car can be having a party with beer or whiskey. The fact is we ought not accept that in this country. No family should receive another call at midnight saying their mother, their brother, their father, or their sister is dead because of another drunk-driving accident.

I say to the Senator from Nebraska, I do not know the details of his legislation, but I do know this: As long as I serve in the Congress, I will continue, year after year after year, until all across this country no matter where an American drives, on whichever street or road or highway, that person will have some assurance that it is not legal in that jurisdiction to be drinking while driving and it is not legal in that jurisdiction to have an open container of alcohol in the vehicle. That ought to be the minimum we would expect in this country for the state of all Americans.

Mr. EXON. Mr. President, would the Senator yield for a moment so I might thank him?

Mr. DORGAN. Mr. President I am happy to yield.

Mr. EXON. Mr. President, I listened with keen interest to the remarks of my friend and colleague from North Dakota. I know he has been very much involved in this thing, and I want to thank him now for the support he gave to the Exon-Danforth bill last year. The Senator voted for it.

I think it is the same, as I outlined in my remarks, since it passed the House and the Senate. I see no reason why we cannot expedite passage of this matter. I have delayed introducing it only because there were many other things going on, but I think, even as important as those matters are, that we should get going on this.

Certainly, I was not aware of the sad fact that two members of his family have been killed by a drunk driver. Hardly a week goes by but that something very similar happens in the State of Nebraska, where the population compared with other States is smaller and we hear more about it.

There are some things that we can do, rather than just sit back and wring our hands. There are some things, and I think the Federal Government can legitimately be of assistance to the States.

I must tell the Senator that this piece of legislation was sparked primarily by a typically tragic teenage accident that happened in my State not too many months ago where young people, 16 and 17 years of age, went out for a good time at night. The problem was that the driver had one too many half-cans of beer. It is a tragic. I am not saying that this bill will solve all of the problem, but I appreciate the pledge of support from my colleague from North Dakota.

I think that the feelings of this Senator, the Senator from North Dakota, and others are shared broadly on both sides of the aisle on this matter, on this measure. It is not a cure-all, but a significant step in the right direction. I thank my friend from North Dakota for his remarks.

Mr. DORGAN. I thank the Senator. I hope we can go further. I certainly support these efforts. As I said, we will be finished when we have prescribed all across this country an understanding that a person cannot drink and drive in this country.

Again, to me it does not make sense that in England, in European countries, for example, people understand that the consequences of drunk driving are so substantial that a person better not get caught because they will get hit with an enormous penalty. There is a completely different attitude about it in the European countries. Here it has been treated kind of like, Well, old Joe, or old Helen just went out and had too much to drink. That was not a problem.

It was not, unless they murdered with a vehicle. That is what happens in this country. Every 28 minutes, around the clock, somebody gets another call that says your relative died because of a drunk driver. This is not some mysterious illness for which we do not have a cure. This is not beyond the comprehension of humans to deal with. We deal with it by saying to people, Do not even think about driving if you drink. Don't even think about it. The consequences are too great.

The very first step is for governments, every government, to decide that there ought to be a prohibition against open containers of alcohol in vehicles.

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By Ms. SNOWE (for herself, Mr. COHEN, Mr. CAMPBELL, Mr. GRASSLEY, Mr. INHOFE, Mr. ROTH, Mr. GREGG, Ms. MOSELEY-BRAUN, Mr. MURKOWSKI, Mr. KOHL, Mr. BENNETT, Mr. LUGAR, Mr. GRAMS, Mr. THOMAS, Mr. HATCH, and Mr. COATS):

S. 388. A bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes; to the Committee on Environment and Public Works.

MOTORCYCLE HELMET LEGISLATION

● Ms. SNOWE. Ms. President, today I am introducing legislation restoring the rights of States to decide for themselves whether to require the use of motorcycle helmets.

My bill is quite simple: it repeals the penalties specified in section 153 of title 23 of the Intermodal Surface Transportation Efficiency Act [ISTEA], passed in 1991. Section 153 imposed a penalty on those States that had not complied by September 30, 1994. These Federal sanctions forced States without helmet laws to divert 1.5 percent of their fiscal 1995 highway funds from three programs—the National Highway Safety Program, the Surface Transportation Program, and the Congestion Mitigation and Air Quality Improvement Program—and spend those funds instead on section 402 safety programs. For fiscal year 1996, the penalty doubled, taking a 3-percent chunk from the State highway construction account.

This compulsory mechanism has the ironic effect of actually decreasing the safety of some highways, as funds available for needed repairs are diverted for safety education and awareness programs.

Once again, the Federal Government is trying to micromanage State transportation budgets, imposing a heavy-handed Federal mandate upon more than half of our States. And make no mistake, Mr. President: this is no carrot and stick. It is a mandate, and despite the broad reach of Federal law, section 153 has failed in its explicit intent.

Fewer than half of the States are in compliance with this Federal law. Two years into these intrusive Federal sanctions, 28 States remain without helmet laws and are subject to financial penalties. These States disagree with the Federal Government's intrusion into what has traditionally been within the jurisdiction of individual States. And although Federal penalties doubled last year, none of these States have passed laws requiring motorcyclists to wear helmets.

The estimated penalties facing States under section 153 total $106.6 million—$106.6 million that is no longer available to upgrade roads in the National Highway System Program—$106.6 million that is unavailable to construct and maintain highways—$106.6 million that is no longer available to promote mass transit—$106.6 million that is unavailable to make sure that this crucial transportation infrastructure is not only modern but safe.

Instead, these valuable Federal dollars will be spent on highway safety programs, which most States already fund quite generously. States—and motorcyclists in the States—have been at

the forefront of highway safety programs. Forty-two States have funded State motorcycle safety programs, most of which are paid for by the motorcyclists themselves, through motorcycle registration and license fees. Motorcyclists understand that their safety is at risk on highways—and they want to make sure that their fellow riders and drivers of passenger cars and trucks have good awareness of motorcycle safety.

Nevertheless, the Federal Government—through section 153—insists of forcing States to redirect their precious Federal resources to programs that are already well-funded. Frankly, I don't believe that we should compel States to direct desperately needed highway construction funds into highway safety programs that are already well funded.

The most recent data shows that States have already been doing an excellent job promoting highway safety. since 1983, the number of accidents has decreased from 3,070 per 10,000 registered motorcyclists to 206. Fatalities have similarly declined from 8 per 10,000 registered motorcyclists to 6 per 10,000 registered motorcyclists. Even without a motorcyle helmet law, the number of motorcycle occupant fatalities declined 58.9 percent, from 5,097 in 1980 to 2,398 in 1992 when no mandatory Federal helmet law existed. Accidents declined by 53.4 percent in this same period. This substantial decline in motorcyle fatalities demonstrates that States are capable of addressing safety issues without intervention by the Federal Government.

It is also interesting to note that of the 10 States with the lowest motorcycle accident rate, 8 had motorcycle rider education programs. In fact, the 10 States with the lowest motorcycle accident rates spent 64.4 percent more on motorcycle rider education programs than States with the 10 highest motorcycle accident rates. Clearly, safety programs do work, and we should allow them to continue to work.

The penalty provisions of section 153 affect States in dire need of their highway construction funds. For my State of Maine, the estimated penalty was $853,194 in fiscal year 1995, increasing to $1,706,387 in fiscal year 1996. I believe that section 153 runs contrary to the principles of federalism, as the Federal Government tries to thwart the efforts of States to rebuild their transportation infrastructure in order to coerce States to pass helmet laws. And it is poor public policy, because poorly-maintained roads are often quite hazardous to the motoring public.

I have always strived to protect the interests of our communities by allowing them and the individual States to make the important decisions on how their affairs should be run. I believe that each State and each community should, to the extent of their ability, be allowed to make their own policy decisions. This is consistent with the ideas of the Founding Fathers.

State governments are closer to their citizens than the Federal Government. Surely, these democratic institutions understand the best interests of their citizens on this important issue, and the Federal Government should respect their decision. Yet section 153 erodes the very freedoms and liberties of our democracy, and on which our Nation was founded. Through provisions such as section 153, we are gradually stripping away the limited autonomy of the States.

Where will we draw the line? How far will Congress go in the debate over State freedoms? The National Conference of State Legislators expressed a clear and solid view during testimony before Congress in 1993: the mandatory helmet and seat belt law provision, it said, is one of the most infringing provisions on the right of individual States included in ISTEA.

Clearly, we must continue to do everything we can to make our roads safer, and to reduce the number of fatalities and severe injuries that occur on our Nation's highways. But I believe there are better ways for us to achieve these goals, without resorting to penalties on our financially burdened States.

At a time when Congress has already acted to eliminate future unfunded mandates on the States, we understand the burden that our actions can impose on the States. Surely, we can remove this unnecessary and intrusive mandate and restore authority to State Governments where they belong.

I will continue to work with my colleagues, however, to support the grant incentive provisions of section 153 and, and to explore additional options for enhancing highway safety. In the meantime, we should give the States some credit for keeping their roads and highways safe and repeal the insulting penalties contained in section 153.

I urge my colleagues to join me in supporting this legislation.●

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By Mr. JOHNSTON (for himself, Mr. BENNETT, Mr. HATFIELD, Mr. NICKLES, Mr. SHELBY, and Mr. SPECTER):

S. 389. A bill for the relief of Nguyen Quy An and his daughter, Nguyen Ngoc Kim Quy; to the Committee on the Judiciary.

PRIVATE RELIEF LEGISLATION

● Mr. JOHNSTON. Mr. President, I am proud to introduce a bill for the relief of Maj. Nguyen Quy An and his daughter, Nguyen Ngoc Kim Quy.

Major An, a former South Vietnamese helicopter pilot, was awarded the Distinguished Flying Cross for risking his own life to save four American servicemen in Vietnam in 1969. Two years later, his helicopter was hit by enemy fire and went down in flames while he was on a mission in Vietnam's central highlands. Major An managed to land the aircraft safely, saving himself and his crew; however, his arms were severely burned and had to be amputated by American doctors. He was imprisoned in a Vietnamese reeducation camp for 9 weeks, but was released because he was considered worthless without his two hands. Major An attempted to escape Vietnam by boat three times, but each time he was captured, and he spent 17 months in jail for the escape attempts.

Mr. President, last January, Senators SIMPSON, Mathews, HATFIELD, SPECTER, NICKLES, BENNETT, and myself gave Major An and his daughter refuge on an Air Force plane from Ho Chi Minh City to Bangkok. One of the most touching moments I have ever experienced was the thrill of announcing to Major An that our plane had cleared Vietnam's airspace and hearing everyone in our delegation and the military escorts clap and cheer. Major An and his daughter are currently in this country on humanitarian parole.

In the 103d Congress, I introduced legislation cosponsored by Senators Mathews, HATFIELD, SPECTER, NICKLES, and BENNETT for the relief of Major An and his daughter. Unfortunately, this bill was not acted on last year, so I rise today to submit new legislation for their relief. I hope my colleagues will join with me in recognizing the heroic actions of Major An and will reward him for his bravery by giving him and his daughter the opportunity to reside permanently in the United States.●

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By Mr. BIDEN (for himself, Mr. SPECTER, Mr. KOHL, Mr. KERREY, and Mr. D'AMATO) (by request):

S. 390. A bill to improve the ability of the United States to respond to the international terrorist threat; to the Committee on the Judiciary.

THE OMNIBUS COUNTERTERRORISM ACT OF 1995

● Mr. BIDEN. Mr. President, at the request of President Clinton, I am introducing today legislation to combat international terrorism. The very grave threat to the United States posed by violent terrorist acts is documented by the events of this week, as well as of the past 2 years.

Two days ago, Ahmed Ramzi Yousef, the alleged mastermind of New York's World Trade Center bombing 2 years ago, was arrested and extradited from Pakistan. Explosives and United and Delta Airlines timetables were recovered from his hotel room in Pakistan.

Even as legal proceedings now begin against him, 11 other men are on trial in Federal court in New York City for conspiracy to commit several heinous acts of terrorism in and around Manhattan—including the World Trade Center bombing.

These incidents demonstrate that the United States and its citizens continue to be the focus of extremists who are willing and able to use violence to advance their cause. The damage this terrorism causes extends beyond the tragic loss of life and damage of the World Trade Center bombing.

Indeed, the revelation that terror networks are operating in our midst undeniably has its intended effect on

our national psyche—it undermines the sense of security of all Americans both at home and abroad.

Equally important, the continued operation of numerous terrorist organizations around the globe undermines the stability of key U.S. allies and important foreign policy objectives.

In the Middle East, terrorism perpetrated by groups supported by Iran and Syria pose a grave threat to the already fragile Middle East peace process.

The recent bombing in central Tel Aviv, which killed 19 Israelis—many of them soldiers on leave—was only the latest in a series of attacks carried out by Palestinian extremists since the signing of the Israeli-PLO Declaration of Principles in September 1993.

In South America, terrorists in Colombia and Peru—often in league with narcotics traffickers—attack the very institutions of State, weakening the ability of those governments to confront the drug trade—a trade that continues to plague our own society.

A short time ago, international terrorism seemed to be in decline. But in 1993, the last year for which data are available, the State Department's Office of Counterterrorism reports that there were 427 terrorist incidents, an increase from 364 incidents in 1992.

The main reason for the increase was an acceleration of the campaign conducted by the Kurdistan workers party—known as the PKK—against Turkish interests in Western Europe.

But the raw numbers—and the dry statistics of which group perpetrated what attack—do not even begin to portray the harm caused by the heinous acts of terrorist violence.

Wherever it occurs, the lost lives, broken hearts, and destroyed dreams of the thousands touched by terrorism is tangible, while the fear that grips the citizenry—the fear of the indiscriminate attack that can occur at any time—cannot be quantified. But its effect is all too real.

In the 1980's, Congress and the Reagan administration worked together to empower law enforcement with many tools to counter the men of terror. Last year, President Clinton urged a refocus on terrorism—and sought recommendations from the executive branch agencies on new tools that might be needed in the fight against terrorism.

Now, this bill includes a number of provisions to help in that fight. The bill expands the circumstances in which we can prosecute crimes committed overseas which affect our interests. It also prohibits persons in the United States from conspiring to commit terrorism overseas—and from raising funds for foreign terrorist organizations.

In addition, the bill implements the convention on the marking of plastic explosives for the purposes of detection. That convention was an international response to earlier terrorist bombings of aircraft, requiring manufacturers of plastic explosives to make them easier to detect.

The bill also expands the coverage of the existing statute involving transactions in nuclear materials, to cover materials from the dismantling of nuclear weapons in the former Soviet Union.

It also allows prosecutors to use the Federal RICO and money laundering statutes to attack terrorism, and fills gaps in current law by authorizing wiretaps for investigations of all terrorism offenses. Other more technical changes will also enhance the law enforcement response to terrorism.

Finally, the bill includes a new Federal terrorism offense, with stiff penalties—including a new death penalty for terrorist murders. This is an important, an appropriate, new Federal offense.

The expansion of Federal jurisdiction has been a contested issue in recent years. I have long opposed broad assertions of Federal jurisdiction over offenses which are more appropriately prosecuted in State courts. But, in my view, international terrorism requires a Federal response.

As expressed in its letter transmitting the legislation to the Congress, the administration stated that it intends that section 101 confer Federal jurisdiction only over acts of violence that are, indeed, international terrorism offenses.

I strongly support that intent, but I believe the language of section 101 could be improved to better reflect that intent. The administration has agreed to work with the Congress to make modifications to the legislative language to further that goal.

I must also point out that the bill includes one provision which I strongly oppose in its current form. That is the provision which allows secret evidence to be used in a deportation proceeding against an immigrant—even a legal permanent resident—who is alleged to be a terrorist.

Under current law, any person who is not a citizen—including legal immigrants—is deportable if the person is engaged in terrorist activities, even without a criminal conviction.

This bill would create a new and, in my view, troubling court procedure which would allow the Government to deport an immigrant based on secret evidence, on evidence unknown to the immigrant or his counsel.

The right to see and confront the evidence against oneself is a fundamental premise of the due process clause of the Constitution.

The Supreme Court has held that the due process clause applies to aliens in the United States, and that it applies to deportation proceedings.

Deportation can be a dramatic step. This procedure could be used, for instance, against a legal permanent resident who has lived in the United States with all of his family for 40 or more years.

Deportation could mean separation from family, and could mean removal to a country in which the person has never before lived, since a person is not always deported to the person's country of citizenship.

The use of secret information is unprecedented. Even in other cases where sensitive information is involved, the Government is required to give a defendant a summary of the evidence to be used against him.

The use of secret evidence raises fundamental questions about the accuracy of any determinations made using that procedure. Our system of justice is an adversarial one. It assumes that by allowing defendants to see and challenge the evidence against them, the reliability and truthfulness of that information can be evaluated.

That is what cross-examination is all about—to test the reliability and biases of the witness. That is why the defense is allowed to put on witnesses to rebut evidence presented by the prosecution. If a person does not know what evidence is being used against him, it is simply impossible to subject that evidence to the scrutiny our system requires.

I agree with the administration that we must have the ability to deport aliens involved in terrorist activities. I also agree that we must be able to safeguard classified information. But I am not convinced that nothing short of secret evidence can protect our security. Why, for example, can we not consider applying the Classified Information Procedures Act—a tried and tested process—to deportation proceedings, before we sanction in this country Kafkaesque procedures requiring people to defend against unknown and unseen evidence.

I have introduced this bill at the President's request. I support most of its provisions, as I am sure most Senators will. But as I have said, I will work to modify certain portions of the bill even as we move expeditiously to see it enacted into law.

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

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

S. 390

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as ''The Omnibus Counterterrorism Act of 1995.''

**SEC. 2. TABLE OF CONTENTS.**

The following is the table of contents for this Act:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Findings and purposes.

TITLE I—SUBSTANTIVE CRIMINAL LAW ENHANCEMENTS

Sec. 101. Acts of terrorism transcending national boundaries.

Sec. 102. Conspiracy to harm people or property overseas.
Sec. 103. Clarification and extension of criminal jurisdiction over certain terrorism offense overseas.

TITLE II—IMMIGRATION LAW IMPROVEMENTS

Sec. 201. Alien terrorist removal procedures.
Sec. 202. Changes to the Immigration and Nationality Act to facilitate removal of alien terrorists.
Sec. 203. Access to certain confidential INS files through court order.

TITLE III—CONTROLS OVER TERRORIST FUND-RAISING

Sec. 301. Terrorist fund-raising prohibited.

TITLE IV—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

Sec. 401. Short title.
Sec. 402. Findings and purposes.
Sec. 403. Definitions.
Sec. 404. Requirement of detection agents for plastic explosives.
Sec. 405. Criminal sanctions.
Sec. 406. Exceptions.
Sec. 407. Investigative authority.
Sec. 408. Effective date.

TITLE V—NUCLEAR MATERIALS

Sec. 501. Expansion of nuclear materials prohibitions.

TITLE VI—PROCEDURAL AND TECHNICAL CORRECTIONS AND IMPROVEMENTS

Sec. 601. Correction to material support provision.
Sec. 602. Expansion of weapons of mass destruction statute.
Sec. 603. Addition of terrorist offenses to the RICO statute.
Sec. 604. Addition of terrorist offenses to the money laundering statute.
Sec. 605. Authorization for interception of communications in certain terrorism related offenses.
Sec. 606. Clarification of maritime violence jurisdiction.
Sec. 607. Expansion of federal jurisdiction over bomb threats.
Sec. 608. Increased penalty for explosives conspiracies.
Sec. 609. Amendment to include assaults, murder, and threats against former federal officials on account of the performance of their official duties.
Sec. 610. Addition of conspiracy to terrorism offenses.

TITLE VII—ANTITERRORISM ASSISTANCE

Sec. 701. Findings.
Sec. 702. Antiterrorism assistance amendments.

**SEC. 3. FINDINGS AND PURPOSES.**

(a) The Congress finds and declares—

(1) International terrorism remains a serious and deadly problem which threatens the interests of the United States both overseas and within its territory. States or organizations that practice terrorism or actively support it should not be allowed to do so without serious consequence;

(2) International terrorism directed against United States interests must be confronted by the appropriate use of the full array of tools available to the President, including diplomatic, military, economic and prosecutive actions;

(3) The Nation's security interests are seriously impacted by terrorist attacks carried out overseas against United States Government facilities, officials and other American citizens present in foreign countries;

(4) United States foreign policy interests are profoundly affected by terrorist acts overseas especially those directed against friendly foreign governments and their people and those intended to undermine the peaceful resolution of disputes in the Middle East and other troubled regions;

(5) Since the Iranian Revolution of 1979, the defeat of the Soviet Union in Afghanistan, the peace initiative in the Middle East, and the fall of communism throughout Eastern Europe and the former Soviet Union, international terrorism has become a more complex problem, with new alliances emerging among terrorist organizations;

(6) Violent crime is a pervasive international problem and is exacerbated by the free international movement of drugs, firearms, explosives and individuals dedicated to performing acts of international terrorism who travel using false or fraudulent documentation;

(7) While international terrorists move freely from country to country, ordinary citizens and foreign visitors often fear to travel to or through certain parts of the world due to concern about terrorist violence;

(8) In addition to the destruction of property and devastation to human life, the occurrence of an international terrorist event results in a decline of tourism and affects the marketplace, thereby having an adverse impact on interstate and foreign commerce and economies of friendly nations;

(9) International terrorists, violating the sovereignty of foreign countries, attack dissidents and former colleagues living in foreign countries, including the United States;

(10) International terrorists, both inside and outside the United States, carefully plan attacks and carry them out in foreign countries against innocent victims;

(11) There are increasing intelligence indications of networking between different international terrorist organizations leading to their increased cooperation and sharing of information and resources in areas of common interest;

(12) In response, increased international coordination of legal and enforcement issues is required, pursuant, for example, to the numerous multilateral conventions in force providing universal prosecutive jurisdiction over persons involved in a variety of terrorist acts, including hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage;

(13) Until recently, United States asylum processing procedures have been complicated and often duplicative, providing a powerful incentive for individuals, including terrorists, without a genuine claim, to apply for asylum and remain in the United States;

(14) The United States Constitution grants Congress the power to establish a uniform rule of naturalization and to make all laws necessary and proper thereto;

(15) Part of that power authorizes the Congress to establish laws directly applicable to alien conduct within the United States that harms the foreign relations, domestic tranquility or national security of the United States;

(16) While the vast majority of aliens justify the trust placed in them by United States immigration policies, a dangerous few utilized access to the United States to carry out their terrorist activity to the detriment of this nation's national security and foreign policy interests. Accordingly, international terrorist organizations have been able to create significant infrastructures and cells in the United States among aliens who are in this country either temporarily or as permanent resident aliens;

(17) International terrorist organizations, acting through affiliated groups and/or individuals, have been raising significant funds within the United States, often through misrepresentation of their purposes or subtle forms of extortion, or using the United States as a conduit for transferring funds among countries;

(18) The provision of funds to organizations that engage in terrorism serves to facilitate their terrorist activities regardless of whether the funds, in whole or in part, are intended or claimed to be used for non-violent purposes;

(19) Certain foreign governments and international terrorist organizations have directed their members or sympathizers residing in the United States to take measures in support of terrorist acts, either within or outside the United States;

(20) Present federal law does not adequately reach all terrorist activity likely to be engaged in by aliens within the United States;

(21) Law enforcement officials have been hindered in using current immigration law to deport alien terrorists because the law fails to provide procedures to protect classified intelligence sources and information. Moreover, a few high ranking members of terrorist organizations have been naturalized as United States citizens because denial of such naturalizations would have necessitated public disclosure of highly classified sources and methods. Furthermore, deportation hearings frequently extend over several years, thus hampering the expeditious removal of aliens engaging in terrorist activity;

(22) Present immigration law is inadequate to protect the United States from terrorist attacks by certain aliens. New procedures are needed to permit expeditious removal of alien terrorists from the United States, thereby reducing the threat that such aliens pose to the national security and other vital interests of the United States;

(23) International terrorist organizations that have infrastructure support within the United States are believed to have been responsible for—

(A) conspiring in 1982 to bomb the Turkish Honorary Consulate in Philadelphia, Pennsylvania;

(B) bombing the Marine barracks in Lebanon in 1983;

(C) holding Americans hostage in Lebanon from 1984–1991;

(D) hijacking in 1984 Kuwait Airlines Flight 221 during which two American employees of the Agency for International Development were murdered;

(E) hijacking in 1985 TWA Flight 847 during which a United States Navy diver was murdered;

(F) murdering in 1985 an American tourist aboard the Achille Lauro cruise liner;

(G) hijacking in 1985 Egypt Air Flight 648 during which one American and one Israeli were killed;

(H) murdering in 1985 four members of the United States Marine Corps in El Salvador;

(I) attacking in December 1985 the Rome and Vienna airports resulting in the death of a young American girl;

(J) hijacking in 1986 Pan Am Flight 73 in Karachi, Pakistan, in which 44 Americans were held hostage and two were killed;

(K) conspiring in 1986 in New York City to bomb an Air India aircraft;

(L) bombing in April 1988 the USO club in Naples, Italy, killing one American servicewoman and injuring four American servicemen;

(M) attacking in 1988 the Greek cruise ship ''City of Poros'';

(N) bombing in 1988 Pan Am Flight 103 resulting in 270 deaths;

(O) bombing in 1989 UTA Flight 772 resulting in 171 deaths, including seven Americans;

(P) murdering in 1989 a United States Marine Corps officer assigned to the United Nations Truce Supervisory Organization in Lebanon;

(Q) downing in January 1991 a United States military helicopter in El Salvador causing the death of a United States military crewman as a result of the crash and subsequently murdering its two surviving United States military crewmen;

(R) bombing in February 1992 the United States Ambassador's residence in Lima, Peru;

(S) bombing in February 1993 a cafe in Cairo, Egypt, which wounded two United States citizens;

(T) bombing in February 1993 the World Trade Center in New York City, resulting in six deaths;

(U) conspiring in the New York City area in 1993 to destroy several government buildings and tunnels;

(V) wounding in October 1994 two United States citizens on a crowded street in Jerusalem, Israel;

(W) kidnapping and subsequently murdering in October 1994 a dual citizen of the United States and Israel; and

(X) numerous bombings and murders in Northern Ireland over the past decade;

(24) Nuclear materials, including byproduct materials, can be used to create radioactive dispersal devices which are capable of causing serious bodily injury as well as substantial damage to property and the environment;

(25) The potential use of nuclear materials, including byproduct materials, enhances the threat posed by terrorist activities and thereby has a greater effect on the security interests of the United States;

(26) Due to the widespread hazards presented by the threat of nuclear contamination, as well as nuclear bombs, the United States has strong interest in assuring that persons who are engaged in the illegal acquisition and use of nuclear materials, including byproduct materials, are prosecuted for their offenses;

(27) The threat that nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially due to international developments in the years since the enactment in 1982 of the legislation which implemented the Convention on the Physicial Protection of Nuclear Material, codified at 18 U.S.C. 831;

(28) The successful effort to obtain agreements from other countries to dismantle and destroy nuclear weapons has resulted in increased packaging and transportation of nuclear materials, thereby creating more opportunities for their unlawful diversion or theft;

(29) The illicit trafficking in the relatively more common, commercially available and usable nuclear and byproduct materials poses a potential to cause significant loss of life and/or environmental damage;

(30) Reported trafficking incidents in the early 1990's suggest that the individuals involved in trafficking these materials from Eurasia and Eastern Europe frequently conducted their black market sales within the Federal Republic of Germany, the Baltic States, and to a lesser extent in the Middle European countries;

(31) The international community has become increasingly concerned over the illegal possession of nuclear and nuclear byproducts materials;

(32) The potentially disastrous ramifications of increased access by terrorists to nuclear and nuclear byproduct materials pose such a significant future threat that the United States must use all lawful methods available to combat the illegal use of such materials;

(33) The United States has an interest in encouraging United States corporations to do business in the countries which comprised the former Soviet Union, as well as in other developing democracies; protection of such corporations from threats created by the unlawful use of nuclear materials is important to encourage such business ventures, and to further the foreign relations and commerce of the United States;

(34) The nature of nuclear contamination is such that it may affect the health, environment, and property of United States nationals even if the acts which constitute the illegal activity occur outside the territory of the United States, and are primarily directed toward non-nationals of the United States;

(35) Plastic explosives were used by terrorists in the bombings of Pan Am flight 103 in December 1988 and UTA flight 772 in September 1989;

(36) Plastic explosives currently can be used with little likelihood of detection for acts of unlawful interference with civil aviation, maritime navigation, and other modes of transportation;

(37) The marking of plastic explosives for the purpose of detection would contribute significantly to the prevention and punishment of such unlawful acts; and

(38) In order to deter and detect the unlawful use of plastic explosives, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991, requires each contracting State to adopt appropriate measures to ensure that plastic explosives are duly marked and controlled.

The Congress further finds:

(39) Such international terrorist offenses place innocent lives in jeopardy, endanger national security, affect domestic tranquility, and gravely impact on interstate and foreign commerce;

(40) Such international terrorist offenses involve international associations, communication, and mobility which can often be addressed effectively only at the federal law enforcement level;

(41) There previously has been no federal criminal statute which provides a comprehensive basis for addressing acts of international terrorism carried out within the United States;

(42) There previously has been no federal provision that specifically prohibits fund raising within the United States on behalf of international terrorist organizations;

(43) There previously has been no adequate procedure under the immigration law that permits the expeditious removal of resident and non-resident alien terrorists;

(44) There previously has been no federal criminal statute which provides adequate protection to United States interests from non-weapons grade, yet hazardous radioactive material, and from the illegal diversion of nuclear materials which are held for other than peaceful purposes;

(45) There previously has been no federal law that requires the marking of plastic explosives to improve their detectability; and

(46) Congress has the power under the interstate and foreign commerce clause, and other provisions of the Constitution, to enact the following measures against international terrorism in order to help ensure the integrity and safety of the Nation.

(b) The purposes of this Act are to provide:

(1) federal law enforcement the necessary tools and fullest possible basis allowed under the Constitution of the United States to address, pursuant to the rule of law, acts of international terrorism occurring within the United States, or directed against the United States or its nationals anywhere in the world;

(2) the Federal Government the fullest possible basis, consistent with the Constitution of the United States, to prevent persons and organizations within the jurisdiction of the United States from providing funds, directly or indirectly, to organizations, including subordinate or affiliated persons, designated by the President as engaging in terrorism, unless authorized under this Act;

(3) procedures which, consistent with principles of fundamental fairness, will allow the government to deport resident and non-resident alien terrorists promptly without compromising intelligence sources and methods;

(4) provide federal law enforcement the necessary tools and fullest possible basis allowed under the Constitution of the United States to combat the threat of nuclear contamination and proliferation which may result from illegal possession and use of radioactive materials; and

(5) fully implement the Convention on the Marking or Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991.

## TITLE I—SUBSTANTIVE CRIMINAL LAW ENHANCEMENTS

### SEC. 101. ACTS OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.

(a) OFFENSE.—Chapter 113B of title 18, United States Code, is amended by inserting after section 2332a this new section:

''2332b. Acts of terrorism transcending national boundaries

''(a) FINDINGS AND PURPOSE.—

''(1) The Congress hereby finds that—

''(A) international terrorism is a serious and deadly problem which threatens the interests of this nation not only overseas but also within our territory;

''(B) international terrorists have demonstrated their intention and capability of carrying out attacks within the United States by, for example, bombing the World Trade Center in New York and undertaking attacks, including assassinations, against former colleagues and opponents who have taken up residence in this country;

''(C) United States foreign policy interests are seriously affected by terrorist acts within the United States directed against foreign governments and their people;

''(D) such offenses place innocent lives in jeopardy, endanger national security, affect domestic tranquility, and gravely impact on interstate and foreign commerce;

''(E) such offenses involve international associations, communication, and mobility which often can be addressed effectively only at the federal law enforcement level; and

''(F) there previously has been no federal criminal statute which provides a comprehensive basis for addressing acts of international terrorism carried out within the United States.

''(2) The purpose of this section is to provide federal law enforcement the fullest possible basis allowed under the Constitution to address acts of international terrorism occurring within the United States.

''(b) PROHIBITED ACTS.—

''(1) Whoever, in a circumstance described in subsection (c),

''(A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any individual within the United States; or

''(B) destroys or damages any structure, conveyance or other real or personal property within the United States,

in violation of the laws of any State or the United States shall be punished as prescribed in subsection (d).

''(2) Whoever threatens to commit an offense under subsection (b)(1), or attempts or conspires so to do, shall be punished as prescribed in subsection (d).

''(c) JURISDICTIONAL BASES.—The circumstances referred to in subsection (b) are:

''(1) any of the offenders travels in commerce with the intent to commit the offense or to escape apprehension after the commission of such offense;

''(2) the mail, or any facility utilized in any manner in commerce, is used in furtherance of the commission of the offense or to effect the escape of any offender after the commission of such offense;

''(3) the offense obstructs, delays or affects commerce in any way or degree or would have so obstructed, delayed or affected commerce if the offense had been consummated;

''(4) the victim, or intended victim, is the United States Government or any official, officer, employee or agent of the legislative, executive or judicial branches, or of any department or agency, of the United States;

''(5) the structure, conveyance or other real or personal property (A) was used in commerce or in any activity affecting commerce, or (B) was in whole or in part owned, possessed, or used by, or leased to (I) the United States, or any department or agency thereof, or (II) any institution or organization receiving federal financial assistance or insured by any department or agency of the United States;

''(6) any victim, or intended victim, of the offense is, at the time of the offense, traveling in commerce;

''(7) any victim, intended victim or offender is not a national of the United States;

''(8) the offense is committed in the territorial sea (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) of the United States; or

''(9) the offense is committed in those places within the United States that are in the special maritime and territorial jurisdiction of the United States.

Jurisdiction shall exist over all principals and coconspirators of an offense under subsection (b), and accessories after the fact to any offense based upon subsection (b), if at least one of the above circumstances is applicable to at least one offender.

''(d) PENALTIES.—Whoever violates this section shall, in addition to the punishment provided for any other crime charged in the indictment, be punished—

''(1) for a killing or if death results to any person from any other conduct prohibited by this section, by death or by imprisonment for any term of years or for life;

''(2) for kidnapping, by imprisonment for any term of years or for life;

''(3) for maiming, by imprisonment for not more than thirty-five years;

''(4) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than thirty years;

''(5) for destroying or damaging any structure, conveyance or other real or personal property, by imprisonment for not more than twenty-five years;

''(6) for attempting or conspiring to commit an offense, for any term of years up to the maximum punishment that would have applied had the offense been completed; and

''(7) for threatening to commit an offense under this section, by imprisonment for not more than ten years.

Notwithstanding any other provision of law, the court shall not place on probation any person convicted of a violation of this section; nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment.

''(e) LIMITATION ON PROSECUTION.—No indictment for any offense described in this section shall be sought by the United States except after the Attorney General, or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions, has made a written certification that, in the judgment of the certifying official, such offense, or any activity preparatory to its commission, transcended national boundaries and that the offense appears to have been intended to coerce, intimidate, or retaliate against a government or a civilian population, including any segment thereof.

''(f) INVESTIGATIVE RESPONSIBILITY.—Violations of this section shall be investigated by the Attorney General. Assistance may be requested from any Federal, State or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

''(g) EVIDENCE.—

''(1) The prosecution is not required to prove knowledge by any defendant of a jurisdictional base alleged in the indictment.

''(2) In a prosecution under this section that is based upon the adoption of State law, only the elements of the offense under State law, and not any provisions pertaining to criminal procedure or evidence, are adopted.

''(h) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial federal jurisdiction (1) over any offense under subsection (b), including any threat, attempt, or conspiracy to commit such offense, and (2) over conduct which, under section 3 of this title, renders any person an accessory after the fact to an offense under subsection (b).

''(i) DEFINITIONS.—As used in this section, the term—

''(1) 'commerce' has the meaning given such term in section 1951(b)(3) of this title;

''(2) 'facility utilized in any manner in commerce' includes means of transportation, communication, and transmission;

''(3) 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

''(4) 'serious bodily injury' has the meaning prescribed in section 1365(g)(3) of this title;

''(5) 'State' includes a State of the United States, the District of Columbia, and any commonwealth, territory or possession of the United States; and

''(6) 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.''.

(b) TECHNICAL AMENDMENT.—The chapter analysis for Chapter 113B of title 18, United States Code, is amended by inserting after ''2332a. Use of Weapons of Mass Destruction.'' the following:

''2332b. Acts of terrorism transcending national boundaries.''

(c) STATUTE OF LIMITATIONS AMENDMENT.—Section 3286 of title 18, United States Code, is amended by—

(1) striking ''any offense'' and inserting ''any non-capital offense'';

(2) striking ''36'' and inserting ''37'';

(3) striking ''2331'' and inserting ''2332'';

(4) striking ''2339'' and inserting ''2332a''; and

(5) inserting ''2332b (acts of terrorism transcending national boundaries),'' after ''(use of weapons of mass destruction),''.

(d) PRESUMPTIVE DETENTION.—Section 3142(e) of title 18, United States Code, is amended by inserting ''or section 2332b'' after ''section 924(c)''.

(e) WIRETAP AMENDMENT.—Section 2518(11)(b)(ii) of title 18, United States Code, is amended by—

(1) inserting ''(A)'' before ''thwart'' and

(2) inserting ''or (B) commit a violation of section 2332b of this title'' after ''facilities''.

**SEC. 102. CONSPIRACY TO HARM PEOPLE AND PROPERTY OVERSEAS.**

(a) Section 956 of chapter 45 of title 18, United States Code, is amended to read as follows:

''956. Conspiracy to kill, kidnap, maim, or injure certain property in a foreign country

''(a)(1) Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnaping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if he or any such other person commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).

''(2) The punishment for an offense under subsection (a)(1) of this section is—

''(A) imprisonment for any term of years of for life if the offense is conspiracy to murder or kidnap; and

''(B) imprisonment for not more than thirty-five years if the offense is conspiracy to maim.

''(b) Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons are located, to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield or other public utility, public conveyance or public structure, or any religious, educational or cultural property so situated, shall, if he or any such other person commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than twenty-five years.''.

(b) The chapter analysis for chapter 45 of title 18, United States Code, is amended by striking ''956. Conspiracy to injure property of foreign government.'' and inserting in lieu thereof ''956. Conspiracy to kill, kidnap, maim, or injure certain property in a foreign country.''.

(c) Section 2339A of title 18, United States Code, is amended by—

(1) striking ''36'' and inserting in lieu thereof ''37'';

(2) striking ''2331'' and inserting in lieu thereof ''2332'';

(3) striking ''2339'' and inserting in lieu thereof ''2332a'';

(4) striking ''of an escape'' and inserting in lieu thereof ''or an escape''; and

(5) inserting ''956,'' before ''1114.''

**SEC. 103. CLARIFICATION AND EXTENSION OF CRIMINAL JURISDICTION OVER CERTAIN TERRORISM OFFENSES OVERSEAS.**

(a) Section 46502(b) of title 49, United States Code, is amended by—

(1) in paragraph (1), striking ''and later found in the United States'';

(2) amending paragraph (2) to read as follows:

''(2) There is jurisdiction over the offense in paragraph (1) if—

''(A) a national of the United States was aboard the aircraft;

''(B) an offender is a national of the United States; or

''(C) an offender is afterwards found in the United States.''; and

(3) inserting a new paragraph (3) as follows:

''(3) For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''.

(b) Section 32(b) of title 18, United States Code, is amended by—

(1) striking '', if the offender is later found in the United States,''; and

(2) adding at the end the following two new paragraphs:

''(5) There is jurisdiction over an offense in this subsection if—

''(A) a national of the United States was on board, or would have been on board, the aircraft;

''(B) an offender is a national of the United States; or

''(C) an offender is afterwards found in the United States.

''(6) For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''.

(c) Section 1116 of title 18, United States Code, is amended by—

(1) in subsection (b), adding at the end a new paragraph (7) as follows:

''(7) 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''; and

(2) in subsection (c), striking the first sentence and inserting the following:

''If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.''.

(d) Section 112 of title 18, United States Code, is amended by—

(1) in subsection (c), inserting ''national of the United States,'' before ''and''; and

(2) in subsection (e), striking the first sentence and inserting the following:

''If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.''.

(e) Section 878 of title 18, United States Code, is amended by—

(1) in subsection (c), inserting ''national of the United States,'' before ''and''; and

(2) in subsection (d) striking the first sentence and inserting the following:

''If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.''.

(f) Section 1201(e) of title 18, United States Code, is amended by—

(1) striking the first sentence and inserting the following:

''If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.''; and

(2) adding at the end thereof the following:

''For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''.

(g) Section 37(b)(2) of title 18, United States Code, is amended—

(1) by inserting ''(A)'' before ''the offender is later found in the United States''; and

(2) by inserting ''; or (B) an offender or a victim is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)))'' after ''the offender is later found in the United States''.

(h) Section 178 of title 18, United States Code, is amended by—

(1) striking the ''and'' at the end of paragraph (3);

(2) striking the period at the end of paragraph (4) and inserting in lieu thereof ''; and''; and

(3) adding the following at the end thereof:

''(5) the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).''.

## TITLE II—IMMIGRATION LAW IMPROVEMENTS

### SEC. 201. ALIEN TERRORIST REMOVAL PROCEDURES.

(a) FINDINGS AND PURPOSE.—

(1) The Congress hereby finds that—

(A) international terrorism is a serious and deadly problem which threatens the interests of this nation overseas and within our territory;

(B) until recently, United States asylum processing procedures have been complicated and often duplicative, providing a powerful incentive for individuals, including terrorists, without a genuine claim, to apply for asylum and remain in the United States;

(C) while most aliens justify the trust placed in them by our immigration policies, a dangerous few utilized access to the United States to create significant infrastructures and cells in the United States in order to carry out their terrorist activity to the detriment of the nation's national security and foreign policy interests;

(D) the bombing of the World Trade Center exemplifies the danger posed to the United States and its citizens by alien terrorists;

(E) similarly, some foreign terrorist organizations utilize associated aliens within the United States to raise funds to facilitate their overseas terrorist acts against U.S. nationals as well as against foreign governments and their citizens; and

(F) current immigration laws and procedures are not effective in addressing the alien terrorist problem, as they require the government to place sensitive intelligence sources and methods at risk and allow the alien to remain within the United States for the prolonged period necessary to pursue a deportation action. Moreover, under the current statutory framework a few high ranking members of terrorist organizations have been naturalized as United States citizens because denial of such naturalizations would have necessitated public disclosure of highly classified sources and methods.

(2) The purpose of this section is to provide procedures which, consistent with principles of fundamental fairness, will allow the government to deport alien terrorists promptly without compromising intelligence sources and methods.

(b) ALIEN REMOVAL PROCEDURES.—The Immigration and Nationality Act is amended—

(1) by adding at the end of the table of contents the following:

''TITLE V—ALIEN TERRORIST REMOVAL PROCEDURES.

''Sec. 501. Applicability
''Sec. 502. Special removal hearing
''Sec. 503. Designation of judges
''Sec. 504. Miscellaneous provisions''; and

(2) by adding at the end the following new title:

## ''TITLE V—ALIEN TERRORIST REMOVAL PROCEDURES

### ''APPLICABILITY

''Sec. 501. (a) The provisions of this title may be followed in the discretion of the Department of Justice whenever the Department of Justice has classified information that an alien described in paragraph 4(B) of section 241(a), as amended, is subject to deportation because of such section. For purposes of this title, the terms 'classified information' and 'national security' shall have the meaning prescribed in section 1 of the Classified Information Procedures Act, 18 U.S.C. App. III 1.

''(b) Whenever an official of the Department of Justice files, under section 502, an application with the court established under section 503 for authorization to seek removal pursuant to the provisions of this title, the alien's rights regarding removal and expulsion shall be governed solely by the provisions of this title. Except as they are specifically referenced, no other provisions of the Immigration and Nationality Act shall be applicable. An alien subject to removal under these provisions shall have no right of discovery of information derived from electronic surveillance authorized under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et. seq.) or otherwise for national security purposes. Nor shall such alien have the right to seek suppression of evidence. Further, the government is authorized to use, in the removal proceedings, the fruits of electronic surveillance and/or unconsented physical searches authorized under the Foreign Intelligence Surveillance Act without regard to subsections 106(c), (e), (f), (g), and (h) of that Act. The provisions and requirements of section 3504 of title 18, United States Code, shall not apply to procedures under this title.

''(c) This title is enacted in response to findings of Congress that aliens described in paragraph 4(B) of section 241(a), as amended, represent a unique threat to the security of the United States. It is the intention of Congress that such aliens be promptly removed from the United States following—

''(1) a judicial determination of probable cause to believe that such person is such an alien; and

''(2) a judicial determination pursuant to the provisions of this title that an alien is removable on the grounds that he or she is an alien described in paragraph 4(B) of section 241(a), as amended.

The Congress furthers intends that, other than as provided by this title, such aliens shall not be given a deportation hearing and are ineligible for any discretionary relief from deportation or for relief under section 243(h).

### ''SPECIAL REMOVAL HEARING

''Sec. 502. (a) Whenever removal of an alien is sought pursuant to the provisions of this title, a written application upon oath or affirmation shall be submitted in camera and ex parte to the court established under section 503 for an order authorizing such a procedure. Each application shall require the approval of the Attorney General or the Deputy Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this title. Each application shall include—

''(1) the identity of the Department of Justice attorney making the application;

''(2) the approval of the Attorney General or the Deputy Attorney General for the making of the application;

''(3) the identity of the alien for whom authorization for the special removal procedure is sought; and

''(4) a statement of the facts and circumstances relied on by the Department of Justice to establish that—

''(A) the alien is an alien as described in paragraph 4(B) of section 241(a), as amended, and is physically present in the United States; and

''(B) with respect to such alien, adherence to the provisions of title II regarding the deportation of aliens would pose a risk to the national security of the United States.

''(b)(1) The application shall be filed under seal with the court established under section 503. The Attorney General may take into custody any alien with respect to whom such an application has been filed and, notwithstanding any other provision of law, may retain such an alien in custody in accordance with the procedures authorized by this title.

''(2) An alien lawfully admitted for permanent residence (hereafter referred to as resident alien) shall be entitled to a release hearing before the judge assigned to the special removal case pursuant to section 503(a). The resident alien shall be granted release pending the special removal hearing, upon such terms and conditions prescribed by the court (including the posting of any monetary amount), if the alien demonstrates to the court that the alien, if released, is not likely to flee and that the alien's release will not endanger national security or the safety of any person or the community. The judge may consider classified information submitted in camera and ex parte in making his determination.

''(C) In accordance with the rules of the court established under section 503, the judge shall consider the application and may consider other information, including classified information, presented under oath or affirmation at an in camera and ex parte hearing on the application. A verbatim record shall be maintained of such a hearing. The application and any other evidence shall be considered by a single judge of that court who shall enter an ex parte order as requested if he finds, on the basis of the facts submitted in the application and any other information provided by the Department of Justice at the in camera and ex parte hearing, there is probable cause to believe that—

''(1) the alien who is the subject of the application has been correctly identified and is an alien as described in paragraph 4(B) of section 241(a), as amended; and

''(2) adherence to the provisions of title II regarding the deportation of the identified alien would pose a risk to the national security of the United States.

''(d) (1) In any case in which the application for the order is denied, the judge shall prepare a written statement of his reasons for the denial and the Department of Justice may seek a review of the denial by the United States Court of Appeals for the District of Columbia Circuit by notice of appeal which must be filed within 20 days. In such a case the entire record of the proceeding shall be transmitted to the Court of Appeals under seal and the Court of Appeals shall hear the matter ex parte.

''(2) If the Department of Justice does not seek review, the alien shall be released from custody, unless such alien may be arrested and taken into custody pursuant to title II as an alien subject to deportation, in which case such alien shall be treated in accordance with the provisions of this Act concerning the deportation of aliens.

''(3) If the application for the order is denied because the judge has not found probable cause to believe that the alien who is the subject of the application has been correctly identified or is an alien as described in paragraph 4(B) of section 241(a), as amended, and the Department of Justice seeks review, the alien shall be released from custody unless such alien may be arrested and taken into custody pursuant to title II as an alien subject to deportation, in which case such alien shall be treated in accordance with the provisions of this Act concerning the deportation of aliens simultaneously with the application of this title.

''(4) If the application for the order is denied because, although the judge found probable cause to believe that the alien who is the subject of the application has been correctly identified and is an alien as described in paragraph 4(B) of section 241(a), as amended, the judge has found that there is not probable cause to believe that adherence to the provisions of title II regarding the deportation of the identified alien would pose a risk to the national security of the United States, the judge shall release the alien from custody subject to the least restrictive condition or combination of conditions of release described in section 3142(b) and (c)(1)(B)(i) through (xiv) of title 18, United States Code, that will reasonably assure the appearance of the alien at any future proceeding pursuant to this title and will not endanger the safety of any other person or the community; but if the judge finds no such condition or combination of conditions the alien shall remain in custody until the completion of any appeal authorized by this title. The provisions of sections 3145 through 3148 of title 18, United States Code, pertaining to review and appeal of a release or detention order, penalties for failure to appear, penalties for an offense committed while on release, and sanctions for violation of a release condition shall apply to an alien to whom the previous sentence applies and—

''(A) for purposes of section 3145 of such title an appeal shall be taken to the United States Court of Appeals for the District of Columbia Circuit; and

''(B) for purposes of section 3146 of such title the alien shall be considered released in connection with a charge of an offense punishable by life imprisonment.

''(e)(1) In any case in which the application for the order authorizing the special procedures of this title is approved, the judge who granted the order shall consider each item of classified information the Department of Justice proposes to introduce in camera and ex parte at the special removal hearing and shall order the introduction of such information pursuant to subsection (j) if he determines the information to be relevant. The Department of Justice shall prepare a written summary of such classified information which does not pose a risk to national security and the judge shall approve the summary if he finds the summary is sufficient to inform the alien of the general nature of the evidence that he is an alien as described in paragraph 4(B) of section 241(a), as amended, and to permit the alien to prepare a defense. The Department of Justice shall cause to be delivered to the alien a copy of the summary.

''(2) If the written summary is not approved by the court, the Department shall be afforded reasonable opportunity to correct the deficiencies identified by the court and submit a revised summary. Thereafter, if the written summary is not approved by the court, the special removal hearing shall be terminated unless the court issues a finding that—

''(A) the continued presence of the alien in the United States, or

''(B) the provision of the required summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person. If such finding is issued, the special removal hearing shall continue, the Department of Justice shall cause to be delivered to the alien a statement that no summary is possible, and the classified information submitted in camera and ex parte may be used pursuant to subsection (j).

''(3) The Department of Justice may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of—

''(A) any determination by the judge pursuant to paragraph (1)—

''(I) concerning whether an item of evidence may be introduced in camera and ex parte; or

''(II) concerning the contents of any summary of evidence to be introduced in camera and ex parte prepared pursuant to paragraph (1); or

''(B) the refusal of the court to make the finding permitted by paragraph (2);

In any interlocutory appeal taken pursuant to this paragraph, the entire record, including any proposed order of the judge or summary of evidence, shall be transmitted to the Court of Appeals under seal and the matter shall be heard ex parte. The Court of Appeals shall consider the appeal as expeditiously as possible.

''(f) In any case in which the application for the order is approved, the special removal hearing authorized by this section shall be conducted for the purpose of determining if the alien to whom the order pertains should be removed from the United States on the grounds that he is an alien as described in paragraph 4(b) of section 241(a), as amended. In accordance with subsection (e), the alien shall be given reasonable notice of the nature of the charges against him and a general account of the basis for the charges. The alien shall be given notice, reasonable under all the circumstances, of the time and place at which the hearing will be held. The hearing shall be held as expeditiously as possible.

''(g) The special removal hearing shall be held before the same judge who granted the order pursuant to subsection (e) unless that judge is deemed unavailable due to illness or disability by the chief judge of the court established pursuant to section 503, or has died, in which case the chief judge shall assign another judge to conduct the special removal hearing. A decision by the chief judge pursuant to the preceding sentence shall not be subject to review by either the alien or the Department of Justice.

''(h) The special removal hearing shall be open to the public. The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent him. Such counsel shall be appointed by the judge pursuant to the plan for furnishing representation for any person financially unable to obtain adequate representation for the district in which the hearing is conducted, as provided for in section 3006A of title 18, United States Code. All provisions of that section shall apply and, for purposes of determining the maximum amount of compensation, the matter shall be treated as if a felony was charged. The alien may be called as a witness by the Department of Justice. The alien shall have a right to introduce evidence on his own behalf. Except as provided in subsection (j), the alien shall have a reasonable opportunity to examine the evidence against him and to cross-examine any witness. A verbatim record of the proceedings and of all testimony and evidence offered or produced at such a hearing shall be kept. The decision of the judge shall be based only on the evidence introduced at the hearing, including evidence introduced under subsection (j).

''(i) At any time prior to the conclusion of the special removal hearing, either the alien or the Department of Justice may request

the judge to issue a subpoena for the presence of a named witness (which subpoena may also command the person to whom it is directed to produce books, papers, documents, or other objects designated therein) upon a satisfactory showing that the presence of the witness is necessary for the determination of any material matter. Such a request may be made ex parte except that the judge shall inform the Department of Justice of any request for a subpoena by the alien for a witness or material if compliance with such a subpoena would reveal evidence or the source of evidence which has been introduced, or which the Department of Justice has received permission to introduce, in camera and ex parte pursuant to subsection (j), and the Department of Justice shall be given a reasonable opportunity to oppose the issuance of such a subpoena. If an application for a subpoena by the alien also makes a showing that the alien is financially unable to pay for the attendance of a witness so requested, the court may order the costs incurred by the process and the fees of the witness so subpoenaed to be paid for from funds appropriated for the enforcement of title II. A subpoena under this subsection may be served anywhere in the United States. A witness subpoenaed under this subsection shall receive the same fees and expenses as a witness subpoenaed in connection with a civil proceeding in a court of the United States. Nothing in this subsection is intended to allow an alien to have access to classified information.

''(j) When classified information has been summarized pursuant to subsection (e)(1) or where a finding has been made under subsection (e)(2) that no summary is possible, classified information shall be introduced (either in writing or through testimony) in camera and ex parte and neither the alien nor the public shall be informed of such evidence or its sources other than through reference to the summary provided pursuant to subsection (e)(1). Notwithstanding the previous sentence, the Department of Justice may, in its discretion and, in the case of classified information, after coordination with the originating agency, elect to introduce such evidence in open session.

''(k) Evidence introduced at the special removal hearing, either in open session or in camera and ex parte, may, in the discretion of the Department of Justice, include all or part of the information presented under subsections (a) through (c) used to obtain the order for the hearing under this section.

''(l) Following the receipt of evidence, the attorneys for the Department of Justice and for the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien. The attorney for the Department of Justice shall open the argument. The attorney for the alien shall be permitted to reply. The attorney for the Department of Justice shall then be permitted to reply in rebuttal. The judge may allow any part of the argument that refers to evidence received in camera and ex parte to be heard in camera and ex parte.

''(m) The Department of Justice has the burden of showing by clear and convincing evidence that the alien is subject to removal because he is an alien as described in paragraph 4(B) of subsection 241(a) of this Act (8 U.S.C. 1251(a)(4)(B)), as amended. If the judge finds that the Department of Justice has met this burden, the judge shall order the alien removed and, if the alien is a resident alien who was released pending the special removal hearing, order the Attorney General to take the alien into custody.

''(n)(1) At the time of rendering a decision as to whether the alien shall be removed, the judge shall prepare a written order containing a statement of facts found and conclusions of law. Any portion of the order that would reveal the substance or source of information received in camera and ex parte pursuant to subsection (j) shall not be made available to the alien or the public.

''(2) The decision of the judge may be appealed by either the alien or the Department of Justice to the United States Court of Appeals for the District of Columbia Circuit by notice of appeal which must be filed within 20 days, during which time such order shall not be executed. In any case appealed pursuant to this subsection, the entire record shall be transmitted to the Court of Appeals and information received pursuant to subsection (j), and any portion of the judge's order that would reveal the substance or source of such information shall be transmitted under seal. The Court of Appeals shall consider the case as expeditiously as possible.

''(3) In an appeal to the Court of Appeals pursuant to either subsection (d) or (e) of this section, the Court of Appeals shall review questions of law de novo, but a prior finding on any question of fact shall not be set aside unless such finding was clearly erroneous.

''(o) If the judge decides pursuant to subsection (n) that the alien should not be removed, the alien shall be released from custody unless such alien may be arrested and taken into custody pursuant to title II of this Act as an alien subject to deportation, in which case, for purposes of detention, such alien may be treated in accordance with the provisions of this Act concerning the deportation of aliens.

''(p) Following a decision by the Court of Appeals pursuant to either subsection (d) or (n), either the alien or the Department of Justice may petition the Supreme Court for a writ of certiorari. In any such case, any information transmitted to the Court of Appeals under seal shall, if such information is also submitted to the Supreme Court, be transmitted under seal. Any order of removal shall not be stayed pending disposition of a writ of certiorari except as provided by the Court of Appeals or a Justice of the Supreme Court.

''(q) The Department of Justice retains the right to dismiss a removal action at any stage of the proceeding.

''(r) Nothing in this section shall prevent the United States from seeking protective orders and/or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and state secrets privileges.

''DESIGNATION OF JUDGES

''SEC. 503. (a) The Chief Justice of the United States shall publicly designate five district court judges from five of the United States judicial circuits who shall constitute a court which shall have jurisdiction to conduct all matters and proceedings authorized by section 502. The Chief Justice shall publicly designate one of the judges so appointed as the chief judge. The chief judge shall promulgate rules to facilitate the functioning of the court and shall be responsible for assigning the consideration of cases to the various judges.

''(b) Proceedings under section 502 shall be conducted as expeditiously as possible. The Chief Justice, in consultation with the Attorney General, the Director of Central Intelligence and other appropriate federal officials, shall, consistent with the objectives of this title, provide for the maintenance of appropriate security measures for applications for ex parte orders to conduct the special removal hearings authorized by section 502, the orders themselves, and evidence received in camera and ex parte, and for such other actions as are necessary to protect information concerning matters before the court from harming the national security of the United States.

''(c) Each judge designated under this section shall serve for a term of five years and shall be eligible for redesignation, except that the four associate judges first designated under subsection (a) shall be designated for terms of from one to four years so that the term of one judge shall expire each year.

''MISCELLANEOUS PROVISIONS

''SEC. 504. (a)(1) Following a determination pursuant to this title that an alien shall be removed, and after the conclusion of any judicial review thereof, the Attorney General may retain the alien in custody or, if the alien was released pursuant to subsection 502(o), may return the alien to custody, and shall cause the alien to be transported to any country which the alien shall designate provided such designation does not, in the judgment of the Attorney General, in consultation with the Secretary of State, impair the obligation of the United States under any treaty (including a treaty pertaining to extradition) or otherwise adversely affect the foreign policy of the United States.

''(2) If the alien refuses to choose a country to which he wishes to be transported, or if the Attorney General, in consultation with the Secretary of State, determines that removal of the alien to the country so selected would impair a treaty obligation or adversely affect United States foreign policy, the Attorney General shall cause the alien to be transported to any country willing to receive such alien.

''(3) Before an alien is transported out of the United States pursuant to paragraph (1) or (2) or pursuant to an order of exclusion because such alien is excludable under paragraph 212(a)(3)(B) of this Act (8 U.S.C. 1182(a)(3)(B), as amended, he shall be photographed and fingerprinted, and shall be advised of the provisions of subsection 276(b) of this Act (8 U.S.C. 1326(b)).

''(4) If no country is willing to receive such an alien, the Attorney General may, notwithstanding any other provision of law, retain the alien in custody. The Attorney General, in coordination with the Secretary of State, shall make periodic efforts to reach agreement with other countries to accept such an alien and at least every six months shall provide to the alien a written report on his efforts. Any alien in custody pursuant to this subsection shall be released from custody solely at the discretion of the Attorney General and subject to such conditions as the Attorney General shall deem appropriate. The determinations and actions of the Attorney General pursuant to this subsection shall not be subject to judicial review, including application for a writ of habeas corpus, except for a claim by the alien that continued detention violates his rights under the Constitution. Jurisdiction over any such challenge shall lie exclusively in the United States Court of Appeals for the District of Columbia Circuit.

''(b)(1) Notwithstanding the provisions of subsection (a), the Attorney General may hold in abeyance the removal of an alien who has been ordered removed pursuant to this title to allow the trial of such alien on any federal or State criminal charge and the service of any sentence of confinement resulting from such a trial.

''(2) Pending the commencement of any service of a sentence of confinement by an alien described in paragraph (1), such an alien shall remain in the custody of the Attorney General, unless the Attorney General determines that temporary release of the

alien to the custody of State authorities for confinement in a State facility is appropriate and would not endanger national security or public safety.

''(3) Following the completion of a sentence of confinement by an alien described in paragraph (1) or following the completion of State criminal proceedings which do not result in a sentence of confinement of an alien released to the custody of State authorities pursuant to paragraph (2), such an alien shall be returned to the custody of the Attorney General who shall proceed to carry out the provisions of subsection (a) concerning removal of the alien.

''(c) For purposes of section 751 and 752 of title 18, United States Code, an alien in the custody of the Attorney General pursuant to this title shall be subject to the penalties provided by those sections in relation to a person committed to the custody of the Attorney General by virtue of an arrest on a charge of felony.

''(d)(1) An alien in the custody of the Attorney General pursuant to this title shall be given reasonable opportunity to communicate with and receive visits from members of his family, and to contact, retain, and communicate with an attorney.

''(2) An alien in the custody of the Attorney General pursuant to this title shall have the right to contact an appropriate diplomatic or consular official of the alien's country of citizenship or nationality or of any country providing representation services therefore. The Attorney General shall notify the appropriate embassy, mission, or consular office of the alien's detention.''.

(c) ADDITIONAL AMENDMENTS TO INA.—(1) Subsection 106(b) of the Immigration and Nationality Act (8 U.S.C. 1105a(b)) is amended by adding at the end thereof the following sentence: ''Jurisdiction to review an order entered pursuant to the provisions of section 235(c) of this Act concerning an alien excludable under paragraph 3(B) of subsection 212(a) (8 U.S.C. 1182(a)), as amended, shall rest exclusively in the United States Court of Appeals for the District of Columbia Circuit.''.

(2) Section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) is amended by deleting the word ''or'' at the end of subparagraph (b)(1), by replacing the period at the end of subparagraph (b)(2) with a semicolon followed by the word ''or'', and by adding at the end of paragraph (b) the following subparagraph: ''(3) who has been excluded from the United States pursuant to subsection 235(c) of this Act (8 U.S.C. 1225(c)) because such alien was excludable under paragraph 3(B) of subsection 212(a) thereof (8 U.S.C. 1182(a)(3)(B)), as amended, or who has been removed from the United States pursuant to the provisions of title V of the Immigration and Nationality Act, and who thereafter, without the permission of the Attorney General, enters the United States or attempts to do so shall be fined under title 18, United States Code, and imprisoned for a period of ten years which sentence shall not run concurrently with any other sentence.''

(3) Section 106(a) of the Immigration and Nationality Act (8 U.S.C. 1105a(a)) is amended by striking from the end of subparagraph 9 the semicolon and the word ''and'' and inserting a period in lieu thereof, and by striking subparagraph 10.

(d) EFFECTIVE DATE.—The provisions of this Act shall be effective upon enactment, and shall apply to all aliens without regard to the date of entry or attempted entry into the United States.

**SEC. 202. CHANGES TO THE IMMIGRATION AND NATIONALITY ACT TO FACILITATE REMOVAL OF ALIEN TERRORISTS.**

(a) Section 212(a)3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended to read as follows:

''(B) TERRORISM ACTIVITIES

''(i) IN GENERAL

Any alien who

''(I) has engaged in a terrorism activity, or

''(II) a consular officer or the Attorney General knows, or has reason to believe, is likely to engage after entry in any terrorism activity (as defined in clause (iii)),

is excludable. An alien who is a representative of the Palestine Liberation Organization, or any terrorist organization designated by proclamation by the President after he has found such organization to be detrimental to the interests of the Untied States, is considered, for purposes of this Act, to be engaged in a terrorism activity. As used in clause (B)(i), the term ''representative'' includes an officer, official or spokesman of the organization and any person who directs, counsels, commands or induces such organization or its members to engage in terrorism activity. For purposes of subparagraph (3)(B)(i), the determination by the Secretary of State or the Attorney General that an alien is a representative of the organization shall be controlling and shall not be subject to review by any court.

''(ii) TERRORISM ACTIVITY DEFINED.—As used in this Act, the term 'terrorism activity' means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State), and which involves any of the following:

''(I) The hijacking or sabotage of any conveyance (including an aircraft, vessel, or vehicle).

''(II) The seizing or detaining, and threatening to kill, injure, or continue to detain, another individual in order to compel a third person (including a governmental organization) to do or abstain from doing any act as an explicit or implicit condition for the release of the individual seized or detained.

''(III) A violent attack upon an internationally protected person (as defined in section 1116(b)(4) of title 18, United States Code) or upon the liberty of such a person.

''(IV) An assassination.

''(V) The use of any—

''(a) biological agent, chemical agent, or nuclear weapon or device, or

''(b) explosive, firearm, or other weapon (other than for mere personal monetary gain),

with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

''(VI) A threat, attempt, or conspiracy to do any of the foregoing.

''(iii) ENGAGE IN TERRORISM ACTIVITY DEFINED.—As used in this Act, the term 'engage in terrorism activity' means to commit, in an individual capacity or as a member of an organization, an act of terrorism activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government which the actor knows or reasonably should know has committed or plans to commit terrorism activity, including any of the following acts:

''(I) The preparation or planning of terrorism activity.

''(II) The gathering of information on potential targets for terrorism activity.

''(III) The providing of any type of material support, including a safe house, transportation, communications, funds, false documentation or identification, weapons, explosives, or training.

''(IV) The soliciting of funds or other things of value for terrorism activity or for any terrorist organization.

''(V) The solicitation of any individual for membership in a terrorist organization, terrorist government, or to engage in a terrorism activity.

''(iv) TERRORIST ORGANIZATION DEFINED.—As used in this Act, the term 'terrorist organization' means any organization engaged, or which has a significant subgroup which engages, in terrorism activity, regardless of any legitimate activities conducted by the organization or its subgroups.

''(v) TERRORISM DEFINED.—As used in this Act, the term 'terrorism' means premeditated, politically motivated violence perpetrated against noncombatant targets.''.

(b) Section 241(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. §1251(a)(4)(B)) is amended to read as follows:

''(B) TERRORISM ACTIVITIES.—Any alien who has engaged, is engaged, or at any time after entry engages in any terrorism activity (as defined in section 212(a)(3)(B)).''.

(c) Section 291 of the Immigration and Nationality Act (8 U.S.C. 1361) is amended by adding after ''custody of the Service.'' this new sentence:

''The limited production authorized by this provision shall not extend to the records of any other agency or department of the Government or to any documents that do not pertain to the respondent's entry.''.

(d) Section 242(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)) is amended by inserting after ''Government'' the following:

''. In the case of an alien who is not lawfully admitted for permanent residence and notwithstanding the provisions of any other law, reasonable opportunity shall not comprehend access to classified information, whether or not introduced in evidence against him. The provisions and requirements of 18 U.S.C. §3504 and 50 U.S.C. §1801 et seq. shall not apply in such cases''.''

**SEC. 203. ACCESS TO CERTAIN CONFIDENTIAL INS FILES THROUGH COURT ORDER.**

(a) Section 245A(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1255a(c)(5) is amended by—

(1) inserting ''(i)'' after ''except the Attorney General''; and

(2) inserting after ''Title 13'' the following:

''and (ii) may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used:

''(I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

''(II) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the legalization application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant''.

(b)(1) Section 210(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1160(b)(5)) is amended by inserting '', except as allowed by a court order issued pursuant to paragraph (6) of this subsection'' after ''consent of the alien''.

(2) Section 210(b)(6) of the Immigration and Nationality Act (8 U.S.C. 1160(b)(6)) is amended by inserting the following sentence before ''Anyone who uses'';

''Except the Attorney General may authorize an application to a Federal Court of competent jurisdiction for, and a judge of such

court may grant, an order authorizing disclosure of information contained in the application of the alien to be used:

''(E) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

''(F) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the special agricultural worker application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant.''.

TITLE III—CONTROLS OVER TERRORIST FUND-RAISING

**SEC. 301. TERRORIST FUND-RAISING PROHIBITED.**

(a) Chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following new section:

''2339B. Fund-raising for terrorist organizations

''(a) FINDINGS AND PURPOSE.—

''(1) The Congress hereby finds that—

''(A) terrorism is a serious and deadly problem which threatens the interests of the United States both overseas and within our territory;

''(B) the nation's security interests are gravely impacted by terrorist attacks carried out overseas against United States Government facilities and officials, as well as against other American citizens present in foreign countries;

''(C) United States foreign policy interests are profoundly affected by terrorist acts overseas directed against foreign governments and their people;

''(D) United States economic interests are significantly impacted by terrorist attacks carried out in foreign countries against United States citizens and businesses;

''(E) international cooperation is required for an effective response to terrorism, as demonstrated by the numerous multilateral conventions in force providing universal prosecutive jurisdiction over persons involved in a variety of terrorist acts, e.g., hostage taking, murder of an internationally protected person, and aircraft piracy and sabotage;

''(F) some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds within the United States or use the United States as a conduit for their receipt of funds raised in other nations; and

''(G) the provision of funds to organizations that engage in terrorism serves to facilitate their terrorist endeavors, regardless of whether the funds, in whole or in part, are intended or claimed to be used for non-violent purposes.

''(2) The purpose of this section is to provide the Federal Government the fullest possible basis, consistent with the Constitution, to prevent persons within the United States or subject to the jurisdiction of the United States from providing funds, directly or indirectly, to foreign organizations, including subordinate or affiliated persons, designated by the President as engaging in terrorism, unless authorized under this section.

''(b) AUTHORITY.—Notwithstanding any other provision of law, the President is authorized, under such regulations as he may prescribe, to regulate or prohibit:

''(1) fund-raising or the provision of funds for use by or for the benefit of any foreign organization, including persons assisting such organization in fund-raising, that the President has designated pursuant to subsection (c) as being engaged in terrorism activities; or

''(2) financial transactions with any such foreign organization,

within the United States or by any person subject to the jurisdiction of the United States anywhere.

''(c) DESIGNATION.—

''(1) Pursuant to the authority granted in subsection (b), the President is authorized to designate any foreign organization based on finding that—

''(A) the organization engages in terrorism activity as defined in section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. § 1182(a)(3)(B)); and

''(B) the organization's terrorism activities threaten the national security, foreign policy, or economy of the United States.

''(2) Pursuant to the authority granted in subsection (b), the President is also authorized to designate persons which are raising funds for, or acting for or on behalf of, any organization designated pursuant to subsection (c)(1) above.

''(3) If the President finds that the conditions which were the basis for any designation issued under this subsection have changed in such a manner as to warrant revocation of such designation, or that the national security, foreign relations, or economic interests of the United States so warrant, he may revoke such designation in whole or in part.

''(4) Any designation, or revocation thereof, issued pursuant to this subsection shall be published in the Federal Register and shall become effective immediately on publication.

''(5) Any revocation of a designation shall not affect any action or proceeding based on any conduct committed prior to the effective date of such revocation.

''(6) Any finding made in my designation issued pursuant to paragraph (1) of this subsection that a foreign organization engages in terrorism activity shall be conclusive. No question concerning the validity of the issuance of such designation may be raised by a defendant in a criminal prosecution as a defense in or as an objection to any trial or hearing if such designation was issued and published in the Federal Register in accordance with this subsection.

''(d) PROHIBITED ACTIVITIES.—

''(1) Except as authorized pursuant to the procedures in subsection (e), it shall be unlawful for any person within United States, or any persons subject to the jurisdiction of the United States anywhere, to directly or indirectly, raise, receive or collect on behalf of, or furnish, give, transmit, transfer or provide funds to or for an organization or person designated by the President under subsection (c), or to attempt to do any of the foregoing.

''(2) It shall be unlawful for any person within the United States or any person subject to the jurisdiction of the United States anywhere, acting for or on behalf of any organization or person designated under subsection (c), (A) to transmit, transfer, or receive any funds raised in violation of subsection (d)(1) or (B) to transmit, transfer, or dispose of any funds in which any organization or person designated pursuant to subsection (c) has an interest.

''(e) AUTHORIZED TRANSACTIONS.—

''(1) The Secretary shall publish regulations, consistent with the provisions of this subsection, setting forth the procedures to be followed by persons seeking to raise or provide funds for an organization designated under subsection (c)(1).

''(2) Any person within the United States, or any person subject to the jurisdiction of United States anywhere, who seeks to solicit funds for or to transfer funds to any organization or person designated under subsection (c) shall, regardless of whether it has an agency relationship with the designated organization or person, first obtain a license from the Secretary and may thereafter solicit funds or transfer funds to a designated organization or person only as permitted under the terms of a license issued by the Secretary.

''(3) The Secretary shall grant a license only after the person establishes to the satisfaction of the Secretary that—

''(A) the funds are intended to be used exclusively for religious, charitable, literary, or educational purposes; and

''(B) all recipient organizations in any fund-raising chain have effective procedures in place to ensure that the funds (i) will be used exclusively for religious, charitable, literary, or educational purposes and (ii) will not be used to offset a transfer of funds to be used in terrorist activity.

''(4) Any person granted a license shall maintain books and records, as required by the Secretary, that establish the source of all funds it receives, expenses it incurs, and disbursements it makes. Such books and records shall be made available for inspection within two business days of a request by the Secretary. Any person granted a license shall also have an agreement with any recipient organization or person that such organization's or person's books and records, wherever located, must be made available for inspection of the Secretary upon a request of the Secretary at a place and time agreeable to that organization or person and the Secretary.

''(5) The Secretary may also provide by regulation procedures for the licensing of transactions otherwise prohibited by this section in cases found by the Secretary to be consistent with the statement of purpose in subsection (a)(2).

''(f) SPECIAL REQUIREMENTS FOR FINANCIAL INSTITUTIONS.—

''(1) Except as authorized by the Secretary by means of directives, regulations, or licenses, any financial institution which becomes aware that it has possession of or control over any funds in which an organization or person designated under subsection (c) has an interest, shall—

''(A) retain possession of or maintain control over such funds; and

''(B) report to the Secretary the existence of such funds in accordance with the regulations prescribed by the Secretary.

''(2) Any financial institution that fails to report to the Secretary the existence of such funds shall be subject to a civil penalty of $250 per day for each day that it fails to report to the Secretary—

''(A) in the case of funds being possessed or control at the time of the designation of the organization or person, within ten days after the designation; and

''(B) in the case of funds whose possession of or control over arose after the designation of the organization or person, within ten days after the financial institution obtained possession of or control over the funds.

''(g) INVESTIGATIONS.—

''Any investigation emanating from a possible violation of this section, or of any license, order, or regulation issued pursuant to this section, shall be conducted by the Attorney General, except that investigations relating to (1) a licensee's compliance with the terms of a license issued by the Secretary pursuant to subsection (e) of this section, (2) a financial institution's compliance with the requirements of subsection (f) of this section, and (3) civil penalty proceedings authorized pursuant to subsection (i) of this section, shall be conducted in coordination with the Attorney General by the office

within the Department of the Treasury responsible for licensing and civil penalty proceedings authorized by this section. Any evidence of a criminal violation of this section arising in the course of an investigation by the Secretary or any other federal agency shall be referred immediately to the Attorney General for further investigation. The Attorney General shall timely notify the Secretary of any action taken on referrals from the Secretary, and may refer investigations to the Secretary for remedial licensing or civil penalty action.

''(h) RECORDKEEPING AND REPORTING; CIVIL PROCEDURES.—

''(1) Notwithstanding any other provision of law, in exercising the authorities granted by this section, the Secretary and the Attorney General may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this section either before, during, or after the completion thereof, or relative to any funds referred to in this section, or as may be necessary to enforce the terms of this section. In any case in which a report by a person could be required under this subsection, the Secretary or the Attorney General may require the production of any books of account, records, contracts, letters, memoranda, or other papers or documents, whether maintained in hard copy or electronically, in the control or custody of such person.

''(2) Compliance with any regulation, instruction, or direction issued under this section shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this section, or any regulation, instruction, or direction issued under this section.

''(3) In carrying out their function under this section, the Secretary and the Attorney General may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence.

''(4) In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which the subpoenaed person carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the agency issuing the subpoena, or other order or direction, to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

''(i) PENALTIES.—

''(1) Any person who knowingly violates subsection (d) shall be fined under this title, or imprisoned for up to 10 years, or both.

''(2)(A) Any person who fails to maintain or to make available to the Secretary upon his request or demand the books or records required by subsection (e), or by regulations promulgated thereunder, shall be subject to a civil penalty of $50,000 or twice the amount of money which would have been documented had the books and records been properly maintained, whichever is greater.

''(B) Any person who fails to take the actions required of financial institutions pursuant to subsection (f)(1), or by regulations promulgated thereunder, shall be subject to a civil penalty of $50,000 per violation, or twice the amount of money of which the financial institution was required to retain possession or control, whichever is greater.

''(C) except as otherwise specified in this section, any person who violates any license, order, direction, or regulation issued pursuant to this section shall be subject to a civil penalty of $50,000 per violation, or twice the value of the violation, whichever is greater.

''(3) Any person who intentionally fails to maintain or to make available to the Secretary the books or records required by subsection (e), or by regulations promulgated thereunder, shall be fined under this title, or imprisoned for up to five years, or both.

''(4) Any organization convicted of an offense under (h) (1) or (3) of this section shall, upon conviction, forfeit any charitable designation it might have received under the Internal Revenue Code.

''(j) INJUNCTION.—

''(1) Whenever it appears to the Secretary or the Attorney General that any person is engaged in, or is about to engage in, any act which constitutes, or would constitute, a violation of this section, the Attorney General may initiate civil action in a district court of the United States to enjoin such violation.

''(2) A proceeding under this subsection is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

''(k) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

''(l) CLASSIFIED INFORMATION IN CIVIL PROCEEDINGS BROUGHT BY THE UNITED STATES.—

''(1) DISCOVERY OF CLASSIFIED INFORMATION BY DEFENDANTS.—A court, upon a sufficient showing, may authorize the United States to delete specified items of classified information from documents to be introduced into evidence and/or made available to the defendant through discovery under the Federal Rules of Civil Procedure, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The court shall permit the United States to make a request for such authorization in the form of a written statement to be inspected by the court alone. If the court enters an order granting relief following such an *ex parte* showing, the entire text of the statement of the United States shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal. If the court enters an order denying relief to the United States under this provision, the United States may take an immediate, interlocutory appeal in accordance with the provisions of paragraph (3) of this subsection. In the event of such an appeal, the entire text of the underlying written statement of the United States, together with any transcripts of arguments made *ex parte* to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

''(2) Introduction of classified information; precautions by court

''(A) EXHIBITS.—The United States, in order to prevent unnecessary or inadvertent disclosure of classified information in a civil trial or other proceeding brought by the United States under this section, may petition the court *ex parte* to admit, in lieu of classified writings, recordings or photographs, one or more of the following: (i) copies of those items from which classified information has been deleted, (ii) stipulations admitting relevant facts that specific classified information would tend to prove, or (iii) a summary of the specific classified information. The court shall grant such a motion of the United States if it finds that the redacted item, stipulation or summary will provide the defendant with substantially the same ability to make his defense as would disclosure of the specific classified information.

''(B) TAKING OF TRIAL TESTIMONY.—During the examination of a witness in any civil proceeding brought by the United States under this section, the United States may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible. Following such an objection, the court shall take suitable action to determine whether the response is admissible and, in doing so, shall take precautions to guard against the compromise of any classified information. Such action may include permitting the United States to provide the court, *ex parte*, with a proffer of the witness's response to the question or line of inquiry, and requiring the defendant to provide the court with a proffer of the nature of the information he seeks to elicit.

''(C) APPEAL.—If the court enters an order denying relief to the United States under this subsection, the United States may take an immediate interlocutory appeal in accordance with paragraph (3) of this subsection.

''(3) Interlocutory appeal

''(A) An interlocutory appeal by the United States shall lie to a court of appeals from a decision or order of a district court authorizing the disclosure of classified information, imposing sanctions for nondisclosure of classified information, or refusing a protective order sought by the United States to prevent the disclosure of classified information.

''(B) An appeal taken pursuant to this section either before or during trial shall be expedited by the court of appeals. Prior to trial, an appeal shall be taken within ten days after the decision or order appealed from and the trial shall not commence until the appeal is resolved. If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved and the court of appeals (1) shall hear argument on such appeal within four days of the adjournment of the trial, (2) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (3) shall render its decision within four days of argument on appeal, and (4) may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

''(4) Nothing in this subsection shall prevent the United States from seeking protective orders and/or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and state secrets privilege.

''(m) DEFINITIONS.—As used in this section, the term—

''(1) 'classified information' means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y));

''(2) 'financial institution' has the meaning prescribed in section 5312(a)(2) of title 31,

United States Code, including any regulations promulgated thereunder;''(3) 'funds' includes coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;

''(4) 'national security' means the national defense and foreign relations of the United States;

''(5) 'person' includes an individual, partnership, association, group, corporation or other organization;

''(6) 'Secretary' means the Secretary of the Treasury; and

''(7) 'United States', when used in a geographical sense, includes all commonwealths, territories and possessions of the United States.''.

(b) TECHNICAL AMENDMENT.—The analysis for chapter 113B of title 18, United States Code, is amended by adding at the end thereof the following:

''2339B. Fund-raising for terrorists organizations''.

(c) Section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)), as amended by section 202(a) of this Act, is further amended by inserting after the phrase ''Palestine Liberation Organization'' the following: '', an organization designated by the President under section 2339B of title 18, United States Code''.

(d) The provisions of section 2339B(k) of title 18, United States Code, (relating to classified information in civil proceedings brought by the United States) shall also be applicable to civil proceedings brought by the United States under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

## TITLE IV—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

**SEC. 401. SHORT TITLE.**

This title may be cited as the ''Marking of Plastic Explosives for Detection Act.''.

(a) FINDINGS.—The Congress finds that—

(1) plastic explosives were used by terrorists in the bombings of Pan Am flight 103 in December 1988 and UTA flight 772 in September 1989;

(2) plastic explosives can be used with little likelihood of detection for acts of unlawful interference with civil aviation, maritime navigation and other modes of transportation;

(3) the criminal use of plastic explosives places innocent lives in jeopardy, endangers national security, affects domestic tranquility, and gravely affects interstate and foreign commerce;

(4) the marking of plastic explosives for the purpose of detection would contribute significantly to the prevention and punishment of such unlawful acts; and

(5) for the purpose of deterring and detecting such unlawful acts, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991, requires each contracting State to adopt appropriate measures to ensure that plastic explosives are duly marked and controlled.

(b) PURPOSE.—The purpose of this Act is to fully implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

**SEC. 403. DEFINITIONS.**

Section 841 of title 18, United States Code, is amended by adding at the end the following new subsections:

''(o) 'Convention on the Marking of Plastic Explosives' means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

''(p) 'Detection agent' means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

''(1) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

''(2) 2, 3-Dimethyl-2, 3-dinitrobutane (DMNB), $_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

''(3) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

''(4) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

''(5) any other substance in the concentration specified by the Secretary, after consultation with the Secretary of State and the Secretary of Defense, which has been added to the table in Part 2 of the Technical Annex to the Convention on the Marketing of Plastic Explosives.

''(q) 'Plastic explosive' means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form have a vapor pressure less than $10^{-4}$ Pa at a temperature of 25°C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.''.

**SEC. 404. REQUIREMENT OF DETECTION AGENTS FOR PLASTIC EXPLOSIVES.**

Section 842 of title 18, United States Code, is amended by adding after subsection (k) the following new subsections:

''(l) It shall be unlawful for any person to manufacture any plastic explosive which does not contain a detection agent.

''(m)(1) It shall be unlawful for any person to import or bring into the United States, or export from the United States, any plastic explosive which does not contain a detection agent.

''(2) This subsection does not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive which was imported, brought into, or manufactured in the United States prior to the effective date of the Marketing of Plastic Explosives for Detection Act by or on behalf of any agency of the United States performing military or police functions (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

''(n)(1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive which does not contain a detection agent.

''(2) This subsection does not apply to—

''(A) the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States prior to the effective date of this Act by any person during a period not exceeding three years after the effective date of this Act; or

''(B) the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States prior to the effective date of this Act by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State, not later than 15 years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States.

''(o) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the effective date of this Act, to fail to report to the Secretary within 120 days from the effective date of this Act the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may by regulations prescribe.''.

**SEC. 405. CRIMINAL SANCTIONS.**

Section 844(a) of title 18, United States Code, is amended to read as follows:

''(a) Any person who violates subsections (a) through (i) or (l) through (o) of section 842 of this chapter shall be fined under this title or imprisoned not more than 10 years, or both.''.

**SEC. 406. EXCEPTIONS.**

Section 845 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting ''(l), (m), (n), or (o) of section 842 and subsections'' after ''subsections'';

(2) by adding at the end of subsection (a)(1) ''and which pertains to safety''; and

(3) by adding at the end the following new subsection:

''(c) It is an affirmative defense against any proceeding involving sections 842 (l) through (o) if the proponent proves by a preponderance of the evidence that the plastic explosive—

''(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

''(A) research, development, or testing of new or modified explosive materials;

''(B) training in explosives detection or development or testing of explosives detection equipment; or

''(C) forensic science purposes; or

''(2) was plastic explosive which, within three years after the date of entry into force of the Convention on the Marking of Plastic Explosives, with respect to the United States, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located. For purposes of this subsection, the term 'military device' includes, but is not restricted to, shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.''.

**SEC. 407. INVESTIGATIVE AUTHORITY.**

Section 846 of title 18, United States Code, is amended—

(1) by inserting in the last sentence before the ''subsection'' the phrase ''subsection (m) or (n) of section 842 or;'', and

(2) by adding at the end the following:

''The Attorney General shall exercise authority over violations of subsections (m) or (n) of section 842 only when they are committed by a member of a terrorist or revolutionary group. In any matter involving a terrorist or revolutionary group or individual,

as determined by the Attorney General, the Attorney General shall have primary investigative responsibility and the Secretary shall assist the Attorney General as requested.''.

**SEC. 408. EFFECTIVE DATE.**

The amendments made by this title shall take effect one year after the date of the enactment of this Act.

TITLE V—NUCLEAR MATERIALS

**SEC. 501. EXPANSION OF NUCLEAR MATERIALS PROHIBITIONS.**

(a)(1) FINDINGS.—The Congress finds and declares—

(A) Nuclear materials, including byproduct materials, can be used to create radioactive dispersal devices which are capable of causing serious bodily injury as well as substantial damage to property and the environment;

(B) The potential use of nuclear materials, including byproduct materials, enhances the threat posed by terrorist activities and thereby has a greater effect on the security interests of the United States;

(C) Due to the widespread hazards presented by the threat of nuclear contamination, as well as nuclear bombs, the United States has a strong interest in assuring that persons who are engaged in the illegal acquisition and use of nuclear materials, including byproduct materials, are prosecuted for their offenses;

(D) The threat that nuclear materials will be obtained and used by terrorist and other criminal organizations has increased substantially since the enactment in 1982 of the legislation which implemented the Convention on the Physical Protection of Nuclear Material, codified at 18 U.S.C. 831;

(E) The successful efforts to obtain agreements from other countries to dismantle nuclear weapons have resulted in increased packaging and transportation of nuclear materials, thereby decreasing the security of such materials by increasing the opportunity for unlawful diversion and theft;

(F) The illicit trafficking in the relatively more common, commercially available and useable nuclear and byproduct materials poses a potential to cause significant loss of life and/or environmental damage;

(G) Reported trafficking incidents in the early 1990's suggest that the individuals involved in trafficking these materials from Eurasia and Eastern Europe frequently conducted their black market sales of these materials within the Federal Republic of Germany, the Baltic States, and to a lesser extent in the Middle European countries;

(H) The international community has become increasingly concerned over the illegal possession of nuclear and nuclear byproduct materials;

(I) The potentially disastrous ramifications of increased access to nuclear and nuclear byproduct materials pose such a significant future threat that the United States must use all lawful methods available to combat the illegal use of such materials;

(J) The United States has an interest in encouraging United States corporations to do business in the countries which comprised the former Soviet Union, as well as in other developing democracies; protection of such U.S. corporations from threats created by the unlawful use of nuclear materials is important to the success of the effort to encourage such business ventures, and to further the foreign relations and commerce of the United States;

(K) The nature of nuclear contamination is such that it may affect the health, environment, and property of U.S. nationals even if the acts which constitute the illegal activity occur outside the territory of the United States, and are primarily directed toward non-U.S. nationals; and

(L) There is presently no federal criminal statute which provides adequate protection to United States interests from non-weapons grade, yet hazardous radioactive material, and from the illegal diversion of nuclear materials which are held for other than peaceful purposes.

(2) PURPOSE.—The purpose of the Act is to provide federal law enforcement the necessary tools and fullest possible basis allowed under the Constitution of the United States to combat the threat of nuclear contamination and proliferation which may result from illegal possession and use of radioactive materials.

(b) EXPANSION OF SCOPE AND JURISDICTIONAL BASES.—Section 831 of title 18, United States Code, is amended by—

(1) in subsection (a), striking ''nuclear material'' each time it appears and inserting each time ''nuclear material or nuclear byproduct material'';

(2) in subsection (a)(1)(A), inserting ''or the environment'' after ''property'';

(3) amending subsection (a)(1)(B) to read as follows:

''(B)(i) circumstances exist which are likely to cause the death of or serious bodily injury to any person or substantial damage to property or the environment; or (ii) such circumstances are represented to the defendant to exist;'';

(4) in subsection (a)(6), inserting ''or the environment'' after ''property'';

(5) amending subsection (c)(2) to read as follows:

''(2) an offender or a victim is a national of the United States or a United States corporation or other legal entity;'';

(6) in subsection (c)(3), striking ''at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and'';

(7) striking ''or'' at the end of subsection (c)(3);

(8) in subsection (c)(4), striking ''nuclear material for peaceful purposes'' and inserting ''nuclear material or nuclear byproduct material'';

(9) striking the period at the end of subsection (c)(4) and inserting ''; or'';

(10) adding at the end of subsection (c) a new paragraph as follows:

''(5) the governmental entity under subsection (a)(5) is the United States or the threat under subsection (a)(6) is directed at the United States.'';

(11) in subsection (f)(1)(A), striking ''with an isotopic concentration not in excess of 80 percent plutonium 238'';

(12) inserting at the beginning of subsection (f)(1)(C) ''enriched uranium, defined as'';

(13) redesignating subsections (f)(2)–(4) as (f)(3)–(5);

(14) inserting after subsection (f)(1) the following new paragraph:

''(2) the term 'nuclear byproduct material' means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;'';

(15) striking ''and'' at the end of subsection (f)(4), as redesignated;

(16) striking the period at the end of subsection (f)(5), as redesignated, and inserting a semicolon; and

(17) adding at the end of subsection (f) the following new paragraphs:

''(6) the term 'national of the United States' has the meaning prescribed in section 101(a) (22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

''(7) the term 'United States corporation or other legal entity' means any corporation or other entity organized under the laws of the United States or any State, district, commonwealth, territory or possession of the United States.''.

TITLE VI—PROCEDURAL AND TECHNICAL CORRECTIONS AND IMPROVEMENTS

**SEC. 601. CORRECTION TO MATERIAL SUPPORT PROVISION**

Section 120005 of Pub. Law 103–322, September 13, 1994, is amended to read at the time of its enactment on September 13, 1994, as follows:

''(a) OFFENSE.—Chapter 113A of title 18, United States Code, is amended by adding the following new section:

''§2339A. PROVIDING MATERIAL SUPPORT TO TERRORISTS

''(a) DEFINITION.—In this section, 'material support or resources' means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, but does not include humanitarian assistance to persons not directly involved in such violations.

''(b) OFFENSE.—A person who, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, in carrying out, a violation of section 32, 37, 351, 844(f) or (i), 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, or 2332a of this title or section 46502 of title 49, or in preparation for or carrying out the concealment or an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than ten years, or both.''.

**SEC. 602. EXPANSION OF WEAPONS OF MASS DESTRUCTION STATUTE.**

Section 2332a of title 18, United States Code, is amended by—

(1) in subsection(a), inserting ''threatens,'' before ''attempts or conspires to use, a weapon of mass destruction'';

(2) by redesignating subsection (b) as subsection (c); and

(3) by adding the following new subsection:

''(b) Any national of the United States who outside of the United States uses, or threatens, attempts or conspires to use, a weapons of mass destruction shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisonment for any term of years or for life.''.

**SEC. 603. ADDITION OF TERRORIST OFFENSES TO THE RICO STATUTE.**

(a) Section 1961(1)(B) of title 18 of the United States Code is amended by—

(1) inserting after ''Section'' the following: ''32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a federal official by threatening or injuring a family member), section '';

(2) inserting after ''section 224 (relating to sports bribery,'' the following: ''section 351 (relating to Congressional or Cabinet officer assassination),'';

(3) inserting after ''section 664 (relating to embezzlement from pension and welfare funds),'' the following: ''section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce),'';

(4) inserting after ''sections 891–894 relating to extortionate credit transactions),'' the following: ''section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),'';

(5) inserting after ''section 1084 (relating to the transmission of gambling information),'' the following: ''section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1203 (relating to hostage taking),'';

(6) inserting after ''section 1344 (relating to financial institution fraud),'' the following: ''section 1361 (relating to willful injury of government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),'';

(7) inserting after ''section 1513 (relating to retaliating against a witness, victim, or an informant),'' the following: ''section 1751 (relating to Presidential assassination),'';

(8) inserting after ''section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire),'' the following: ''section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),''; and

(9) inserting after ''2321 (relating to trafficking in certain motor vehicles or motor vehicle parts),'' the following: ''section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to acts of terrorism transcending national boundaries), section 2339A (relating to providing material support to terrorists),''.

(b) Section 1961(1) of title 18 of the United States Code is amended by striking ''or'' before ''(E)'', and inserting at the end thereof the following: ''or (F) section 46502 of title 49, United States Code;''.

**SEC. 604. ADDITION OF TERRORISM OFFENSES TO THE MONEY LAUNDERING STATUTE.**

(a) Section 1956(c)(7)(B)(ii) of title 18, United States Code, is amended by striking ''or extortion;'' and inserting ''extortion, murder, or destruction of property by means of explosive or fire;''.

(b) Section 1956(c)(7)(D) of title 18, United States Code, is amended by—

(1) inserting after ''an offense under'' the following: ''section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding or retaliating against a federal official by threatening or injuring a family member),'';

(2) inserting after ''section 215 (relating to commissions or gifts for procuring loans),'' the following: ''section 351 (relating to Congressional or Cabinet officer assassination),'';

(3) inserting after ''section 798 (relating to espionage),'' the following: ''section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce),'';

(4) inserting after ''section 875 (relating to interstate communications),'' the following: ''section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),'';

(5) inserting after ''section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution),'' the following: ''section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons),'';

(6) inserting after ''section 1203 (relating to hostage taking)'' the following: '', section 1361 (relating to willful injury of government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),'';

(7) inserting after ''section 1708 (relating to theft from the mail'' the following: ''), section 1751 (relating to Presidential assassination),'';

(8) inserting after ''2114 (relating to bank and postal robbery and theft),'' the following: ''section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),''; and

(9) striking ''of this title'' and inserting the following: ''section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code,''.

**SEC. 605. AUTHORIZATION FOR INTERCEPTIONS OF COMMUNICATIONS IN CERTAIN TERRORISM RELATED OFFENSES.**

(a) Section 2516(1) of title 18, United States Code, is amended by—

(1) striking ''and'' at the end of subparagraph (n);

(2) redesignating subparagraph (o) as subparagraph (q); and

(3) inserting these two new paragraphs after paragraph (n):

''(o) any violation of section 956 or section 960 of title 18, United States Code (relating to certain actions against foreign nations);

''(p) any violation of section 46502 of title 49, United States Code; and''.

(b) Section 2516(1)(C) of title 18, United States Code, is amended by inserting before ''or section 1992 (relating to wrecking trains)'' the following: ''section 2332 (relating to terrorist acts abroad), section 2332a (relating to weapons of mass destruction, section 2332b (relating to acts of terrorism transcending national boundaries), section 2339A (relating to providing material support to terrorists), section 37 (relating to violence at international airports),''.

**SEC. 606. CLARIFICATION OF MARITIME VIOLENCE JURISDICTION.**

Section 2280(B)(1)(A) of title 18, United States Code, is amended by—

(1) in clause (ii), striking ''and the activity is not prohibited as a crime by the State in which the activity takes place''; and

(2) in clause (iii), striking ''the activity takes place on a ship flying the flag of a foreign country or outside of the United States,''.

**SEC. 607. EXPANSION OF FEDERAL JURISDICTION OVER BOMB THREATS.**

Section 844(e) of title 18, United States Code, is amended by—

(1) inserting ''(1)'' before ''Whoever''; and

(2) adding at the end thereof this new paragraph:

''(2) Whoever willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made to violate subsections (f) or (i) of this section or section 81 of this title shall be fined under this title or imprisoned for not more than five years, or both.

**SEC. 608. INCREASED PENALTY FOR EXPLOSIVE CONSPIRACIES.**

Section 844 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as those prescribed for the offense the commission of which was the object of the conspiracy.''.

**SEC. 609. AMENDMENT TO INCLUDE ASSAULTS, MURDERS, AND THREATS AGAINST FORMER FEDERAL OFFICIALS ON ACCOUNT OF THE PERFORMANCE OF THEIR OFFICIAL DUTIES.**

Section 115(a)(2) of title 18, United States Code, is amended by inserting '', or threatens to assault, kidnap, or murder, any person who formerly served as a person designed in paragraph (1), or'' after ''assaults, kidnaps, or murders, or attempts to kidnap or murder''.

**SEC. 610. ADDITION OF CONSPIRACY TO TERRORISM OFFENSES**

(a)(1) Section 32(a)(7) of title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(2) Section 32(b)(4) of title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(b) Section 37(a) title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(c)(1) Section 115(a)(1)(A) of title 18, United States Code is amended by inserting ''or conspires'' after ''attempts''.

(2) Section 115(a)(2) of title 18, United States Code, as amended by section 609, is further amended by inserting ''or conspires'' after ''attempts''.

(3) Section 115(b)(2) of title 18, United States Code, is amended by striking both times it appears ''or attempted kidnapping'' and inserting both times, ''attempted kidnapping or conspiracy to kidnap''.

(4) (A) Section 115(b)(3) of title 18, United States Code, is amended by striking ''or attempted murder'' and inserting, ''attempted murder or conspiracy to murder''.

(B) Section 115(b)(3) of title 18, United States Code, is further amended by striking ''and 1113'' and inserting, ''1113 and 1117''.

(d) Section 175(a) of title 18, United States Code, is amended by inserting, ''or conspires to do so,'' after ''any organization to do so,''.

(e) Section 1203(a) of title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(f) Section 2280(a)(1)(H) of title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(g) Section 2281(a)(1)(F) of title 18, United States Code, is amended by inserting ''or conspires'' after ''attempts''.

(h)(1) Section 46502(a)(2) of title 49, United States Code, is amended by inserting ''or conspires'' after ''attempting''.

(2) Section 46502(b)(1) of title 49, United States Code, is amended by inserting ''or conspiring to commit'' after ''committing''.

## TITLE VII—ANTITERRORISM ASSISTANCE

**SEC. 701. FINDINGS.**

Congress finds that in order to improve the effectiveness and cost efficiency of the Antiterrorism Training Assistance Program, which is administered and coordinated by the Department of State to increase the antiterrorism capabilities of friendly countries, more flexibility is needed in providing trainers and courses overseas and to provide personnel needed to enhance the administration and evaluation of the courses.

**SEC. 702. ANTITERRORISM ASSISTANCE AMENDMENTS.**

Section 573 of chapter 8 (relating to antiterrorism assistance), of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa2) is amended by:

(1) striking ''30 days'' in subsection (d)(1)(A) and inserting in lieu thereof ''180 days'';

(2) striking the ''add'' after subsection (d)(1)(B);

(3) striking subsection (d)(1)(B);

(4) inserting ''and'' after subsection (d)(1)(A);

(5) redesignating subsection (d)(1)(C) as subsection (d)(1)(B);

(6) amending subsection (d)(2) to read as follows:

''(2) Personnel of the United States Government authorized to advise foreign countries on antiterrorism matters shall carry out their responsibilities within the United States when determined most effective or outside the United States for periods not to exceed 180 consecutive calendar days.''; and

(7) striking subsection (f).

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SECTION-BY-SECTION ANALYSIS

SECTION 1.

Section 1 states that the short title for the Act is ''The Omnibus Counterterrorism Act of 1995.''

SECTION 2.

Section 2 provides a Table of Contents for the Act.

SECTION 3.

Section 3 sets forth the congressional findings and purposes for the Act.

SECTION 101.

The purpose of section 101 is to provide a more certain and comprehensive basis for the Federal Government to respond to future acts of international terrorism carried out within the United States. The section creates an overarching statute (proposed 18 U.S.C. 2332b) which would allow the government to incorporate for purposes of a federal prosecution any applicable federal or state criminal statute violated by the terrorist act, so long as the government can establish any one of a variety of jurisdictional bases delineated in proposed subsection 2332b(c).

Subsection 101(a) creates a new offense, 18 U.S.C. 2332b, entitled ''Acts of Terrorism Transcending National Boundaries.'' This statute is aimed at those terrorist acts that take place within the United States but which are in some fashion or degree instigated, commanded, or facilitated from outside the United States. It does not encompass acts of street crime or domestic terrorism which are in no way connected to overseas sources.

Subsection 2332b(a) sets forth the particular findings and purposes for the provision.

Subsection 2332b(b) sets forth the prohibited acts which relate to the killing, kidnapping, maiming, assault causing serious bodily injury, or assault with a dangerous weapon of any individual (U.S. national or alien) within the United States. It also covers destruction or damage to any structure, conveyance of other real or personal property within the United States. These are the types of violent actions that terrorist most often undertake. The provision encompasses any such activity which is in violation of the laws of the United States or any States, provided a federal jurisdictional nexus is present.

Subsection 2332b(c) sets forth the jurisdictional bases. Except for subsections (c) (6) and (7), these bases are a compilation of jurisdictional elements which are presently utilized in federal statutes and which have been approved by the courts.

Paragraph (1) covers the situation where the offender travels in commerce. Cf. 18 U.S.C. 1952.

Paragraph (2) covers the situation where the mails or a facility utilized in any manner in commerce is used to further the commission of the offense or to effectuate an escape therefrom. Cf. 18 U.S.C. 1951.

Paragraph (3) covers the situation where the results of illegal conduct affect commerce. Cf. 18 U.S.C. 1365(c).

Paragraph (4) covers the situation where the victim is a federal official. Cf. 18 U.S.C. 115, 1114, 351, 1751. The language includes both civilians and military personnel. Moreover, it also covers any ''agent'' of a federal agency. Cf. 18 U.S.C. 1114 (*i.e.*, assisting agent of customs or internal revenue) and 1121. It covers all ranches of government, including members of the military services, as well as all independent agencies of the United States.

Paragraph (5) covers property used in commerce (cf. 18 U.S.C. 844(i)), owned by the United States (cf. 18 U.S.C. 1361), owned by an institution receiving federal financial assistance (cf. 18 U.S.C. 844(f)) or insured by the federal government (cf. 18 U.S.C. 2113).

Paragraph (6) provides a jurisdictional base which has not been tested. It should, however, fall with the federal government's commerce power. It is included to avoid the construction, given to many federal interstate commerce statutes, that a ''commercial'' aspect is required. Paragraph (6) would cover both business and personal travel.

Paragraph (7) covers situations where the victim or perpetrator is not a national of the United States. The victimization of an alien in a terrorist attack has the potential of affecting the relations of the United States with the country of criminal jurisdiction on the involvement of an alien as the perpetrator or victim. *E.q.*, see 18 U.S.C. 1203 and 1116. In addition, aliens are a special responsibility of the federal government, as it is involved in admitting aliens, establishing the conditions for their presence, adjusting them to resident alien status, deporting aliens for violating the immigration laws, and eventually naturalizing aliens as citizens.

Paragraphs (8) and (9) cover the territorial seas of the United States and other places within the special maritime and territorial jurisdiction of the United States that are located within the United States (cf. 18 U.S.C. 7).

Jurisdiction exists over the prohibited activity if at least one of the jurisdictional elements is applicable to one perpetrator. When jurisdiction exists for one perpetrator, it exists over all perpetrators even those who were never within the United States.

Subsection (d) sets forth stringent penalties. These penalties are mandatorily consecutive to any other term of imprisonment which the defendant might receive. Consecutive sentences for ''identical'' offenses brought in the same prosecution are constitutionally permissible. See *Missouri* v. *Hunter*, 459 U.S. 359, 367 (1983). However, there is no statutory mandatory minimum. The court is given the discretion to decide the penalty for this offense under the sentencing guidelines.

Subsection (e) limits the prosecutorial discretion of the Attorney General. Before an indictment is sought under section 2332b, the Attorney General, or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions, must certify that in his or her judgment the violation of section 2332b, or the activity preparatory to its commission, transcended national boundaries. This means that the Attorney General must conclude that some connection exists between the activities and some person or entity outside the United States.

Moreover, the certification must find that the offense appears to have been intended to coerce, intimidate, or retaliate against a government or civilian population. This is similar to the certification requirement for ''terrorism'' found in 18 U.S.C. 2332(d). The term ''civilian population'' includes any segment thereof and, accordingly, is consistent with the Congressionally intended scope of section 2332(d). The certification requirement ensures that the statute will only be used against terrorists with overseas connections. Section 2332b is not aimed at purely domestic terrorism or against normal street crime as current law, both federal and state, appears to adequately address these areas. The certification of the Attorney General is not an element of the offense and, except for verification that the determination was made by an authorized official, is not subject to judicial review.

Subsection (f) states that the Attorney General shall investigate this offense and may request assistance from any other federal, state, or local agency including the military services. This latter provision, also found in several other statutes, see *e.g.*, 18 U.S.C. 351(g) and 1751(i), is intended to overcome the restrictions of the posse comitatus statute, 18 U.S.C. 1385. It is not intended to give intelligence agencies, such as the Central Intelligence Agency, any mission that is prohibited by their charters.

Pursuant to 28 C.F.R. 0.85(a), the Attorney General automatically delegates investigative responsibility over this offense to the Director of the Federal Bureau of Investigation (FBI). Moreover, under 28 C.F.R. 0.85(l) the FBI has been designated as the lead federal law enforcement agency responsible for criminal investigation of terrorism within the United States. While local and state authorities retain their investigative authority under their respective laws, it is expected that in the event of major terrorist crimes such agencies will cooperate, consult, coordinate and work closely with the FBI, as occurred in the investigation of the World Trade Center bombing in New York City.

Subsection (g) makes express two points which are normally inferred by courts under similar statutes, namely, that no defendant has to have knowledge of any jurisdictional base and that only the elements of the state offense and not any of its provisions pertaining to procedures or evidence are adopted. Federal rules of evidence and procedure control any case brought under section 2332b.

Subsection (h) makes it clear that there is extraterritorial jurisdiction to reach defendants who were involved in crimes but who never entered the United States.

Subsection (i) sets forth definitions, many of which specifically incorporate definitions from elsewhere in the federal code, *e.g.*, the definition of ''territorial sea'' in 18 U.S.C. 2280(e).

Subsection 101(b) makes a technical amendment to the chapter analysis for Chapter 113B of title 18, United States Code.

Subsection 101(c) amends 18 U.S.C. 3286, which was created by section 120001 of Pub. Law 103–322. Section 3286 is designed to extend the period of limitation for a series of enumerated terrorism offenses from five to eight years. The wording of the section, however, gives rise to a potential interpretation that, with respect to violations of the enumerated offenses that are capital crimes, the same eight-year period applies rather than the unlimited period that previously applied and continues to apply to capital offenses under 18 U.S.C. 3281. Section 3286's introductory language is as follows:

''Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for *any* offense involving a violation of'' the enumerated provisions of law (emphasis supplied).

It seems clear that Congress did not intend to reduce the limitations period for offenses under the enumerated statutes that are capital due to the killing of one or more victims. Rather, the intent was (as the title of the section 120001 provision indicates) to enlarge the applicable limitation period for non-capital violations of the listed offenses. Accordingly, the proposed amendment would insert ''non-capital'' after ''any'' in the above-quoted phrase. Notably, the drafters

were careful to include the word ''non-capital'' when effecting a similar period of limitations extension applicable to arson offenses under 18 U.S.C. 844(i) in section 320917 of the Pub. L. 103–322.

Subsection 101(c) also corrects certain erroneous statutory references in section 3286 (*i.e.*, changes ''36'' to ''37'', ''2331'' to ''2332'' and ''2339'' to ''2332a''). Finally, the subsection adds to section 3286 the new 18 U.S.C. 2332b.

Subsection 101(d) amends section 3142(e) of title 18, United States Code, to insure that a defendant arrested for a violation of the new 18 U.S.C. 2332b is presumed to be unreleasable pending trial. The factors, most likely to be present i.e., an alien perpetrator who is likely to flee and who is working on behalf of or in concert with a foreign organization, makes such an individual unsuitable for release pending trial. This presumption, which is subject to rebuttal, will limit the degree of sensitive evidence that the Government must disclose to sustain its burden to deny release.

Subsection 101(e) amends the ''roving'' provision in the wiretap statute (18 U.S.C. 2518(11)(b)(ii)) so that it can be applied to violations of new 18 U.S.C. 2332b even in the absence of a showing of intent to thwart detection. The development of evidence of such intent could cause a delay which, in the content of a section 2332b violation, could have catastrophic consequences. Further, the secrecy and clandestine movement of terrorists make it extremely difficult to develop advance knowledge of which precise telephones they will use.

SECTION 102.

Section 102 is designed to complement section 101 of this bill concerning terrorist acts within the United States transcending national boundaries. Just as a better basis for addressing crimes carried out within the United States by international terrorists is needed, it also is appropriate that there should be an effective federal basis to reach conspiracies undertaken in part within the United States for the purpose of carrying out terrorist acts in foreign countries.

Section 102 covers two areas of activity involving international terrorists. The first is conspiracy in the United States to murder, kidnap, or maim a person outside of the United States. The second is conspiracy in the United States to destroy certain critical types of property, such as public buildings and conveyances, in foreign countries. The term conveyance would include cars, buses, trucks, airplanes, trains, and vessels.

Subsection 102(a) amends current 18 U.S.C. 956 in several ways. It creates a new subsection 956(a) which proscribes a conspiracy in the United States to murder, maim, or kidnap a person outside of the United States. The new section fills a void in the law that exists. Currently, subsection 956(a) only prohibits a conspiracy in the United States to commit certain types of property crimes in a foreign country with which the United States is at peace. It does not cover conspiracy to commit crimes against the person.

Subsection 102(a) thus expands on the current section 956 so that new subsection 956(a) covers conspiracy to commit one of the three listed serious crimes against any person in a foreign country or in any place outside of the jurisdiction of the United States, such as on the high seas. This type of offense is committed by terrorists and the new subsection 956(a) is intended to ensure that the government is able to punish those persons who use the United States as a base in which to plot such a crime to be carried out outside the jurisdiction of the United States.

New subsection 956(a) would apply to conspiracies to commit one of the enumerated offenses where at least one of the conspirators is inside the United States. The other member or members of the conspiracy would not have to be in the United States but at least one overt act in furtherance of the conspiracy would have to be committed in the United States. The subsection would apply, for example, to two individuals who consummated an agreement to kill a person in a foreign country where only one of the conspirators was in the United States and the agreement was reached by telephone conversations or letters, provided at least one of the overt acts were undertaken by one coconspirator while in the United States. In such a case, the agreement would be reached at least in part in the United States. The overt act may be that of only one of the conspirators and need not itself be a crime.

Subsection 102(a) also re-enacts current section 956(a) of title 18 (dealing with a conspiracy in the United States to destroy property in a foreign country) as subsection 956(b), and expands its coverage to other forms of property. The revision adds the terms ''airport' and ''airfield'' to the list of ''public utilities'' presently set out in section 956(a), since they are particularly attractive targets for terrorists. New subsection 956(b) also adds public conveyances (e.g., buses), public structures, and any religious, educational or cultural property to the list of targets. This makes it clear that the statute covers a conspiracy to destroy any conveyance on which people travel and any structure where people assemble, such as a store, factory or office building. It also covers property used for purposes of tourism, education, religion or entertainment. Accordingly, the words ''public utility'' do not limit the statute's application to a conspiracy to destroy only such public utility property as transportation lines or power generating facilities.

Consequently, as amended, 18 U.S.C 956 reaches those individuals who have conspired within the United States to commit the violent offenses overseas and who solicit money in the United States to facilitate their commission. Moreover, monetary contributors who have knowledge of the conspiracy's purpose are coconspirators subject to prosecution.

Subsection 102(a) also increases the penalties in current 18 U.S.C. 956(a). The new penalties are comparable to those proposed in section 101 of the bill for the new 18 U.S.C. 2332b. Finally, subsection 102(a) eliminates the requirement that is currently found in 18 U.S.C. 956(b) of naming in the indictment the ''specific property'' which is being targeted, as this requirement may be difficult to establish in the context of a terrorism conspiracy which does not result in a completed offense. Additionally, even in a completed conspiracy, the parties may, after agreeing that a category of property or person will be targeted, leave the actual selection of the particular target to their conspirators on the ground overseas. Hence, while an indictment must always describe its purposes with specificity, it need not allege all specific facts, especially those that were formulated at a subsequent time or which may not be completely known to some of the participants.

Section 956 is contained in chapter 45 of title 18, United States Code, relating to interference with the foreign relations of the United States. It is not intended to apply to duly authorized actions undertaken on behalf of the United States Government. Chapter 45 covers those individuals who, without appropriate governmental authorization, engage in prohibited conduct that is harmful to the foreign relations of the United States.

SECTION 103

This section would correct a failure to execute fully our treaty obligations and would, in addition, clarify and expand federal jurisdiction over certain overseas acts of terrorism affecting United States interests.

Subsection 103(a) would amend 49 U.S.C. 46502(b) (former section 902(n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472(n)). Section 46502(b) currently covers those aircraft piracies that occur outside the ''special aircraft jurisdiction of the United States,'' as defined in 49 U.S.C. 46501(2). It, therefore, applies to hijackings of foreign civil aircraft which never enter United States airspace. As a State Party to the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the United States has a treaty obligation to prosecute or extradite such offenders when they are found in the United States. This measure is based on the universal jurisdiction theory. See *United States* v. *Yunis,* 924 F.2d 1086 (D.C. Cir. 1991). However, the present statute fails to make clear when federal criminal jurisdiction commences with respect to such air piracies, absent the actual presence within the United States of one of the perpetrators.

Paragraph (a)(1) would establish clear federal criminal jurisdiction over those foreign aircraft hijackings where United States nationals are victims or perpetrators. While the Hague Convention does not mandate that State Parties criminalize those situations involving their nationals as victims or perpetrators, it does allow State Parties to assert extraterritorial jurisdiction on the basis of the passive personality principle. *See* Paragraph 3 of Article 4. In addition, other recent international conventions dealing with terrorism, such as the United Nations Convention Against the Taking of Hostages and the International Maritime Organization Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, mandate criminal jurisdiction by a State Party when its national is a perpetrator and permit the assertion of jurisdiction when its national is a victim of an offense prohibited by those conventions. Further, experience has shown that it is often the country whose nationals were victims of the hijacking which is willing to commit the necessary resources to locate, prosecute, and incarcerate the perpetrators for a period of time commensurate with their criminal acts. For those foreign civil aircraft hijackings involving no United States nationals as victims or perpetrators, section 46502 would continue to carry out the U.S. obligation under the Convention to prosecute or extradite an alien perpetrator who was subsequently found in the United States.

Under the clarified statute, subject matter jurisdiction over the offense would vest whenever a United States national was on a hijacked flight or was the perpetrator of the hijacking. Where a United States national is the perpetrator, all perpetrators, including non-U.S. nationals, would be subject to indictment for the offense, since these non-national defendants would be either principals or aiders and abettors within the meaning of 18 U.S.C. 2.

Paragraph (a)(2) amends 49 U.S.C. 46502(b)(2) to set forth the three different subject matter jurisdictional bases. It has the effect of repealing the current provision which failed to fully execute our treaty obligation. Presently, paragraph 46502(b)(2) reads: ''This subsection applies only if the place of takeoff or landing of the aircraft on which the individual commits the offense is located outside the territory of the country of registration of the aircraft.'' Paragraph (b)(2) was intended to reflect paragraph 3 of Article 3 of the Hague Convention, which

states that the convention normally applies ''only if the place of take-off or the place of actual landing of the aircraft on which the offense is committed is situated outside the territory of the State of registration of that aircraft.'' However, the authors of the original legislation apparently overlooked the obligation imposed by paragraph 5 of Article 3 of the Convention which applies when the alleged aircraft hijacker is found in the territory of a State Party other than the State of registration of the hijacked aircraft. Paragraph 5 states: ''Notwithstanding paragraphs 3 and 4 of this Article, Article 6, 7, 8 and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft.''

For example, under the Hague Convention, the hijacking of an Air India flight that never left India is not initially covered by the Convention. (Article 3, paragraph 3.) However, the subsequent travel of the offender from India to the jurisdiction of another State Party triggers treaty obligations. Paragraph 5 makes the obligation of Article 7, to either prosecute or extradite an alleged offender found in a party's territory, applicable to a hijacker of a purely domestic air flight who flees to another State.

Paragraph (a)(3) creates a new section 46502(b)(3) which provides a definition of ''national of the United States'' that has been used in other terrorism provisions, see, e.g., 18 U.S.C. 2331(2) and 3077(2)(A).

Subsection 103(b) amends section 32(b) of title 18, United States Code. Presently, section 32(b) carries out the treaty obligation of the United States, as a State Party to the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, to prosecute or extradite offenders found in the United States who have engaged in certain acts of violence directed against foreign civil aircraft located outside the United States. The proposed amendment would fully retain current jurisdiction and would establish additional jurisdiction where a United States national was the perpetrator or a United States national was on board such aircraft when the offense was committed. Because subsection 32(b)(3) of title 18, United States Code, covers the placement of destructive devices upon such aircraft and a ''victim'' does not necessarily have to be on board the aircraft at the time of such placement, the phrase ''or would have been on board'' has been used. In such instances, the prosecution would have to establish that a United States national would have been on board a flight that such aircraft would have undertaken if the destructive device had not been placed thereon.

Subsection 103(b) is drafted in the same manner as paragraph (a)(2), above, so that once subject matter jurisdiction over the offense vests, all the perpetrators of the offense are subject to indictment for the offense.

Subsections 103(c), (d), (e) and (f) would amend 18 U.S.C. 1116 (murder), 112 (assault), 878 (threats), and 1201 (kidnapping), respectively. The primary purpose of these proposed amendments is to extend federal jurisdiction to reach United States nationals, or those acting in concert with such a national, who commit one of the specified offenses against an internationally protected person located outside of the United States. The invocation of such jurisdiction under U.S. law is required by the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including diplomatic agents. It was apparently omitted as an oversight when the implementing federal legislation was enacted in 1976 (P.L. 94-467).

Additionally, the provisions would also clarify existing jurisdiction. The language used in the first sentence of sections 1116(e), 112(e), 878(d), and 1201(e) is ambiguous as pertains to instances in which the victim is a United States diplomat. The first sentence in each of these provisions now reads: ''If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender.''

This sentence could be read to require the presence of the offender in the United States even when the internationally protected person injured overseas was a United States diplomat. This would be anomalous and was likely not intended. Accordingly, subsections (c)–(f) rewrite the first sentence to read as follows:

''If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.''

The provision is drafted, in the same manner as the aircraft piracy and aircraft destruction measures, so that once subject matter jurisdiction over the offense is vested, all the perpetrators of the offense would be subject to indictment for the offense.

Subsections 103(c)–(f) also would incorporate in an appropriate manner the definition of ''national of the United States'' in sections 1116, 112, 878, and 1201 of title 18.

Subsection 103(g) contains an amendment similar in nature to those in the preceding subsections. It expands federal jurisdiction over extraterritorial offenses involving violence at international airports under 18 U.S.C. 37. That provision, enacted as section 60021 of Public law 103-322, presently reachers such crimes committed outside the United States only when the offender is later found in the United States. There is, however, good reasons to provide for federal jurisdiction over such terrorist crimes when an offender or a victim is a United States national. In such circumstances the interests of the United States are equal to, if not greater than, the circumstance where neither the victim nor the offender is necessarily a United States national but the offender is subsequently found in this country.

Subsection 103(h) adds the standard definition of the term ''national of the United States'' to 18 U.S.C. 178. This term is used earlier in the chapter (in 18 U.S.C. 175(a), which provides for extraterritorial jurisdiction over crimes involving biological weapons ''committed by or against a national of the United States'') but no definition is provided.

SECTION 201

In recent years, the Department of Justice has obtained considerable evidence of involvement in terrorism by aliens in the United States. Both legal aliens, such as lawful permanent residents and aliens here on student visas, and illegal aliens are known to have aided and to have received instructions regarding terrorist acts from various international terrorist groups. While many of these aliens would be subject to deportation proceedings under the Immigration and Nationality Act (INA), these proceedings present serious difficulties in cases involving classified information. Specifically, these procedures do not prevent disclosure of classified information where such disclosure would pose a risk to national security. Consequently, section 201 sets out a new title in the INA devoted exclusively to the removal of aliens involved in terrorist activity where classified information is used to sustain the grounds for deportation.

The new title would create a special court, patterned after the special court created under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.). When the Department of Justice believes that it has identified an alien in the United States who has engaged in terrorist activity, and that to afford such an alien a deportation hearing would reveal classified national security information, it could seek an ex parte order from the court. The order would authorize a formal hearing, called a special removal hearing, before the same court, at which the Department of Justice would seek to prove by clear and convincing evidence that the alien had in fact engaged in terrorist activity. At the hearing, classified evidence could be presented *in camera* and not revealed to the alien or the public, although its general nature would normally be summarized.

Enactment of section 201 would provide a valuable new tool with which to combat aliens who use the United States as a base from which to launch or fund terrorist attacks either on U.S. citizens or on persons in other countries. It is a carefully measured response to the menace posed by alien terrorists and fully comports with and exceeds all constitutional requirements applicable to aliens.

Subsection 201(a) sets out findings that aliens are committing terrorist acts in the United States and against United States citizens and interests and that the existing provisions of the INA providing for the deportation of criminal aliens are inadequate to deal with this threat. These findings are in addition to the general findings contained in section 3 of the bill. The findings explain that these inadequacies arise primarily because the INA, particularly in its requirements pertaining to deportation hearings, may require disclosure of classified information.

The findings are important in explaining Congressional intent and purpose. As noted above, section 201 creates an entirely new type of hearing to determine whether aliens believed to be terrorists should be removed from the United States. At such a ''special removal hearing,'' the government would be permitted to introduce in *camera* and *ex parte* classified evidence that the alien has engaged in terrorist activity. Such hearings would be held before Article III judges. The *in* camera and *ex parte* portion of the hearing would relate to classified information which, if provided to the alien or otherwise made public, would pose a risk to national security. Such an extraordinary type of hearing would be invoked only in a very small percentage of deportation cases, and would be applicable only in those cases in which an Article III judge has found probable cause to believe that the aliens in question are involved in terrorist activity. Although the bill provides the alien many rights equal to—and in some respects greater than—those enjoyed by aliens in ordinary deportation proceedings, the rights specified for aliens subject to a special removal hearing are deemed exclusive of any rights otherwise afforded under the INA.

It is within the power of Congress to provide for a special adjudicatory proceeding and to specify the procedural rights of aliens involved in terrorist acts. The Supreme Court has noted that ''control over matters of immigration is a sovereign prerogative, largely within the control of the Executive and the Legislature. . . . The role of the judiciary is limited to determining whether the procedures meet the essential standard

of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy.'' *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982). Moreover, Congress can specify what type of process is due different classes of aliens. ''(A) host of constitutional and statutory provisions rest on the premise that a legitimate distinction between citizens and aliens may justify attributes and benefits for one class not accorded to the other; and the class of aliens itself is a heterogeneous multitude of persons with a wide-ranging variety of ties to this country.'' *Matthews v. Diaz*, 426 U.S. 67, 78–79 (1976). Because the Due Process Clause does not require ''that all aliens must be placed in a single homogeneous legal classification,'' *id.*, Congress can provide separate processes and procedures for determining whether to remove resident and non-nonresident alien terrorists.

Subsection 201(b) adds a new title V to the INA to provide a special process for removing alien terrorists when compliance with normal deportation procedures might adversely affect national security interests of the United States. However, the new title V is not the only way of expelling alien terrorists from the United States. In addition to proceedings under the new special removal provisions, aliens falling within 8 U.S.C. 1251(a)(4)(B) alternatively could be deported following a regular deportation hearing. Moreover, like all other aliens, alien terrorists remain subject to possible expulsion for any of the remaining deportation grounds specified in section 241 of the Act (8 U.S.C. 1251). For example, alien terrorists who violate the criminal laws of the United States remain subject to ''ordinary'' deportation proceedings on charges under INA section 241(a)(2). The special removal provisions augment, without in any narrowing, the prosecutorial options in cases of alien terrorists.

The new title V consists of four new sections of the INA, sections 501–504 (8 U.S.C. 1601–1604). Briefly, the title provides for creation of a special court comprised of Article III judges, patterned after the special court created under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.*). When the Department of Justice believes it has identified an alien terrorist, that is, an alien who falls within 8 U.S.C. 1251(a)(4)(B), and determines that to disclose the evidence of that fact to the alien or the public would compromise national security, the Department may seek an order from the special court. The order would authorize the Department to present the classified portion of its evidence that the alien is a terrorist *in camera* and *ex parte* at a special removal hearing. The classified portion of the evidence would be received in chambers with only the court reporter, the counsel for the government, and the witness or document present. The general nature of such evidence, without identifying classified or sensitive particulars, would than normally be revealed to the alien, his counsel, and the public in summarized form. The summary would have to be found by the court to be sufficient to permit the alien to prepare a defense.

Where an adequate summary, as determined by the court, would pose a risk to national security, and, hence, unavailable to the alien, the special hearing would be terminated unless the court found that (1) the continued presence of the alien in the United States or (2) the preparation of the adequate summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person. If such a situation exits, the special removal hearing would continue, the alien would not receive a summary, and the relevant classified information could be introduced against the alien pursuant to subsection (j).

If, at the conclusion of the hearing, the judge finds that the government has established by clear and convincing evidence that the alien has engaged in terrorist activity, the judge would order the alien removed from the United States. The alien could appeal the decision to the United States Court of Appeals for the District of Columbia Circuit, and ultimately could petition for a writ of certiorari to the Supreme Court.

Use of information that is not made available to the alien for reasons of national security is a well-established concept in the existing provisions of the INA and immigration regulations. For example, section 235(c) provides for an expedited exclusion process for aliens excludable under 8 U.S.C. 1182(a)(3) (providing for the exclusion, *inter alia*, of alien spies, saboteurs, and terrorists), and states in relevant part:

''If the Attorney General is satisfied that the alien is excludable under [paragraph 212(a)(3)] on the basis of information of a confidential nature, the disclosure of which the Attorney General, in his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security, he may in his discretion order such alien to be excluded and deported without any inquiry or further inquiry by [an immigration judge].''

Thus, where it is necessary to protect sensitive information, existing law authorizes the Attorney General to conduct exclusion proceedings outside the ordinary immigration court procedures and to rely on classified information in ordering the exclusion of alien terrorists.

In the deportation context, 8 C.F.R. 242.17 (1990) provides that in determining whether to grant discretionary relief to an otherwise deportable alien, the immigration judge—

''May consider and base his decision on information not contained in the record and not made available for inspection by the [alien], provided the Commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security.''

The constitutionality of this provision has been upheld. *Suciu* v. *INS*, 755 F.2d 127 (8th Cir. 1985). The alien in that case had been in the United States for 16 years and had become deportable for overstaying his student visa, a deportation ground ordinarily susceptible to discretionary relief. Nevertheless, the court held that it was proper to deny the alien discretionary relief without disclosing to him the reasons for the denial. *Sucia* followed the Supreme Court's holding sustaining the constitutionality of a similar predecessor regulation in *Jay* v. *Boyd*, 351 U.S. 345 (1956).

*Section 501 (Applicability)*

Section 501 sets forth the applicability of the new title. Section 501(a) states that the title may, but need not, be employed by the Department of Justice whenever it has information that an alien is subject to deportation because he is an alien described in 8 U.S.C. 1251(a) (4)(B), that is, because he has engaged in terrorist activity.

Section 501(b) provides that whenever an official of the Department of Justice determines to seek the expulsion of an alien terrorist under the special removal provisions, only the provisions of the new title need be followed. This ensures that such an alien will not be deemed to have any additional rights under the other provisions of the INA. Except when specifically referenced in the special removal provisions, the remainder of the INA would be inapplicable. For example, under the special removal provisions an alien who has entered the United States (and thus is not susceptible to exclusion proceedings) need not be given a deportation hearing under section 242 of the Act, 8 U.S.C. 1252, and will not have available the rights generally afforded aliens in deportation proceedings (*e.g.*, the opportunity for an alien out of status to correct his status).

Section 501(c) states that Congress has enacted the title upon finding that alien terrorists represent a unique threat to the security interests of the United States. Consequently, the subsection states Congress' specific intent that the Attorney General be authorized to remove such aliens without resort to a traditional deportation hearing, following an ex parte judicial determination of probable cause to believe they have engaged in terrorist activity and a further judicial determination, following a modified adversarial hearing, that the Department of Justice has established by clear and convincing evidence that the aliens in fact have engaged in terrorist activity.

Section 501(c) is designed to make clear that singling out alien terrorists for a special type of hearing rather than according them ordinary deportation hearings is a careful and deliberate policy choice by a political branch of government. This policy choice is grounded upon the legislative determination that alien terrorists seriously threaten the security interests of the United States and that the existing process for adjudicating and effecting alien removal is inadequate to meet this threat. In accordance with settled Supreme Court precedent, such a choice is well within the authority of the political branches of government to control our relationship with and response to aliens.

For example, in *Mathews v. Diaz, supra*, the Court held that Congress could constitutionally provide that only some aliens were entitled to Medicare benefits. The Court held that it was ''unquestionably reasonable for Congress to make an alien's eligibility depend on both the character and duration of his residence,'' and noted that the Court was ''especially reluctant to question the exercise of congressional judgment'' in matters of alien regulation. 426 U.S. at 83, 84; *see Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (describing the regulation of aliens as a political matter ''largely immune from judicial control''). The specific findings and reference to the intent in adopting the new provisions of title V make clear the policy judgment that alien terrorists should be treated as a separate class of aliens and that this choice should not be disturbed by the courts.

*Section 502 (Special Removal Hearing)*

Section 502 sets out the procedure for the special removal hearing. Section 502(a) provides that whenever the Department of Justice determines to use the special removal process it must submit a written application to the special court (established pursuant to section 503) for an order authorizing such procedure. Each application must indicate that the Attorney General or Deputy Attorney General has approved its submission and must include the identity of the Department attorney making the application, the identity of the alien against whom removal proceedings are sought, and a statement of the facts and circumstances relied upon by the Department of Justice as justifying the belief that the subject is an alien terrorist and that following normal deportation procedures would pose a risk to the national security of the United States.

Section 502(b) provides that applications for special removal proceedings shall be filed under seal with the special court established pursuant to section 503. At or after the time the application is filed, the Attorney General may take the subject alien into custody. The

Attorney General's authority to retain the alien in custody is governed by the provisions of new title V which, as explained below, provide in certain circumstances for the release of the alien.

Although title V does not require the Attorney General to take the alien subject to special removal applications into custody, it is expected that most such aliens will be apprehended and confined. The Attorney General's decision whether to take a non-resident alien into custody will not be subject to judicial review. However, a resident alien is entitled to a release hearing before the judge assigned by the special court. The resident alien may be released upon such terms and conditions prescribed by the court (including the posting of any monetary amount), if the alien demonstrates to the court that the alien, if released, is not likely to flee and that the alien's release will not endanger national security or the safety of any person or the community. Subsequent provisions (section 504(a)) authorize the Attorney General to retain custody of alien terrorists who have been ordered removed until such aliens can be physically delivered outside our borders.

Section 502(c) provides that special removal applications shall be considered by a single Article III judge in accordance with section 503. In each case, the judge shall hold an ex parte hearing to receive and consider the written information provided with the application and such other evidence, whether documentary or testimonial in form, as the Department of Justice may proffer. The judge shall grant an ex parte order authorizing the special removal hearing as provided under title V if the judge finds that, on the basis of the information and evidence presented, there is probable cause to believe that the subject of the application is an alien who falls within the definition of alien terrorist and that adherence to the ordinary deportation procedures would pose a risk to national security.

Section 502(d)(1) provides that in any case in which a special removal application is denied, the Department of Justice within 20 days may appeal the denial to the United States Court of Appeals for the District of Columbia Circuit. In the event of a timely appeal, a confined alien may be retained in custody. When the Department of Justice appeals from the denial of a special removal application, the record of proceedings will be transmitted to the Court of Appeals under seal and the court will hear the appeal ex parte. Subsequent provisions (section 502(p)) authorize the Department of Justice to petition the Supreme Court for a writ of certiorari from an adverse appellate judgment.

Section 502(d)(2) provides that if the Department of Justice does not seek appellate review of the denial of a special removal application, the subject alien must be released from custody unless, as a deportable alien, the alien may be arrested and taken into custody pursuant to title II of the INA. Thus, for example, when the judge finds that the special procedures of title V are unwarranted but the alien is subject to deportation as an overstay or for violation of status, the alien might be retained in custody but such detention would be pursuant to and governed by the provisions of title II.

Subsection 502(d)(3) provides that if a special removal application is denied because the judge finds no probable cause that the alien has engaged in terrorist activities, the alien must be released from custody during the pendency of an appeal by the government. However, section 502(d)(3) is similar to section 502(d)(2) in that it provides for the possibility of continued detention in the case of aliens who otherwise are subject to deportation under title II of the Act.

Section 502(d)(4) applies to cases in which the judge finds probable cause that the subject of a special removal application has been correctly identified as an alien terrorist, but fails to find probable cause that use of the special procedures are necessary for reasons of national security, and the Department of Justice determines to appeal. A finding that the alien has engaged in terrorist activity—a ground for deportation that would support confinement under title II of the Act—justifies retaining the alien in custody. Nevertheless, section 502(d)(4) provides that the judge must determine the question of custody based upon an assessment of the risk of flight and the danger to the community or individuals should the alien be released. The judge shall release the alien subject to the least restrictive condition(s) that will reasonably assure the alien's appearance at future proceedings, should the government prevail on its appeal, and will not endanger the community or individual members thereof. The possible release conditions are those authorized under the Bail Reform Act of 1984, 18 U.S.C. 3142(b) and (c), and range from release on personal recognizance to release on execution of a bail bond or release limited to certain places or periods of time. As with the referenced provsions of the Bail Reform Act, the judge may deny release altogether upon determining that no condition(s) of release would assure the alien's future appearance and community safety.

Section 502(e)(1) provides that in cases in which the special removal application is approved, the judge must then consider each piece of classified evidence that the Department of Justice proposes to introduce in camera and ex parte at the special removal hearing. The judge shall authorize the in camera and ex parte introduction of any item of classified evidence if such evidence is relevant to the deportation charge.

Section 502(e)(1) also provides that with respect to any evidence authorized to be introduced in camera and ex parte, the judge must consider how the alien subject to the proceedings is to be advised regarding such evidence. The Department of Justice must prepare a summary of the classified informaiton. The court must find the summary to be sufficient to inform the alien of the general nature of the evidence that he has engaged in terrorist activity, and to permit the alien to prepare a defense. A summary, however, ''shall not pose a risk to the national security.'' In considering the summary to be provided to the alien of the government's proffered evidence, it is intended that the judge balance the alien's interest in having an opportunity to hear and respond to the case against him against the government's extraordinarily strong interest in protecting the national security. The Department of Justice shall provide the alien a copy of the court approved summary.

In situations where the court does not approve the proposed summary, the Department of Justice can amend the summary to meet specific concerns raised by the court. Subsection (e)(2) provides that if such submission is still found unacceptable, the special removal proceeding is to be terminated unless the court finds that the continued presence of the alien in the United States or the preparation of an adequate summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person. If such a situation exists, the special removal hearing would continue, the alien would be notified that no summary is possible, and relevant classified information could be introduced against the alien pursuant to subsection (j).

Section 502(e)(3) provides that, in certain situations, the Department of Justice may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit from the judge's rulings regarding the in camera and ex parte admission and summarization of particular items of evidence. Interlocutory appeal is authorized if the judge rules that a piece of classified information may not be introduced in camera and ex parte because it is not relevant; or if the Department disagrees with the judge regarding the wording of a summary (that is, if the Department believes that the scope of summary required by the court will compromise national security). Interlocutory appeal is also authorized when the court refuses to make the finding permitted by subsection (e)(2). Because the alien is to remain in custody during such an appeal, the Court of Appeals must hear the matter as expeditiously as possible. When the Department appeals, the entire record must be transmitted to the Court of Appeals under seal and the court shall hear the matter ex parte.

Section 502(f) provides that in any case in which the Department's application is approved, the court shall order a special removal hearing for the purpose of determining whether the alien in question has engaged in terrorist activity. Subsection (f) provides that ''[i]n accordance with subsection (e), the alien shall be given reasonable notice of the nature of the charges against him and a general account of the basis for the charges.'' This cross-reference is intended to make clear that subsection (f) is not to be construed as requiring that information be given to the alien about the nature of the charges if such information would reveal the matters that are to be introduced in camera. The special removal hearing must be held as expeditiously as possible.

Section 502(g) provides that the special removal hearing shall be held before the same judge who approved the Department of Justice's application unless the judge becomes unavailable due to illness or disability.

Section 502(h) sets out the rights to be afforded to the alien at the special removal hearing. The hearing shall be open to the public, the alien shall have the right to be represented by counsel (at government expense if he cannot afford representation), and to introduce evidence in his own behalf. Except as provided in section 502(j) regarding presentation of evidence in camera and ex parte, the alien also shall have a reasonable opportunity to examine the evidence against him and to cross-examine adverse witnesses. As in the case of administrative proceedings under the INA and civil proceedings generally, the alien may be called as a witness by the Department of Justice. A verbatim record of the proceedings and of all evidence and testimony shall be kept.

Section 502(i) provides that either the alien or the government may request the issuance of a subpoena for witnesses and documents. A subpoena request may be made ex parte, except that the judge must inform the Department of Justice where the subpoena sought by the alien threatens disclosure of evidence of the source or evidence which the Department of Justice has introduced or proffered for introduction in camera and ex parte. In such cases, the Department of Justice shall be given a reasonable opportunity to oppose the issuance of a subpoena and, if necessary to protect the confidentiality of the evidence or its source, the judge may, in his discretion, hear such opposition in camera. A subpoena under section 502(i) may be served anywhere in the United States. Where the alien shows an inability to pay for the appearance of a necessary witness, the court may order the costs of the subpoena and witness fee to be paid by the government from funds appropriated for the enforcement of

title II of the INA. Section 502(i) states that it is not intended to allow the alien access to classified information.

Section 502(j) provides that any evidence which has been summarized pursuant to section 502(e)(1) may be introduced into the record, in documentary or testimonial form, in camera and ex parte. The section also permits the introduction of relevant classified information if the court has made the finding permitted by subsection (e)(2). While the alien and members of the public would be aware that evidence was being submitted in camera and ex parte, neither the alien nor the public would be informed of the nature of the evidence except as set out in section 502(e)(1). For example, if the Department of Justice sought to present in camera and ex parte evidence through live testimony, the courtroom could be cleared of the alien, his counsel, and the public while the testimony is presented. Alternatively, the court might hear the testimony in chambers attended by only the reporter, the government's counsel, and the witness. In the case of documentary evidence, sealed documents could be presented to the court without examination by the alien or his counsel (or access by the public).

While the Department of Justice does not have to present evidence in camera and ex parte, even if it previously has received authorization to do so, it is contemplated that ordinarily much of the government's evidence (or at least the crucial portions thereof) will be presented in this fashion rather than in open court. The right to present evidence in camera and ex parte will have been determined in the ex parte proceedings before the court pursuant to subsections (a) through (c) of section 502.

Section 502(k) provides that evidence introduced in open session or in camera and ex parte may include all or part of the information that was presented at the earlier ex parte proceedings. If the evidence is to be introduced in camera and ex parte, the attorney for the Department of Justice could refer the judge to such evidence in the transcript of the ex parte hearing and ask that it be considered as evidence at the removal hearing itself. The Department might present evidence in open court rather than in camera and ex parte as a result of changed circumstances, for example, where the source whose life was at risk had died before the hearing or if the Department believes that a public presentation of the evidence might have a deterrent effect on other terrorists. In any event, once the Department of Justice has received authorization to present evidence in camera and ex parte, its decision whether to do so is purely discretionary and is not subject to review at the time of the special removal hearing. Of course, the disclosure of any classified information requires appropriate consultation with the originating agency.

Section 502(l) provides that following the introduction of evidence, the attorney for the Department of Justice and the attorney for the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the alien's removal. At the judge's discretion, in camera and ex parte argument by the Department of Justice attorney may be heard regarding evidence received in camera and ex parte.

Section 502(m) provides that the Department of Justice has the burden of showing that the evidence is sufficient. This burden is not satisfied unless the Department establishes by clear and convincing evidence—the standard of proof applicable in a deportation hearing—that the alien has engaged in terrorist activity. If the judge finds that the Department has met that burden, the judge must order the alien removed. In cases in which the alien has been shown to have engaged in terrorist activity, the judge has no authority to decide that removal would be unwarranted. If the alien was a resident alien granted release, the court is to order the Attorney General to take the alien into custody.

Section 502(n)(1) provides that the judge must render his decision as to the alien's removal in the form of a written order. The order must state the facts found and the conclusions of law reached, but shall not reveal the substance of any evidence received in camera or ex parte.

Section 502(n)(2) provides that either the alien or the Department of Justice may appeal the judge's decision to the United States Court of Appeals for the District of Columbia Circuit. Any such appeal must be filed within 20 days, and during this period the order shall not be executed. Information received in camera and ex parte at the special removal hearing shall be transmitted to the Court of Appeals under seal. The Court of Appeals must hear the appeal as expeditiously as possible.

Section 502(n)(3) sets out the standard of review for proceedings in the Court of Appeals. Questions of law are to be reviewed de novo, but findings of fact may not be overturned unless clearly erroneous. This is the usual standard in civil cases.

Section 502(o) provides that in cases in which the judge decides that the alien should not be removed, the alien must be released from custody. There is an exception for aliens who may be arrested and taken into custody pursuant to title II of the INA as aliens subject to deportation. For such aliens, the issues of release and/or circumstances of continued detention would be governed by the pertinent provisions of the INA.

Section 502(p) provides that following a decision by the Court of Appeals, either the alien or the government may seek a writ of certiorari in the Supreme Court. In such cases, information submitted to the Court of Appeals under seal shall, if transmitted to the Supreme Court, remain under seal.

Section 502(q) sets forth the normal right the Government has to dismiss a removal action at any stage of the proceeding.

Section 502(r) acknowledges that the United States retains it common law privileges.

*Section 503 (Designation of Judges)*

Section 503 establishes the special court to consider terrorist removal cases under section 502, patterned on the special court created under the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801 et seq. Section 503(a) provides that the court will consist of five federal district court judges chosen by the Chief Justice of the United States from five different judicial circuits. One of these judges shall be designated as the chief or presiding judge. Should the Chief Justice determine it appropriate, he could designate as judges under this section some of those that he has designated pursuant to section 1803(a) of title 50, United States Code for the Foreign Intelligence Surveillance Court. The presiding judge shall promulgate rules for the functioning of the special court. The presiding judge also shall be responsible for assigning cases to the various judges. Section 503(c) provides that judges shall be appointed to the special court for terms of five years, except for the initial appointments the terms of which shall vary from one to five years so that one new judge will be appointed each year. Judges may be reappointed to the special court.

Section 503(b) provides that all proceedings under section 502 are to be held as expeditiously as possible. Section 503(b) also provides that the Chief Justice, in consultation with the Attorney General, the Director of Central Intelligence and other appropriate officials, shall provide for the maintenance of appropriate security measures to protect the ex parte special removal applications, the orders entered in response to such applications, and the evidence received in camera and ex parte sufficient to prevent disclosures which could compromise national security.

*Section 504 (Miscellaneous Provisions)*

Section 504 contains the title's miscellaneous provisions. Section 504(a) provides that following a final determination that the alien terrorist should be removed (that is, after the special removal hearing and completion of any appellate review), the Attorney General may retain the alien in custody (or if the alien was released, apprehend and place the alien in custody) until he can be removed from the United States. The alien is provided the right to choose the country to which he will be removed, subject to the Attorney General's authority, in consultation with the Secretary of State, to designate another country if the alien's choice would impair a United States treaty obligation (such as an obligation under an extradition treaty) or would adversely affect the foreign policy of the United States. If the alien does not choose a country or if he chooses a country deemed unacceptable, the Attorney General, in coordination with the Secretary of State, must make efforts to find a country that will take the alien. The alien may, at the attorney General's discretion, be kept in custody until an appropriate country can be found, and the Attorney General shall provide the alien with a written report regarding such efforts at least once every six months. The Attorney General's determinations and actions regarding execution of the removal order are not subject to direct or collateral judicial review, except for a claim that continued detention violates the alien's constitutional rights. The alien terrorist shall be photographed and fingerprinted and advised of the special penalty provisions for unlawful return before he is removed from the United States.

Section 504(b) provides that, notwithstanding section 504(a), the Attorney General may defer the actual removal of the alien terrorist to allow the alien to face trial on any State or federal criminal charge (whether or not related to his terrorist activity) and, if convicted, to serve a sentence of confinement. Section 504(b)(2) provides that pending the service of a State or federal sentence of confinement, the alien terrorist is to remain in the Attorney General's custody unless the Attorney General determines that the alien can be released to the custody of State authorities for pretrial confinement in a State facility without endangering national security or public safety. It is intended that where the alien terrorist could possibly secure pretrial release, the Attorney General shall not release the alien to a State for pretrial confinement. Section 503(b)(3) provides that if an alien terrorist released to State authorities is subsequently to be released from state custody because of an acquittal in the collateral trial, completion of the alien's sentence of confinement, or otherwise, the alien shall immediately be returned to the custody of the Attorney General who shall then proceed to effect the alien's removal from the United States.

Section 504(c) provides that for purposes of sections 751 and 752 of title 18 (punishing escape from confinement and aiding such an escape), an alien in the Attorney General's custody pursuant to this new title—whether awaiting or after completion of a special removal hearing—shall be treated as if in custody by virtue of a felony arrest. Accordingly, escape by or aiding the escape of an

alien terrorist will be punishable by imprisonment for up to five years.

Section 504(d) provides that an alien in the Attorney General's custody pursuant to this new title—whether awaiting or after completion of a special removal hearing—shall be given reasonable opportunity to receive visits from relatives and friends and to consult with his attorney. Determination of what is ''reasonable'' usually will follow the ordinary rules of the facility in which the alien is confined.

Section 504(d) also provides that when an alien is confined pursuant to this new title, he shall have the right to contact appropriate diplomatic or consular officers of his country of citizenship or nationality. Moreover, even if the alien makes no such request, subsection (d) directs the Attorney General to notify the appropriate embassy of the alien's detention.

Subsection 201(c) sets out three conforming amendments to the INA. First, section 106 of the INA, 8 U.S.C. §1105a, is amended to provide that appeals from orders entered pursuant to section 235(c) of the Act (pertaining to summary exclusion proceedings for alien spies, saboteurs, and terrorists) shall be to the United States Court of Appeals for the District of Columbia Circuit. Thus, in cases involving alien terrorists, the same court of appeals shall hear both exclusion and deportation appeals and will develop unique expertise concerning such cases.

Second, section 276 of the INA, 8 U.S.C. §1326, is amended to add increased penalties for an alien entering or attempting to enter the United States without permission after removal under the new title or exclusion under section 235(c) for terrorist activity. For aliens unlawfully reentering or attempting to reenter the United States, the section presently provides for a fine pursuant to title 18 and/or imprisonment for up to two years (five years when the alien has been convicted of a felony in the United States, or 15 years when convicted of an ''aggravated felony''); the bill increases to a mandatory ten years the term of imprisonment for reentering alien terrorists.

Finally, section 106 of the INA, 8 U.S.C. §1105a, is amended to strike subsection (a)(10) regarding habeas corpus review of deportation orders. Originally enacted in 1961 to make clear that the exclusive provision for review of final deportation orders through petition to the courts of appeals was not intended to extinguish traditional writs of habeas corpus in cases of wrongful detention, the subsection has been the source of confusion and duplicative litigation in the courts. Congress never intended that habeas corpus proceedings be an alternative to the process of petitioning the courts of appeals for review of deportation orders. Elimination of subsection (a)(10) will make clear that any review of the merits of a deportation order or the denial of relief from deportation is available only through petition for review in the courts of appeals, while leaving unchanged the traditional writ of habeas corpus to examine challenges to detention arising from asserted errors of constitutional proportions.

Subsection 201(d) provides that the new provisions are effective upon enactment and ''apply to all aliens without regard to the date of entry or attempted entry into the United States.'' Aliens may not avoid the special removal process on the grounds that either their involvement in terrorist activity or their entry into the United States occurred before enactment of the new title. Upon enactment, the new title will be available to the Attorney General for removal of any and all alien terrorists when classified information is involved.

SECTION 202

This section makes additional changes to the Immigration and Naturalization Act (INA) besides those contained in section 201. It improves the government's ability to deny visas to alien terrorist leaders and to deport non-resident alien terrorists under the INA.

Subsection 202(a) amends the excludability provisions of the INA relating to terrorism activities (section 212(a)(3)(B) of the INA (8 U.S.C. 1182(a)(3)(B)). Most of the changes are clarifying in nature, but a few are substantive. The changes are:

(1) ''Terrorist'' is changed to ''terrorism'' in most instances in order to direct focus on the nature of the activity itself and not the character of the particular individual perpetrator.

(2) Definitions of ''terrorist organization'' and ''terrorism'' are added. The definition of ''terrorist organization'' includes subgroups. Although a terrorist organization may perform certain charitable activities, *e.g.*, run a hospital, this does not remove its characterization of being a terrorist organization if it, or any of its subgroups, engages in terrorism activity. The definition of ''terrorism'' describes terrorism as the ''premeditated politically motivated violence perpetrated against noncombat targets.'' This is consistent with existing law found elsewhere in the federal code. See, *e.g.*, 22 U.S.C. 2656f(d).

(3) In order to make ''representatives'' of certain specified terrorist organizations excludable, the term has been expanded to cover any person who directs, counsels, commands or induces the organization or its members to engage in terrorism activity. The terms ''counsels, commands, or induces'' are used in 18 U.S.C. 2. Presently, only the officers, officials, representatives and spokesman are deemed to be excludable. This change expands coverage to encompass those leaders of the group who may not hold formal titles and those who are closely associated with the group and exert leadership over the group but may not technically be a member. This is not a mere membership provision.

(4) In order to make the ''leaders'' of more terrorist organizations excludable without having to establish that they personally have engaged in terrorist activity, the revision gives the President authority to designate terrorist organizations based on a finding that they are detrimental to the interests of the United States. (Presently, only the PLO is expressly cited in the existing statute.) Implicit with the right to designate is the authority to remove an organization that the President has previously designated. By giving the President this authority, which is similar to subsection (f) of section 212 (8 U.S.C. 212(f)), the President can impose stricter travel limitations on the leaders of terrorist organizations who desire to visit the United States. For a leader of a designated terrorist organization to obtain a visa, he would have to solicit a waiver from the Attorney General under subsection 212(d)(3) (8 U.S.C. 1182(d)(3)) to obtain temporary admission. In deciding whether or not to grant to waiver, the Attorney General could, should he/she decide to grant a waiver, impose whatever restrictions are warranted on the alien's presence in the United States.

(5) The words ''it has been'' are inserted in the first sentence of the definition of ''terrorism activity'' in order to make clear that it is United States law (federal or state) which is used to determine whether overseas violent activity is considered criminal.

(6) The term ''weapons'' is added to clause (V)(b) in the definition of ''terrorist activity'' in order to cover those murders carried out by deadly and dangerous devices other than firearms or explosives (e.g., a knife).

(7) The knowledge requirement in clause (III) of the definition of ''engage in terrorism activity'' was deleted as unnecessary, as similar language has been added in the beginning of the definition.

(8) The term ''documentation or'' has been added to ''false identification'' in clause (III) of the definition of ''engage in terrorism activity'' to encompass other forms of false documentation that might be provided to facilitate terrorism activity. The term ''false identification'' would include stolen, counterfeit, forged and falsely made identification documents.

Subsection 202(b) amends section 241(a)(4)(B) of the INA (8 U.S.C. 1251(a)(4)(B)) to reflect the change in section 212(a)(3)(B) (8 U.S.C. 1182(a)(3)(B)) from ''terrorist'' to ''terrorism.''

Subsection 202(c) adds a sentence to section 291 of the INA (8 U.S.C. 1361) to clarify that discovery by the alien in a deportation proceeding is limited only to those documents in the INS file relating to the alien's entry. Section 291 was never intended to authorized discovery beyond this limited category of documents.

Subsection 202(d) makes an important change to section 242(b)(3) of the INA (8 U.S.C. 1252(b)(3)). First, in the case of nonresident aliens it precludes the alien's access to any classified information that is being used to deport them. Secondly, it denies nonresident aliens any rights under 18 U.S.C. 3504 (relating to access concerning sources of evidence) and 50 U.S.C. 1801 et seq. (relating to the Foreign Intelligence Surveillance Act) during their deportation.

SECTION 203

Section 203 amends the confidentiality provisions contained in the Immigration and Nationality Act (INA) for an alien's application relating to legalization (section 245A(c)(5) of the INA (8 U.S.C. 1255(a)(c)(5)) or special agricultural worker status (section 210(b)(5) and (6) of the INA (8 U.S.C. 1160(b)(5) and (6)). At present, it is very difficult to obtain crucial information contained in these files, such as fingerprints, photographs, addresses, etc., when the alien becomes a subject of a criminal investigation. In both the World Trade Center bombing and the killing of CIA personnel on their way to work at CIA Headquarters, the existing confidentiality provisions hindered law enforcement efforts.

Subsection 203(a) amends the confidential provisions for legalization files. It permits access to the file if a federal court finds that the file relates to an alien who has been killed or severely incapacitated or is the suspect of an aggravated felony. Subsection 203(b) makes comparable amendments to the confidentiality requirements relating to special agricultural worker status.

SECTION 301

Section 301 authorizes the government to regulate or prohibit any person or organization within the United States and any person subject to the jurisdiction of the United States anywhere from raising or providing funds for use by any foreign organization which the President has designated to be engaged in terrorism activities. Such designation would be based on a Presidential finding that the organization (1) engages in terrorism activity as defined in the Immigration and Nationality Act and (2) its terrorism activities threaten the national security, foreign policy, or economy of the United States.

The fund-raising provision provides a licensing mechanism under which funds may be provided to a designated organization based on a showing that the money will be used exclusively for religious, charitable, literary, or educational purposes. It includes

both administrative and judicial enforcement procedures, as well as a special classified information procedures applicable to certain types of civil litigation. The term ''person'' is defined to include individuals, partnerships, associations, groups, corporations or other organizations.

Subsection 301(a) creates a new section 2339B in title 18, United States Code, entitled ''Fund-raising for terrorist organizations.''

Subsection 2339B(a) sets forth the congressional findings and purposes for the fund-raising statute.

Subsection 2339B(b) gives the President the authority to issue regulations to regulate or prohibit any person within the United States or any person subject to the jurisdiction of the United States anywhere from raising or providing funds for use by, or from engaging in financial transactions with, any foreign organization which the President, pursuant to subsection 2339B(c), has designated to be engaged in terrorism activities.

Subsection 2339B(c)(1) grants the President the authority to designate any foreign organization, if he finds that (1) the organization engages in terrorism activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) and (2) the organization's terrorism activities threaten the national security, foreign policy or economy of the United States. Subsection 2339B(c)(2) grants the President the authority to designate persons who are raising funds for or are acting for or on behalf of a foreign organization designated pursuant to subsection (c)(1).

Such designations must be published in the Federal Register. The President is authorized to revoke any designation. A designation under subsection (c)(1) is conclusive and is not reviewable by a court in a criminal prosecution.

Subsection 2339B(d) sets forth the prohibited activities. Paragraph (1) makes it unlawful for any person within the United States, or any person subject to the jurisdiction of the United States anywhere in the world, to raise, receive, or collect funds on behalf of or to furnish, give, transmit, transfer, or provide funds to or for an organization designated by the President unless such activity is done is accordance with a license granted under subsection 2339B(e). Paragraph (2) makes it unlawful for any person within the United States or any person subject to the jurisdiction of the United States anywhere in the world, acting for or or behalf of a designated organization, (1) to transit, transfer, or receive any funds raised in violation of subsection 2339B(d)(1); (2) to transmit, transfer or dispose of any funds in which any designated organization has an interest; or (3) to attempt to do any of the foregoing. The latter provision serves to make it a crime for any person within the United States, or any person subject to the jurisdiction of the United States anywhere, to transfer, transfer or dispose of on behalf of a designated organization any funds in which such organization has an interest until after a license has been issued.

Subsection 2339B(e) requires that any person who desires to solicit funds or transfer funds to any designated organization must obtain a license from the Secretary of the Treasury. Any license issued by the Secretary shall be granted only when the Secretary is satisfied that the funds are intended exclusively for religious, charitable, literacy, or educational purposes and that any recipient in any fund-raising chain has effective procedures in place to insure that the funds will be used exclusively for religious, charitable, literary, or educational purposes and will not be used to affect a transfer of funds to be used in terrorism activity. The burden is on the license applicant to convince the Secretary that such procedures do in fact exist. A licensee is required to keep books and records and make such books available for inspection upon the Secretary's request. A licensee is also required to have an agreement with any recipient which permits the Secretary to inspect the recipient's records.

Subsection 2339B(f) requires that a financial institution which becomes aware that it is in possession of or that it has control over funds in which a designated organization has an interest must ''freeze'' such funds and notify the Secretary of the Treasury. A civil penalty is provided for failure to freeze such funds or report the required information to the Secretary. The term ''financial institution'' has the meaning prescribed in 31 U.S. C. 5312(a)(2) and regulations promulgated thereunder. It is the same definition as utilized in the money laundering statute, see 18 U.S.C. 1956(c)(6).

Subsection 2339B(g) divides investigative responsibility for the section between the Secretary of the Treasury and the Attorney General. This provision thus permits the combination of the administrative and financial expertise of Treasury's Office of Foreign Assets Control (OFAC) and the intelligence capabilities and criminal investigative techniques of the Federal Bureau of Investigation (FBI) to be combined together in a highly coordinated manner in order to effectively enforce the requirements of this section while protecting the equities of the nation's national security intelligence gathering community. The provision reflects, as does section 407 of the bill, the FBI's role as the lead federal agency for the investigation and prosecution of terrorist activity as well as the prime federal intelligence agency for gathering national security information within the United States.

Section 2339B(h) gives authority to the Secretary of the Treasury and the Attorney General to require recordkeeping, hold hearings, issue subpoenas, administer oaths and receive evidence.

Subsection 2339B(i) sets forth the penalties for section 2339B. Any person who knowingly violates subsection 2339B(d) can be fined under title 18, United States Code, or imprisoned for up to ten years, or both. A person who fails to keep records or make records available to the Secretary of the Treasury upon his/her request is subject to a civil penalty of the greater of $50,000 or twice the amount of money which would have been documented had the books and records been properly maintained. A financial institution which fails to take the actions required pursuant to subsection (f)(1) is subject to civil penalty of the greater of $50,000 or twice the amount of money of which the financial institution was required to retain possession or control. Any person who violates any license, order, direction, or regulation issued pursuant to the section is subject to a civil penalty of the greater of $50,000 per violation or twice the value of the violation. A person who intentionally fails to maintain or make available the required books or records also commits a crime subject to a fine under title 18, United States Code, or imprisonment for up to five years, or both. Any organization convicted of an offense under subsections 2339B(i)(1) or (3) shall forfeit any charitable designation it might have received under the Internal Revenue Code.

Subsection 2339B(j)(1) gives the Attorney General the right to seek an injunction to block any violation of section 2339B. An injunctive proceeding is normally governed by the Federal Rules of Civil Procedure, but if the respondent is under indictment, discovery is to be governed by the Federal Rules of Criminal Procedure.

Subsection 2339B(k) states that there is extra territorial jurisdiction over activity prohibited by section 2339B which is conducted outside the United States. This insures that foreign persons outside the United States are covered by this statute if they aid, assist, counsel, command, induce or procure, or conspire with, persons within the United States or persons subject to the jurisdiction of the United States anywhere in the world to violate the fund-raising prohibition (18 U.S.C. 2339B, 2, and 371).

Subsection 2339B(1) sets forth a special process to protect classified information when the government is the plaintiff in civil proceedings to enforce section 2339B.

Subsection 2339B(m) sets forth the definitions of ''classified information,'' ''financial institution,'' ''funds,'' ''national security,'' ''person,'' and ''United States.'' Funds are defined to include all currency, coin, and any negotiable or registered security that can be used as a method of transferring money.

Subsection 301(c) further amends section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)) to include leaders of any terrorist organization designated under the fund-raising statute (18 U.S.C. 2339B) as an aliens deemed to be excludable under the immigration laws.

Subsection 301(d) makes the special classified information provisions of 18 U.S.C. 2339B(k) applicable to similar civil proceedings under the International Emergency Economic Powers Act (50 U.S.C. 1701 et. seq.).

SECTION 401

This section states that title IV may be cited as the ''Marking of Plastic Explosives for Detection Act.''

SECTION 402

This section sets forth the congressional findings concerning the criminal use of plastic explosives and the prevention of such use through the marking of plastic explosives for the purpose of detection. This section also states that the purpose of the legislation is to implement the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991 (the Convention).

SECTION 403

This section sets forth three new definitions for 18 U.S.C. 841. It amends 18 U.S.C. 841 by adding a new subsection (o) which defines the term ''Convention on the Marking of Plastic Explosives.'' The definition provides the full title of the Convention, ''Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.'' The definition eliminates the need to repeat the full title of the Convention each time it is used in the bill.

Section 403 also amends section 841 by adding a new subsection (p) which defines the term ''detection agent.'' The term has been defined to include four specified chemical substances and any other substance specified by the Secretary of the Treasury by regulation. The four specified chemical substances, ethylene glycol dinitrate (EDGN), 2, 3-dimethyl-2-3-dinitrobutane (DMNB), paramononitrotoluene (p-MNT), and orthomononitrotoluene (o-MNT), are in Part 2 of the Technical Annex to the Convention. The required minimum concentration of the four substances in the finished plastic explosives was also taken from the Technical Annex. The definition of ''detection agent'' has been drafted to require that the particular substance be introduced into a plastic explosive in such a manner as to achieve homogeneous distribution in the finished explosive. The purpose of homogeneous distribution is to assure that the detection agent can be detected by vapor detection equipment.

New section 841(p)(5) would permit the Secretary of the Treasury to add other substances to the list of approved detection agents by regulation, in consultation with the Secretaries of State and Defense. Permitting the Secretary to designate detection agents other than the four listed in the statute would facilitate the use of other substances without the need for legislation. Only those substances which have been added to the table in Part 2 of the Technical Annex, pursuant to Articles VI and VII of the Convention, may be designated as approved detection agents under section 841(p)(5). Since the Department of Defense (DOD) is the largest domestic consumer of plastic explosives (over 95 percent of domestic production), it is appropriate that DOD provide guidance to the Treasury Department in approving additional substances as detection agents.

Finally, section 403 adds a new subsection (q) to section 841 which defines the term ''plastic explosive.'' The definition is based on the definition of ''explosives'' in Article I of the Convention and Part I of the Technical Annex.

SECTION 404

This section adds subsections (l)–(o) to 18 U.S.C. §842 proscribing certain conduct relating to unmarked plastic explosives.

Section 842(l) would make it unlawful for any person to manufacture within the United States any plastic explosive which does not contain a detection agent.

Section 842(m) would make it unlawful for any person to import into the United States or export from the United States any plastic explosive which does not contain a detection agent. However, importations and exportations of plastic explosives imported into or manufactured in the United States prior to the effective date of the Act by Federal law enforcement agencies or the National Guard of any State, or by any person acting on behalf of such entities, would be exempted from this prohibition for a period of 15 years after the Convention is entered into force with respect to the United States. This provision implements Article IV, paragraph 3, of the Convention. Section 842(m) is drafted to specifically include the National Guard of any State and military reserve units within the 15-year exemption.

The purpose of the 15-year exemption is to give the military and Federal law enforcement agencies a period of 15 years to use up the considerable stock of unmarked plastic explosives they now have on hand. This exception would also permit DOD to export its unmarked plastic explosives to United States forces in other countries during the 15-year period.

Section 842(n)(1) would make it unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive which does not contain a detection agent. Section 842(n)(2)(A) would provide an exception to the prohibition of section 842(n)(1) for any plastic explosive which was imported, brought into, or manufactured in the United States prior to the effective date of the Act by any person during a period not exceeding three years after the effective date of the Act. This provision implements Article IV, paragraph 2, of the Convention, and provides an exemption from the prohibitions of section 842(n)(1) for any person, including State and local governmental entities and other Federal agencies, for a period of three years after the effective date of the Act.

Section 842(n)(2)(B) would provide an exception to the prohibition of section 842(n)(1) for any plastic explosive which was imported, brought into, or manfuactured in the United States prior to the effective date of the Act by any Federal law enforcement agency or the United States military or by any Federal law enforcement agency or the United States military or by any person acting on behalf of such entities for a period of 15 years after the date of entry into force of the Convention with respect to the United States. This provision implements Article IV, paragraph 3, of the Convention. The provision was drafted to specifically include the National Guard of any State and military reserve units within the 15-year exemption.

Section 842(o) would make it unlawful for any person, other than a Federal agency possessing any plastic explosive on the effective date of the Act, to fail to report to the Secretary of the Treasury within 120 days from the effective date of the Act the quantity of plastic explosive possessed, the manufacturer or importer of the explosive, any identifying markings on the explosive, and any other information as required by regulation. This provision implements Article IV, paragraph 1, of the Convention, which requires each State Party to take all necessary measures to exercise control over the possession and transfer of possession of unmarked explosives which have been manufactured in or imported into its territory prior to the entry into force of the Convention with respect to that State. This provision was drafted to specifically include the National Guard of any State and military reserve units as agencies which are exempt from the reporting requirement.

SECTION 405

This section amends 18 U.S.C. 844(a), which provides penalties for violating certain provisions of 18 U.S.C. 842. The amended section would add sections 842(l)-(o) to the list of offenses punishable by a fine under 18 U.S.C. 3571 of not more than $250,000 in the case of an individual, and $500,000 in the case of an organization, or by imprisonment for not more than 10 years, or both.

SECTION 406

This section amends 18 U.S.C. 845(a)(1), which excepts from the provisions of 18 U.S.C. Chapter 40 any aspect of the transportation of explosive materials regulated by the United States Department of Transportation. The purpose of the amendment is to make it clear that the exception in section 845(a)(1) applies only to those aspects of such transportation relating to safety. This amendment would overcome the effect of the adverse decisions in *United States v. Petrykievicz*, 809 F. Supp. 794 (W.D. Wash. 1992), and *United States v. Illingworth*, 489 F.2d 264 (10th Cir.) 1973). In those cases, the court held that the language of section 845(a)(1) resulted in the defendant's exemption from all the provisions of the chapter, including the requirement of a license or permit to ship, transport, or receive explosives in interstate or foreign commerce.

The list of offenses which are not subject to the exceptions of section 845(a) has also been amended to include the new plastic explosives offenses in sections 842(l)-(m).

Section 406 also adds a new subsection (c) to 18 U.S.C. 845 to provide certain affirmative defenses to the new plastic explosives offenses in sections 842(l)-(o). This provision implements Part 1, paragraph II, of the Technical Annex to the Convention, which relates to exceptions for limited quantities of explosives. The affirmative defenses of 18 U.S.C. 845(c) could be asserted by defendants in criminal prosecutions, persons having an interest in explosive materials seized and forfeited pursuant to 18 U.S.C. 844(c), and persons challenging the revocation or denial of their explosives licenses or permits pursuant to 18 U.S.C. 845(c).

The three affirmative defenses specified in section 845(c)(1) all relate to research, training, and testing, and require that the proponent provide evidence that there was a ''small amount'' of plastic explosive intended for and utilized solely in the specified activities. The respresentatives to the Conference which resulted in the Convention agreed that the amount of unmarked explosive permitted to be used for these purposes should be ''limited,'' but were unable to agree on a specific quantity. The Secretary of the Treasury may issue regulations defining what quantity of plastic explosives is a ''small amount'' or may leave it up to the proponent of the affirmative defense to prove that a ''small amount'' of explosives was imported, manufactured, possessed, etc. The statute is drafted to require that the proponent establish the affirmative defense by a preponderance of the evidence.

Section 845(c)(2) would create another affirmative defense to the plastic explosives offenses, which implements Article IV of the Convention, and Part I, Paragraph II(d), of the Technical Annex. This provision would require that proponent to prove, by a preponderance of the evidence, that the plastic explosive was, within three years after the date of entry into force of the Convention with respect to the United States, incorporated in a military device that is intended to become or has become the property of any Federal military or law enforcement agency. Furthermore, the proponent must prove that the plastic explosive has remained an integral part of the military device for the exemption to apply. This requirement would discourage the removal of unmarked plastic explosives from bombs, mines, and other military devices manufactured for the United States military during the three year period. The provision was drafted to specifically include the National Guard of any State and military reserve units within the exemption. The term ''military device'' has been defined in accordance with the definition of that term in Article I of the Convention.

Requiring that the exceptions of section 845(c) be established as an affirmative defense would facilitate the prosecution of violations of the new plastic explosive provisions by terrorists and other dangerous criminals in that the Government would not have to bear the difficult, if not impossible, burden of proving that the explosives were not used in one of the research, training, testing, or military device exceptions specified in the statute. The proponent of the affirmative defense would be in the best position to establish the existence of one of the exceptions.

The approach taken in section 845(c) is patterned after the affirmative defense provision in 18 U.S.C. 176 and 177, relating to the use of biological weapons.

SECTION 407

This section provides the Attorney General investigative authority over new subsections (m) and (n) of section 842, relating to the importation, exportation, shipping, transferring, receipt or possession of unmarked plastic explosives, when such provisions are violated by terrorist/revolutionary groups or individuals. This authority is consistent with the existing March 1, 1973, memorandum of understanding on the investigation of explosives violations between the Departments of Justice and the Treasury and the United States Postal Service. The section also makes it clear that, consistent with current national policy, the Federal Bureau of Investigation (FBI) is the lead Federal agency for investigating all violations of Federal law involving terrorism when the FBI has been given by statute or regulation investigative authority over the relevant offense. See 28 U.S.C. 523 and 28 C.F.R. 0.85(1).

SECTION 408

This section provides that the amendments made by title IV shall take effect one year after the date of enactment. The one year delay should be adequate for manufacturers to obtain sources of one of the specified detection agents and to reformulate the plastic explosives they manufacture to include a detection agent.

SECTION 501

Section 501 expands the scope and jurisdictional bases under 18 U.S.C. 831 (prohibited transactions involving nuclear materials). It is an effort to modify current law to deal with the increased risk stemming from the destruction of certain nuclear weapons that were once in the arsenal of the former Soviet Union and the lessening of security controls over peaceful nuclear materials in the former Soviet Union. Among other things, the bill expands the definition of nuclear materials to include those materials which are less than weapons grade but are dangerous to human life and/or the environment. It also expands the jurisdictional bases to reach all situations where a U.S. national or corporation is the victim or perpetrator of an offense. The bill expressly covers those situations where a threat to do some form of prohibited activity is directed at the United States Government.

Subsection 501(a)(1) sets forth a series of findings. Subsection 501(a)(2) sets forth the purpose.

Subsection 501(b) makes many technical changes to section 831 of title 18, United States Code. The ones of substance are:

(1) Paragraph (1) adds ''nuclear byproduct material'' to the scope of subsection 831(a).

(2) Paragraph (2) ensures coverage of situations under subsection 831(a)(1)(A) where there is substantial damage to the environment.

(3) Paragraph (3) rewrites subsection 831(a)(1)(B) in the following ways:

(A) drops the requirement that the defendant ''know'' that circumstances exist which are dangerous to life or property. If such circumstances are created through the intentional actions of the defendant, criminal sanctions are appropriate due to the inherently dangerous nature of nuclear material and the extraordinary risk of harm created.

(B) adds substantial damage to the environment; and

(C) adds language (i.e., ''such circumstances are represented to the defendant to exist'') to cover the situation of sales by undercover law enforcement to prospective buyers of materials purported to be nuclear materials. This is comparable to the new 18 U.S.C. 21 created by section 320910 of Pub. L. 103–322 for undercover operations.

(4) Paragraph (4) expands the threat provision of subsection 831(a)(6) to cover threats to do substantial damage to the environment.

(5) Paragraph (5) expands the jurisdiction in subsection 831(c)(2) beyond those situations where the offender is a United States national. As revised, it includes all situations, anywhere in the world where a United States national is the victim of an offense or where the perpetrator or victim of the offense is a ''United States corporation or other legal entity.''

(6) Paragraph (6) drops the requirement in subsection 831(c)(3) that the nuclear material be for ''peaceful purposes'', i.e., non-military, and that it be in use, storage, or transport. Hence, the provision now reaches any alien who commits an offense under subsection 831(a) overseas and is subsequently found in the United States. Of course, if the target of the offense was a U.S. national or corporation or the U.S. Government there would be jurisdiction of the offense under another provision of subsection 831(c), even when the perpetrator is still overseas. The activities prohibited by subsection 831(a) are so serious that all civilized nations have recognized their obligations to confront this growing problem because of its inherent dangerousness.

(7) Paragraph (8) deletes the requirement for subsection 831(c)(4) that the nuclear materials being shipped to or from the United States be for peaceful purposes. Hence, military nuclear materials are now encompassed under subsection 831(c)(4). It also adds nuclear byproduct material to the provision.

(8) Paragraph (10) adds a new paragraph (5) to subsection 831(c) to ensure that there is federal jurisdiction when the governmental entity being threatened under subsection 831(a)(5) is the United States and when the threat under subsection 831(a)(6) is directed at the United States.

(9) Paragraph (11) deletes an outmoded requirement, so that all plutonium is now covered.

(10) Paragraph (14) adds ''nuclear byproduct material'' to the definitions as a new subsection 831(f)(2). Nuclear byproduct material means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator. This will extend the prohibitions of this statute to materials that are not capable of creating a nuclear explosion, but which, nevertheless, could be used to create a radioactive dispersal device capable of spreading highly dangerous radioactive material throughout an area.

(11) Paragraph (17) adds to subsection 831(f) the definitions for the terms ''national of the United States'' and ''United States corporation or other legal entity.''

SECTION 601

This section deletes subsection (c) of the material support statute (18 U.S.C. 2339A(c)) enacted as part of the 1994 crime bill (Pub. L. 103–322). It would also correct erroneous statutory references and typographical errors (i.e., changes ''36'' to ''37,'' ''2331'' to ''2332,'' ''2339'' to ''2332a,'' and ''of an escape'' to ''or an escape'').

Subsection 2339A(c) of title 18, United States Code, imposes an unprecedented and impractical burden on law enforcement concerning the initiation and continuation of criminal investigations under 18 U.S.C. 2339A. Specifically, subsection (c) provides that the government may not initiate or continue an investigation under this statute unless the existing facts reasonably indicate that the target knowingly and intentionally has engaged, is engaged, or will engage in a violation of federal criminal law. In other words, the government must have facts that reasonably indicate each element of the offense before it even initiates (or continues) an investigation. The normal investigative practice is that the government obtains evidence which indicates that a violation may exist if certain other elements of the offense, particularly the knowledge or intent elements, are also present. The government then seeks to obtain evidence which establishes or negates the existence of the other elements. If such evidence is found to exist, the investigation continues to obtain the necessary evidence to prove its case beyond a reasonable doubt on every element.

As drafted, however, subsection (c) reverses the natural flow of a criminal investigation. It is an impediment to the effective use of section 2339A. Moreover, the provision would generate unproductive litigation which would only serve to delay the prosecution of any offender, drain limited investigative and prosecutive resources, and hinder efforts to thwart terrorism. It is the position of the Department of Justice that the investigative guidelines issued by the Attorney General adequately protect individual rights while providing for effective law enforcement.

Section 601 deletes subsection (c) retroactive to September 13, 1994, the date that the 1994 crime bill was signed into law. Since subsection (c) is procedural in nature, the retroactive nature of the proposed deletion does not pose a constitutional problem. It should suffice, however, to preclude a defendant from availing himself of subsection (c) in the event that the conduct charged in a subsequent indictment arose between September 13, 1994, and the enactment of section 601.

Section 102(c) of this Act also proposes to broaden the scope of the material support statute by incorporating, as one of the predicate offenses, the proposed statute relating to conspiracies within the United States to commit terrorist acts abroad.

SECTION 602

This section would add coverage for threats to the weapons of mass destruction statute (18 U.S.C. 2332a). The offense of using a weapon of mass destruction (or attempting or conspiring to use such a weapon) was created by section 60023 of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103–322). However, no threat offense was included. A threat to use such a weapon is a foreseeable tactic to be employed by a terrorist group. Further, it could necessitate a serious and costly government response, e.g. efforts to eliminate the threat, evacuation of a city or facility, etc. Accordingly, it seems clearly appropriate to make threatening to use a weapon of mass destruction a federal offense.

This section amends subsection (a) to include threats among the proscribed offenders. Further, it redesignates subsection (b) of section 2332a as subsection (c) and provides a new subsection (b). The new subsection (b) ensures jurisdiction when a national of the United States outside the United States is the perpetrator of the threat offense.

SECTION 603

Section 603 adds to the Racketeer Influenced and Corrupt Organizations (RICO) statute certain federal violent crimes relating to murder and destruction of property. These are the offenses most often committed by terrorists. Many violent crimes committed within the United States are encompassed as predicate acts for the RICO statute. However, RICO does not presently reach most terrorist acts directed against United States interests overseas. Hence, this section adds to RICO extraterritorial terrorism violations. When an organization commits a series of terrorist acts, a RICO theory of prosecution may be the optimal means of proceeding.

The offenses being added to as predicate acts to RICO are: 18 U.S.C. 32 (relating to the destruction of aircraft), 37 (relating to violence at international airports), 115 (relating to influencing, impeding or retaliating against a federal official by threatening or injuring a family member) 351 (relating to Congressional or Cabinet officer assassination), 831 (relating to prohibited transactions involving nuclear materials as amended by section 501 of this bill), 844 (f) or (i) (relating to destruction by explosives or fire of government property or property affecting interstate or foreign commerce), 956 (relating to conspiracy to kill, kidnap, maim or injure property certain property in a foreign country as amended by section 102 of this bill), 1111 (relating to murder), 1114 (relating to murder of United States law enforcement officials), 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to willful injury of

government property), 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), 1751 (relating to Presidential assassination), 2280 (relating to violence against maritime navigation as amended by section 606 of this bill), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to terrorist acts abroad against United States (nationals), 2332a (relating to use of weapons of mass destruction as amended by section 602 of this bill), 2332b (relating to acts of terrorism transcending national boundaries created by section 101 of this bill), and 2339A (relating to providing material support to terrorists as amended by sections 102(c) and 601 of this bill), and 49 U.S.C. 46502 (relating to aircraft piracy).

SECTION 604

18 U.S.C. 1956(a)(2)(A) makes it a felony to transfer funds from the United States to a place outside the United States if the transfer is done with the intent to promote the carrying on of ''specified unlawful activity.'' The term ''specified unlawful activity'' is defined in section 1956(c)(7)(B) to include an offense against a foreign nation involving kidnapping, robbery, or extortion as well as certain offenses involving controlled substances and fraud by or against a foreign bank. It does not, however, include murder or the destruction of property by means of explosive or fire.

In recent investigations of international terrorist organizations, it has been discovered that certain of these organizations collect money in the United States and then transfer the money outside the United States for use in connection with acts of terrorism which may involve murder or destruction of property in foreign nations.

In order to prevent terrorist organizations from collecting money inside the United States which is used to finance murders and destruction of property, subsection (a) would add ''murder and destruction of property by explosive or fire'' to the list of specified unlawful activity in section 1956(c)(7)(B)(ii). This amendment would also apply to cases where the proceeds of any such murder or property destruction would be laundered in the United States.

Subsection (b) would add to the definitions of ''specified unlawful activity'' in section 1956(c)(7)(D) of title 18, United States Code, those violent federal offenses most likely to be violated by terrorists overseas. Hence, if during the course of perpetrating these violent offenses the terrorists transferred funds in interstate or foreign commerce to promote the carrying on of any of these offenses, they would also violate the money laundering statute. The offenses added are the same as those added to the RICO statute by section 603 of this bill, except for 18 U.S.C. 1203 (relating to hostage taking) which is already contained as a money laundering predicate. It should be noted that if section 603 of this bill is enacted, subsection 604(b) need not be enacted because any offense which is included as a RICO predicate is automatically a predicate also under the money laundering statute.

SECTION 605

This section would add a number of terrorism-related offenses to 18 U.S.C. 2516, thereby permitting court-authorized interception of wire, oral, and electronic communications when the rigorous requirements of chapter 119 (including section 2516) are met. Presently, section 2516 contains a long list of felony offenses for which electronic surveillance is authorized. The list has grown periodically since the initial enactment of the section in 1968. As a result, coverage of terrorism-related offenses is not comprehensive. Section 2516 already includes such offenses as hostage taking under 18 U.S.C. 1203, train wrecking under 18 U.S.C. 1992, and sabotage of nuclear facilities or fuel under 42 U.S.C. 2284.

The instant proposal would add 18 U.S.C. 956, as amended by section 103 of this bill, and 960 (proscribing conspiracies to harm people or damage certain property of a foreign nation with which the United States is not at war and organizing or participating in from within the United States an expedition against a friendly nation), 49 U.S.C. 46502 (relating to aircraft piracy), and 18 U.S.C. 2332 (relating to killing United States nationals abroad with intent to coerce the government or a civilian population). It would also add 18 U.S.C. 2332a (relating to offenses involving weapons of mass destruction), 18 U.S.C. 2332b (relating to acts of terrorism transcending national boundaries, which offense is created by section 101 of this bill), 18 U.S.C. 2339A (relating to providing material support to terrorists), and 18 U.S.C. 37 (relating to violence at airports).

Terrorism offenses frequently require the use of court-authorized electronic surveillance techniques because of the clandestine and violent nature of the groups that commit such crimes. Adding the proposed predicate offenses to 18 U.S.C. 2516 would therefore facilitate the ability of law enforcement successfully to investigate, and sometimes prevent, such offenses in the future.

SECTION 606

In considering legislative proposals which were incorporated into the 1994 crime bill (Pub. L. 103–322), Congress altered the Department's proposed formulation of the jurisdictional provisions of the Maritime Violence legislation, the Violence Against Maritime Fixed Platforms legislation, and Violence at International Airports legislation, because of a concern over possible federal coverage of violence stemming from labor disputes. The altered language created uncertainties which were brought to the attention of Congress. Subsequently, the labor violence concern was addressed by adoption of the bar to prosecution contained in 18 U.S.C. 37(c), 2280(c) and 2281(c). With the adoption of this bar, the sections were to revert to their original wording, as submitted by the Department of Justice. While sections 37 and 2281 were properly corrected, the disturbing altered language was inadvertently left in section 2280.

Consequently, as clauses (ii) and (iii) of subsection 2280(b)(1)(A) of title 18, United States Code, are presently written, there would be no federal jurisdiction over a prohibited act within the United States by anyone (alien of citizen) if there was a state crime, regardless of whether the state crime is a felony. Moreover, the Maritime Convention mandated that the United States assert jurisdiction when a United States national does a prohibited act anywhere against any covered ship. Limiting jurisdiction over prohibited acts committed by United States nationals to those directed against only foreign ships and ships outside the United States does not fulfill our treaty responsibilities to guard against all wrongful conduct by our own nationals.

Moreover, as presently drafted, there is no federal jurisdiction over alien attacks against foreign vessels within the United States, except in the unlikely situation that no state crime is involved. This is a potentially serious gap. Finally, until the federal criminal jurisdiction over the expanded portion of the territorial sea of the United States is clarified, there remains some doubt about federal criminal jurisdiction over aliens committing prohibited acts against foreign vessels in the expanded portion of the territorial sea of the United States (*i.e.*, from 3 to 12 nautical miles out). Consequently, striking the limiting phrases in clauses (ii) and (iii) ensures federal jurisdiction, unless the bar to prosecution under subsection 2280(c) relating to labor disputes is applicable, in all situations that are required by the Maritime Convention.

SECTION 607

This section expands federal jurisdiction over certain bomb threats or hoaxes. Presently, 18 U.S.C. 844(e), covers threats to damage by fire or explosive property protected by 18 U.S.C. 844(f) or (i), if the United States mails, the telephone or some other instrument of commerce is used to convey the threat or the false information. Section 607 removes any jurisdictional nexus for the means used to convey the threat or false information. A sufficient jurisdictional nexus is contained in the targeted property itself, *i.e.*, the property (1) belongs to the United States Government, (2) is owned by an organization receiving federal funds, or (3) is used in or affects interstate or foreign commerce. The threat provision has also been drafted to cover a threat to commit an arson in violation of 18 U.S.C. 81 against property located in the special maritime and territorial jurisdiction of the United States.

SECTION 608

This section would amend the explosives chapter of title 18 to provide generally that a conspiracy to commit an offense under that chapter is punishable by the same maximum term as that applicable to the substantive offense that was the object of the conspiracy. In contrast, the general conspiracy statute, 18 U.S.C. 371, provides for a maximum of five years' imprisonment. This provision accords with several recent Congressional enactments, including 21 U.S.C. 846 (applicable to drug conspiracies) and 18 U.S.C. 1956(h) (applicable to money laundering conspiracies). See also section 320105 of Pub. Law 103–322, which raised the penalty for the offense of conspiracy to travel interstate with intent to commit murder for hire (18 U.S.C. 1958). This trend in federal law, which is emulated in the penal codes of many States, recognizes that, as the Supreme Court has observed, ''collective criminal agreement—partnership in crime—presents a greater potential threat to the public than individual delicts.'' *Callanan* v. *United States, 364 U.S. 587, 593 (1961);* accord *United States* v. *Feola*, 420 U.S. 671, 693–4 (1975).

Section 608 includes the introductory phrase ''[e]xcept as provided in this section'' in order to take account of one area where a different maximum penalty will apply. Section 110518(b) of Pub. Law 103–322 enacted a special twenty-year maximum prison penalty (18 U.S.C. 844(m)) for conspiracies to violate 18 U.S.C. 844(h), which prohibits using an explosive to commit certain crimes and which carries a mandatory five-year prison term for the completed crime. Like section 844(m), the proposed amendment exempts the penalty of death for a conspiracy offense.

SECTION 609

Section 609 would cure an anomaly in 18 U.S.C. 115. The statute presently punishes violent crimes against the immediate families of certain former federal officials and law enforcement officers (including prosecutors) in retaliation for acts undertaken while the former official was in office. However, the former official is not protected against such crimes. Federal investigators, prosecutors, and judges who are involved in terrorism cases are often the subject of death threats. The danger posed to the safety of such officers does not necessarily abate when they leave government service. Former United States officials should be protected by federal law against retaliation directed at

the past performance of their official duties. Section 609 would provide such protection.

SECTION 610

The changes made by this section are similar to that made by section 608 for explosives conspiracies.

This section adds ''conspiracy'' to several offenses likely to be committed by terrorists. Conspiracy is added to the offense itself to ensure that coconspirators are subject to the same penalty applicable to those perpetrators who attempt or complete the offense. Presently, the maximum possible imprisonment provided under the general conspiracy statute, 18 U.S.C. 371, is only five years. The offenses for which conspiracy is being added are: 18 U.S.C. 32 (destruction of aircraft), 37 (violence at airports serving international civil aviation), 115 (certain violent crimes against former federal officials, added by section 609, and family members of current or former federal officials), 175 (prohibitions with respect to biological weapons), 1203 (hostage taking), 2280 (violence against maritime navigation), and 2281 (violence against maritime fixed platforms), and 49 U.S.C. 46502 (relating to aircraft piracy).

SECTION 701

This section sets forth the congressional findings for title VII

SECTION 702

Amending subsection 573(d) of chapter 8 of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa2) would allow more flexibility and efficiency in the Department of State's Antiterrorism Training Assistance (ATA) program by permitting more courses to be taught overseas and allowing for instructors to teach overseas for up to 180 days. Current law allows training overseas for only certain specified types of courses and only for up to 30 days. Deleting subsection (f) of section 573 would allow for some personnel expenses for administering the ATA program to be met through the foreign aid appropriation. Currently, all such costs are paid from the Department of State's Salaries and Expenses account.●

● Mr. SPECTER. Mr. President, as chairman of the Intelligence Committee and the Judiciary Committee's Subcommittee on Terrorism, Technology and Government Information, I am pleased to join with the distinguished ranking member of the Judiciary Committee, Senator BIDEN, the ranking member of the Terrorism Subcommittee, Senator KOHL, the chairman of the Banking Committee, who has a long history of involvement on counter-terrorism activities, Senator D'AMATO, and the ranking member of the Intelligence Committee, Senator KERREY, in introducing the Omnibus Counter-Terrorism Act of 1995. I note that this bipartisan measure was drafted by the Justice and State Departments, and I appreciate their input and actions in support of this bill.

I have been actively involved in the fight against international terrorism for many years. In 1986, I introduced the law that made it a crime to commit an act of terrorism against a U.S. citizen in a foreign country. I also introduced a bill to provide the death penalty for terrorism murderers of U.S. citizens. A terrorist death penalty was finally enacted in 1994 as part of the crime bill.

This bill provides a next, but overdue step. It would, for the first time, make an act of international terrorism committed in this country a violation of Federal law and provide severe punishment, including the death penalty in the case of terrorist murders, against those who would commit acts of violence against people in the United States for political purposes. The legislation will also strengthen the hand of U.S. authorities to attack international terrorists by making illegal conspiracies to plan overseas terrorist acts in this country.

A second vital component of the legislation will make it easier to deport suspected terrorists from the United States. The current procedures of the Immigration and Nationality Act are cumbersome. The procedures outlined in this bill will expedite such deportations. Although I believe we need to study this issue, I am concerned about the due process implications of some of the special procedures that permit secret proceedings. I think the subcommittee will need to hold hearings on this issue and review it very carefully in order to ensure we strike the right balance between our national security needs and the requirements of the Constitution.

The third component of this comprehensive bill will be a restriction on fundraising for international terrorist groups in the United States. While international organizations will still be able to raise funds in the United States for charitable purposes, any fundraising in this country for an organization determined by the President to be engaged in conducting or supporting international terrorism will be barred. Again, we will need to take a very close look at this provision to ensure that it comports with the requirements of the first amendment.

Another important element of this bill is the implementation of the Montreal convention on the marking of plastic explosives to improve detectability. This important international agreement will make it easier to detect plastic explosives to avert tragedies like the bombing of Pan Am flight 103 over Lockerbie.

This legislation will provide additional weapons in our Nation's battle against international terrorism and on behalf of democracy throughout the world. I again wish to thank the administration for its work on the bill and the cosponsors. I urge all Members of the Senate to join with us in supporting this bill and to see to it that this bill is enacted promptly. ●

● Mr. KOHL. Mr. President, one need only read the cruel and tragic litany of terrorist incidents detailed in the first few pages of the bill we introduce today, to appreciate the need for—and importance of—this measure.

Though Americans are less at risk of terrorist attack than citizens of other countries, we are not immune, and we never will be, so long as we are a democracy with open borders. The concrete barriers now gracing the entrances to the World Trade Center—and to this very building—are a stark reminder of this reality.

And as a matter of both national security and morality, we cannot ignore the fact that terrorists who strike outside our borders, seek—and receive—aid and comfort within them.

This is simply intolerable. Free and open societies should not be free and open to movements and organizations that facilitate terror and wanton violence—whether in our communities, or across the world.

In the past, the Federal Government has vigorously joined the battle against terrorism. But there is clearly more to be done if we are to unite with civilized countries throughout the world to protect each other and our citizens from those who obey no law.

The legislation we introduce today, crafted by President Clinton, is a crucial next step in bolstering our commitment to fight international terror and politically-motivated violence.

The Omnibus Counter-Terrorism Act contains a number of important provisions. It creates a comprehensive Federal antiterrorism statute with stiff penalties. It clarifies that U.S. antiterrorism laws apply to each and every attack against U.S. nationals, regardless of where in the world an attack occurs.

This bill also solidifies the President's authority to shut down the fundraising activities of terrorist organizations on U.S. soil. And it creates a new mechanism that will facilitate the expulsion of aliens currently in the United States who are, or have, engaged in terrorist activities.

Let me close by noting that the sponsors of this bill are aware that any effort to crack down on terrorism must be sensitive to civil liberties concerns. And we must also be mindful of ethnic communities that may be affected if this legislation were implemented without due care and consideration.

I know that the Department of Justice has tried to keep these concerns in mind in drafting the bill we introduce today. And we stand ready to continue a discussion on this subject to ensure that our fight against terrorism is prosecuted fairly and judiciously.●

Mr. D'AMATO. Mr. President, I rise today to comment on the introduction of the Omnibus Counter-Terrorism Act of 1995. I am pleased to be an original cosponsor of this legislation along with Senators BIDEN, KOHL, SPECTER, and KERREY.

Mr. President, what we are seeing today is an exponential increase in violence across the globe. Acts that were once thought to be implausible are becoming commonplace. We witnessed the bombing of the World Trade Center 2 years ago. What we saw there was something that so sane person could imagine. Unfortunately, six people were killed and over 1,000 were injured. Thankfully, more we not killed and due to quick police work the perpetrators

of this horrible act were quickly apprehended. Additionally, special recognition must go out to those responsible for the arrest of Ramzi Yousef, the alleged mastermind of the operation, in Pakistan just this week.

We must prevent another World Trade Center-like operation from taking place. We can no longer rely on luck. The bill we are introducing today will close loopholes and shore up jurisdiction problems and allow us to get our hands on these murdering terrorists before they get a chance to act and if need be, to grab them overseas. It offers us essential legal tools such as the RICO statute and wiretapping capabilities to stop terrorism in its tracks.

If we wish to fight terrorism, we must have the right tools. This bill is a great beginning and will help us to gain the upper hand.

I am pleased to be joining my colleagues in introducing this legislation and I urge my other colleagues in the Senate to join us in supporting this important legislation.

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By Mr. GLENN (for himself and Mr. DEWINE):

S. 392. A bill to amend the Dayton Aviation Heritage Preservation Act of 1992 with regard to appointment of members of the Dayton Aviation Heritage Commission, and for other purposes; to the Committee on Energy and Natural Resources.

THE DAYTON AVIATION HERITAGE PRESERVATION ACT

● Mr. GLENN. Mr. President, on behalf of myself and Senator DEWINE, I would like to introduce legislation to correct a concern that was raised after the passage of the Dayton Aviation Heritage Preservation Act, establishing a national park to preserve historic sites in Dayton, OH, that are associated with the Wright brothers and the early development of aviation.

Public Law 102–419 required that members of a commission established by the act to assist in preserving and managing the park would be appointed by the Secretary of the Interior from recommendations made by certain local and State officials. Concerns were raised that the language of the act may not be in accordance with the appointments clause of the Constitution.

The legislation that I am introducing today addresses that concern and provides that the Secretary will appoint the Commission after consideration of recommendations made by those public officials. I hope that the Senate committee will consider this legislation expeditiously so that the Commission can undertake its full responsibilities.●

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By Mrs. BOXER:

S. 393. A bill to prohibit the Secretary of Agriculture from transferring any National Forest System lands in the Angeles National Forest in California out of Federal ownership for use as a solid waste landfill; to the Committee on Energy and Natural Resources.

TRANSFERS OF NATIONAL FOREST LAND FOR LANDFILL CONSTRUCTION

● Mrs. BOXER. Mr. President, I am pleased today to introduce a bill to prohibit the Forest Service from transferring land in the Angeles National Forest for the purposes of constructing a landfill.

Three times in the past 25 years the Forest Service has studied the possibility of transferring land in Elsmere Canyon to a private company that wants to build a 190-million-ton landfill on the site. The landfill would destroy the canyon, 1,600 acres of resource rich, publicly owned land held in trust by the National Forest Service.

The proposed landfill would sit atop the aquifer that serves the entire Santa Clarita Valley, posing a considerable risk of contamination to this critical water supply.

Elsmere Canyon is a major wildlife corridor connecting the San Gabriel and Santa Monica Mountains. This corridor serves the needs of deer, bear, and cougars. If the connection were destroyed, many of these animals would end up in residential areas threatening both the animals and local residents.

It is clear that this national forest property is far too valuable to be transferred for the purpose of constructing a landfill. We must also be concerned about establishing a precedent of using national forest lands for this purpose when realistic alternatives exist. It is particularly difficult to justify the loss of this resource in a region with limited open space and recreational facilities.

To its credit, the Forest Service has denied each of the requests that have been made for the transfer of Elsmere Canyon. But the economic and political pressure remains. This bill, introduced in the House by Congress BUCK MCKEON with the support of many of his Republican and Democratic colleagues, takes the landfill option off the table. It takes a strong position in favor of Forest Service management that places the public good before private profit.

I hope my colleagues in the Senate will give this bill their early and favorable consideration.

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. 393

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

**SECTION 1. PROHIBITION OF CERTAIN TRANSFERS OF NATIONAL FOREST LANDS.**

(a) PROHIBITION.—The Secretary of Agriculture shall not transfer (by exchange or otherwise) any land owned by the United States and managed by the Secretary as part of the Angeles National Forest to any person unless the instrument of conveyance contains a restriction, enforceable by the Secretary, on the future use of the land prohibiting the use of any portion of the land as a solid waste landfill.

(b) ENFORCEMENT.—The Secretary shall act to enforce a restriction described in subsection (a) as soon as possible when and if violation of the restriction occurs.●

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By Mr. D'AMATO;

S. 394. A bill to clarify the liability of banking and lending agencies, lenders, and fiduciaries, and for other purposes; to the Committee on Environment and Public Works.

ASSET CONSERVATION, LENDER LIABILITY, AND DEPOSIT INSURANCE PROTECTION ACT

● Mr. D'AMATO. Mr. President, I am today introducing the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1995. This bill addresses an urgent issue facing America's banks and lenders today—the imposition of massive liability for the cleanup of property they hold as security interest on a loan, or as the technical owner under a leveraged lease, that is later discovered to be contaminated.

Mr. President, court decisions have eviscerated the ''secured creditor exception'' currently contained in CERCLA, or as it is more commonly known, the Superfund law. Some courts have scrutinized the oversight activities of creditors, and deemed them responsible for cleanup costs. For instance, the Eleventh Circuit Court of Appeals deemed a secured creditor liable because it exercised authority over the contaminated property ''sufficiently broad to support the inference that it could affect hazardous waste disposal decisions if it chose.'' As a result, lenders risk being targeted as convenient deep pockets, and being forced to foot the cleanup bill for contamination, not because they caused it or did not take precautions, but simply because they hold a security interest or have some other technical indicia of ownership.

Mr. President, this bill will not permit lenders to evade responsibility if they cause environmental contamination. But lenders should not be held liable merely because of their deep pockets. The imposition of culpability based on legal dictates of commercial or fiduciary law is wrong. And, the implications of this legal doctrine extend beyond the finance industry. Why? Because the so-called deep pockets in the banking and finance industries are not bottomless pits. And the ultimate losers in this scheme are not the lenders, but potential borrowers, especially small businesses, who may face liability. Lenders are reluctant to extend credit and face potential liability. Many small businesses and potential homeowners do not receive financing because of potential claims. Without access to credit small businesses can not get off the ground or grow. So, in the final analysis, the victims are economic growth and job creation.

Mr. President, the refinements embodied in this bill are not new. The Senate passed similar legislation in

1991 as part of S. 543, the Federal Deposit Insurance Corporation Improvement Act. The Senate approved a lender liability amendment to the Federal Housing Enterprises Regulatory Reform Act of 1992. Last year, the Banking and Environment Committees worked together and crafted language for inclusion in the Superfund reauthorization bill. This bill is modeled on final language form that bill, with several adjustments. Most significantly, this bill would clarify lender liability rules not only with respect to Superfund, but also with respect to the underground tank provisions of the Solid Waste Disposal Act.

This bill will make clear the potential liability that lenders, acting in their capacity as secured creditors, lessors, or fiduciaries, face for contamination. Lender liability will be limited to the net gain that the lender realizes from the sale of property. Fiduciary liability may not exceed the assets held in that fiduciary capacity. This bill also addresses the liability problems that the FDIC, RTC, and other banking agencies face when they close a financial institution and take over the assets of the failed institution. If these assets include contaminated property acquired through foreclosure, the agency may assume liability for contamination for which it is not responsible. Finally, the bill provides clarity as to when creditors will be deemed to be owners or operators of contaminated property, and excludes federally appointed receivers and conservators, including Federal agencies acting in this capacity, from the definition of owner or operator.

Mr. President, the time has come to make it clear that innocent banks and lenders should not face liability for environmental contamination because they make a loan or protect their security interest. In light of the Supreme Court's denial of certiorari in Kelly versus Environmental Protection Agency, the EPA's ability to effectively address this problem is limited. Congressional action is needed. The Senate has an ambitious agenda set out for this Congress; an agenda that includes regulatory relief and litigation reforms. This bill is consistent with this initiative for economic growth. I offer this bill in the hopes of furthering the process of reform.●

## ADDITIONAL COSPONSORS

S. 228

At the request of Mr. BRYAN, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 228, a bill to amend certain provisions of title 5, United States Code, relating to the treatment of Members of Congress and congressional employees for retirement purposes.

S. 248

At the request of Mr. GREGG, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 248, a bill to delay the required implementation date for enhanced vehicle inspection and maintenance programs under the Clean Air Act and to require the Administrator of the Environmental Protection Agency to reissue the regulations relating to the programs, and for other purposes.

S. 252

At the request of Mr. LOTT, the names of the Senator from South Carolina [Mr. THURMOND], and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 252, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 254

At the request of Mr. LOTT, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from South Carolina [Mr. HOLLINGS], and the Senator from Utah [Mr. HATCH] were added as cosponsors of S. 254, a bill to extend eligibility for veterans' burial benefits, funeral benefits, and related benefits for veterans of certain service in the United States merchant marine during World War II.

S. 256

At the request of Mr. DOLE, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 257

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 257, a bill to amend the charter of the Veterans of Foreign Wars to make eligible for membership those veterans that have served within the territorial limits of South Korea.

S. 258

At the request of Mr. PRYOR, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 258, a bill to amend the Internal Revenue Code of 1986 to provide additional safeguards to protect taxpayer rights.

S. 381

At the request of Mr. HELMS, the names of the Senator from Arizona [Mr. KYL], the Senator from Wyoming [Mr. THOMAS], and the Senator from New Hampshire [Mr. SMITH] were added as cosponsors of S. 381, a bill to strengthen international sanctions against the Castro government in Cuba, to develop a plan to support a transition government leading to a democratically elected government in Cuba, and for other purposes.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate of Friday February 10, 1995, at 9 a.m. to hold a hearing on ''A Review of the National Drug Control Strategy.''

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

COMMITTEE ON SMALL BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet for a hearing on the future of the Small Business Administration, during the session of the Senate on Friday, February 10, 1995, at 10 a.m.

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

## ADDITIONAL STATEMENTS

### CANCER RESEARCH

● Mr. GORTON. Mr. President, I have always been a strong proponent of Federal funding for cancer research. As a member of the Labor, Health, and Human Services and Education Appropriations Subcommittee since 1991, I have continually made cancer research one of my highest priorities.

One form of this disease, breast cancer, will affect one in eight women and will kill 46,000 Americans this year alone. Whether you have had a sister, a mother, a spouse, or a friend who has been directly affected by breast cancer, the fear of this disease is instilled in all women.

Conventional treatment for this type of cancer includes surgery, chemotherapy, radiation, and bone-marrow transplants.

With this in mind, I am delighted to share with my colleagues the great strides researchers are making at the University of Washington. The scientists in Seattle have been working on a whole new approach to stopping breast cancer—the use of a vaccine.

The vaccine, which has been under development for more than 3 years, is designed to stop the disease from recurring in many patients who have already been diagnosed and treated.

The research is being financed by a $765,000 grant from the National Institutes of Health and $145,000 from the Boeing Co. The vaccine is now being refined in laboratory animals and the researchers hope to conduct human tests this year.

I am proud of the wonderful work that is being done in Seattle, and throughout the whole country, where research is being conducted daily. With the great technological and research advances our society is experiencing, I am excited to see what innovative therapies tomorrow will bring.●

### GREEK INDEPENDENCE DAY

● Mr. SIMON. Mr. President, it is with great pleasure that I am an original cosponsor of a resolution introduced today by the senior Senator from Pennsylvania designating March 25,

1995, as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy.'' More than a gesture of friendship and good will, this resolution recognizes the enormous influence Greece and its traditions have had on our Nation.

It is fitting that we honor Greek independence in this Chamber, since the ancient Greeks first created the Athenian Assembly and direct democracy. The Greek word ''demokratia'' is a compound of ''demos,'' meaning the people and ''kratos,'' meaning power. To the Greeks we owe our most basic concept of democratic government, which our 16th President from Illinois so eloquently referred to in his Gettysburg Address as, ''* * * government of the people, by the people, and for the people * * *''

Without Greece, its history, and its democratic traditions, we as a Nation would be lacking a strong foundation. For this inspiration, the people of the United States owe Greece deep gratitude.

This resolution not only honors Greece on its 174th anniversary of the beginning of the revolution that freed the Greek people from the Ottoman Empire, but also celebrates the historic and close ties between the citizens of Greece and the citizens of the United States. From the Greek philosophical influences on our Founding Fathers, to the neoclassical architecture of our Capitol and many of our State capitols, to Greek support of international struggles against fascism and communism, Greeks through many generations have helped foster and nourish the mutually beneficial ties between Greece and the United States.

I urge other colleagues from the Senate to join in cosponsorship of this worthwhile resolution.●

## RULES OF THE COMMITTEE ON VETERANS' AFFAIRS

● Mr. SIMPSON. Mr. President, pursuant to paragraph 2 of rule XXVI, Standing Rules of the Senate, I submit for printing in the CONGRESSIONAL RECORD the Rules of the Committee on Veterans' Affairs for the 104th Congress, as adopted by the committee on February 1, 1995.

The rules follow:

### RULES OF PROCEDURE OF THE COMMITTEE ON VETERANS' AFFAIRS

#### I. MEETINGS

(a) Unless otherwise ordered, the Committee shall meet on the first Wednesday of each month. The Chairman may, upon proper notice, call such additional meetings as he deems necessary.

(b) Except as provided in subparagraphs (b) and (d) of paragraph 5 of rule XXVI of the Standing Rules of the Senate, meetings of the Committee or a Subcommittee shall be open to the public.

(c) The Chairman of the Committee or of a Subcommittee, or the Vice Chairman in the absence of the Chairman, or the Ranking Majority Member present in the absence of the Vice Chairman, shall preside at all meetings.

(d) No meeting of the Committee or any Subcommittee shall be scheduled except by majority vote of the Committee or by authorization of the Chairman of the Committee.

(e) The Committee shall notify the office designated by the Committee on Rules and Administration of the time, place, and purpose of each meeting. In the event such meeting is canceled, the Committee shall immediately notify such designated office.

(f) Written notice of a Committee meeting, accompanied by an agenda enumerating the items of business to be considered, shall be sent to all Committee members at least 72 hours (not counting Saturdays, Sundays, and Federal holidays) in advance of each meeting. In the event that the giving of such 72-hour notice is prevented by unforeseen requirements or Committee business, the Committee staff shall communicate notice by the quickest appropriate means to members or appropriate staff assistants of members and an agenda shall be furnished prior to the meeting.

(g) Subject to the second sentence of this paragraph, it shall not be in order for the Committee to consider any amendment in the first degree proposed to any measure under consideration by the Committee unless a written copy of such amendment has been delivered to each member of the Committee at least 24 hours before the meeting at which the amendment is to be proposed. This paragraph may be waived by a majority vote of the members and shall apply only when 72-hour written notice has been provided in accordance with paragraph (f).

#### II. QUORUMS

(a) Subject to the provisions of paragraph (b), seven members of the Committee and four members of a Subcommittee shall constitute a quorum for the reporting or approving of any measure or matter or recommendation. Four members of the Committee or Subcommittee shall constitute a quorum for purposes of transacting any other business.

(b) In order to transact any business at a Committee or Subcommittee meeting, at least one member of the minority shall be present. If, at any meeting, business cannot be transacted because of the absence of such a member, the matter shall lay over for a calendar day. If the presence of a minority member is not then obtained, business may be transacted by the appropriate quorum.

(c) One member shall constitute a quorum for the purpose of receiving testimony.

#### III. VOTING

(a) Votes may be cast by proxy. A proxy may be written or oral, and may be conditioned by personal instructions. A proxy shall be valid only for the day given except that a written proxy may be valid for the period specified therein.

(b) There shall be a complete record kept of all Committee action. Such record shall contain the vote cast by each member of the Committee on any question on which a rollcall vote is requested.

#### IV. SUBCOMMITTEES

(a) No member of the Committee may serve on more than two Subcommittees. No member of the Committee shall receive assignment to a second Subcommittee until all members of the Committee, in order of seniority, have chosen assignments to one Subcommittee.

(b) The Committee Chairman and the Ranking Minority Member shall be ex officio nonvoting members of each Subcommittee of the Committee.

(c) Subcommittees shall be considered de novo whenever there is a change in Committee Chairmanship and, in such event, Subcommittee seniority shall not necessarily apply.

(d) Should a Subcommittee fail to report back to the Committee on any measure within a reasonable time, the Chairman may withdraw the measure from such Subcommittee and so notify the Committee for its disposition.

#### V. HEARINGS AND HEARING PROCEDURES

(a) Except as specifically otherwise provided, the rules governing meetings shall govern hearings.

(b) At least 1 week in advance of the date of any hearing, the Committee or a Subcommittee shall undertake, consistent with the provisons of paragraph 4 of rule XXVI of the Standing Rules of the Senate, to make public announcement of the date, place, time, and subject matter of such hearing.

(c) The Committee or a Subcommittee shall require each witness who is scheduled to testify at any hearing to file 40 copies of such witness' testimony with the Committee not later than 48 hours prior to the witness' scheduled appearance unless the Chairman and Ranking Minority member determine there is good cause for failure to do so.

(d) The presiding officer at any hearing is authorized to limit the time allotted to each witness appearing before the Committee or Subcommittee.

(e) The Chairman, with the concurrence of the Ranking Minority Member of the Committee, is authorized to subpoena the attendance of witnesses and the production of memoranda, documents, records, and any other materials. If the Chairman or a Committee staff member designated by the Chairman has not received from the Ranking Minority member or a Committee staff member designated by the Ranking Minority member notice of the Ranking Minority Member's nonconcurrence in the subpoena within 48 hours (excluding Saturdays, Sundays, and Federal holidays) of being notified of the Chairman's intention to subpoena attendance or production, the Chairman is authorized following the end of the 48-hour period involved to subpoena the same without the Ranking Minority Member's concurrence. Regardless of whether a subpoena has been concurred in by the Ranking Minority member, such subpoena may be authorized by vote of the members of the Committee. When the Committee or Chairman authorizes a subpoena, the subpoena may be issued upon the signature of the Chairman or of any other member of the Committee designated by the Chairman.

(f) Witnesses at hearings will be required to give testimony under oath whenever the Chairman or Ranking Minority Member deems such to be advisable. At any hearing to confirm a Presidential nomination, the testimony of the nominee and, at the request of any member, any other witness shall be under oath.

#### VI. MEDIA COVERAGE

Any Committee or Subcommittee meeting or hearing which is open to the public may be covered by television, radio, and print media. Photographers, reporters, and crew members using mechanical recording, filming, or broadcasting devices shall position and use their equipment so as not to interfere with the seating, vision, or hearing of the Committee members or staff or with the orderly conduct of the meeting or hearing. The presiding member of the meeting or hearing may for good cause terminate, in whole or in part, the use of such mechanical devices or take such other action as the circumstances and the orderly conduct of the meeting or hearing may warrant.

VII. GENERAL

All applicable requirements of the Standing Rules of the Senate shall govern the Committee and its Subcommittees.

VIII. PRESIDENTIAL NOMINATIONS

Each Presidential nominee whose nomination is subject to Senate confirmation and referred to this Committee shall submit a statement of his or her background and financial interests, including the financial interests of his or her spouse and of children living in the nominee's household, on a form approved by the Committee which shall be sworn to as to its completeness and accuracy. The Committee form shall be in two parts—

(A) information concerning employment, education, and background of the nominee which generally relates to the position to which the individual is nominated, and which is to be made public; and

(B) information concerning the financial and other background of the nominee, to be made public when the Committee determines that such information bears directly on the nominee's qualifications to hold the position to which the individual is nominated.

Committee action on a nomination, including hearings or a meeting to consider a motion to recommend confirmation, shall not be initiated until at least five days after the nominee submits the form required by this rule unless the Chairman, with the concurrence of the Ranking Minority Member, waives this waiting period.

IX. NAMING OF DEPARTMENT OF VETERANS AFFAIRS FACILITIES

It is the policy of the Committee that no Department of Veterans Affairs facility shall be named after any individual unless—

(A) such individual is deceased and was—

(1) a veteran who (i) was instrumental in the construction or the operation of the facility to be named, or (ii) was a recipient of the Medal of Honor or, as determined by the Chairman and Ranking Minority Member, otherwise performed military service of an extraordinarily distinguished character;

(2) a member of the United States House of Representatives or Senate who had a direct association with such facility;

(3) an Administrator of Veterans' Affairs, a Secretary of Veterans Affairs, a Secretary of Defense or of a service branch, or a military or other Federal civilian official of comparable or higher rank; or

(4) an individual who, as determined by the Chairman and Ranking Minority Member, performed outstanding service for veterans;

(B) each member of the Congressional delegation representing the State in which the designated facility is located has indicated in writing such member's support of the proposal to name such facility after such individual; and

(C) the pertinent State department or chapter of each Congressionally chartered veterans' organization having a national membership of at least 500,000 has indicated in writing its support of such proposal.

X. AMENDMENTS TO THE RULES

The rules of the Committee may be changed, modified, amended, or suspended at any time, provided, however, that no less than a majority of the entire membership so determine at a regular meeting with due notice, or at a meeting specifically called for that purpose. The rules governing quorums for reporting legislative matters shall govern rules changes, modification, amendments, or suspension.●

## UNANIMOUS-CONSENT AGREEMENT—SENATE RESOLUTION 73

Mr. HATCH. I ask unanimous consent that the vote ordered on adoption of Senate Resolution 73, the committee funding resolution, occur at 5 p.m. on Monday, February 13.

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

## MEASURE REFERRED TO COMMITTEE—S. 391

Mr. HATCH. Mr. President, I ask unanimous consent that a bill introduced by Senator CRAIG, S. 391, the Federal Lands Forest Health Protection and Restoration Act of 1995 be referred to the Committee on Energy and Natural Resources and that when and if the bill is reported by that committee, it be referred jointly to the Committee on Agriculture and the Committee on Environment and Public Works for not to exceed 20 days of session, and if on the 20th day either committee has not reported the bill, the committee's be discharged from further consideration of the bill and the bill be placed on the Senate calendar.

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

## AMENDING THE CHARTER OF THE VETERANS OF FOREIGN WARS

Mr. HATCH. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 257, a bill to amend the charter of the Veterans of Foreign Wars, that the Senate proceed to its immediate consideration; that the bill be deemed read a third time; passed, and the motion to reconsider be laid upon the table.

There being no objection, the bill (S. 257) was considered, deemed read the third time, and passed, as follows:

S. 257

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 5 of the Act of May 28, 1936 (36 U.S.C. 115), is amended to read as follows:

''SEC. 5. A person may not be a member of the corporation created by this Act unless that person—

''(1) served honorably as a member of the Armed Forces of the United States in a foreign war, insurrection, or expedition, which service has been recognized as campaign-medal service and is governed by the authorization of the award of a campaign badge by the Government of the United States; or

''(2) while a member of the Armed Forces of the United States, served honorably on the Korean peninsula or in its territorial waters for not less than 30 consecutive days, or a total of 60 days, after June 30, 1949.''

## ORDERS FOR MONDAY, FEBRUARY 13, 1995

Mr. HATCH. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 12 noon on Monday, February 13, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, and that following the time for the two leaders that there then be a period for the transaction of routine morning business, not to extend beyond the hour of 1 p.m., with Senators permitted to speak for not to exceed 10 minutes each.

I further ask unanimous consent that at the hour of 1 p.m., the Senate resume consideration of House Joint Resolution 1, the constitutional balanced budget amendment.

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

## ORDER OF PROCEDURE

Mr. HATCH. For the information of all of my colleagues, under the previous order there will be a rollcall vote at 5 p.m. on Monday on adoption of Senate Resolution 73, the committee funding resolution. Senators should also be aware that there is a pending amendment to the constitutional balanced budget amendment, so further rollcall votes are possible on Monday.

## RECESS UNTIL MONDAY, FEBRUARY 13, 1995

Mr. HATCH. Mr. President, if there is no further business to come before the Senate, and no other Senator is seeking recognition, I now ask unanimous consent the Senate stand in recess under the previous order.

There being no objection, the Senate, at 3:57 p.m., recessed until Monday, February 13, 1995, at 12 noon.