United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, FRIDAY, MAY 5, 1995 No. 74

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, May 9, 1995, at 12:30 p.m.

Senate

FRIDAY, MAY 5, 1995

(Legislative day of Monday, May 1, 1995)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

The PRESIDENT pro tempore. The opening prayer will be made this morning by Father Thomas Kuhn of Ohio. We are pleased to have him with us.

PRAYER

The guest Chaplain, Father Thomas A. Kuhn, Church of the Incarnation, Centreville, OH, offered the following prayer:

Lord God, we have consistently believed in Your great love for us and for our Nation. We know that we are Your children, and in that faith have not called ourselves simply a nation, but ''one nation under God.''

The tragedy of recent weeks in Oklahoma City points out the need we have to foster Your love in our land. Help us to reflect the love You have for us in our lives and in our dealing with others. We know that You have a plan for us. We know that You love us. Help us to keep faith that You will always be there to guide and direct our great Nation.

You have blessed all of Your children with the same rights that come from calling You our Father. Help us as a nation to work to protect the rights of all, for we know when the rights of one of us is in danger, the rights of all are in danger.

You have blessed us with a beautiful land. Help us to preserve it so the generations after us may enjoy it as we have.

We know that some of Your children, particularly the aged, the sick, the poor, and the very young, are in need of help and protection. Give us the insight as a people to always protect those who cannot care for themselves.

Father, we pray in a special way for our Senators. Give each of them a parochial, a national, and a world vision, so they may lead us safely in Your kingdom.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leader time is reserved.

MORNING BUSINESS

Mr. DEWINE. Under the previous order, there will now be a period for the transaction of morning business until the hour of 11 a.m. with Senators permitted to speak therein for not to exceed 5 minutes each.

Under the previous order, the Senator from North Dakota [Mr. DORGAN] is recognized to speak for up to 20 minutes.

The Senator from North Dakota is recognized.

TRADE, ECONOMIC STRATEGY, JOBS, AND INCOME

Mr. DORGAN. Mr. President, I indicated the other day that I intended to come to the floor of the Senate over a period of some weeks and offer some comments and observations and discuss a series of issues relating to trade, economic strategy, jobs, and income in our country. I would like to introduce that topic today. I will finish it in other presentations in the coming couple of weeks.

I was a speaker at a college commencement exercise last Sunday at Concordia College in Moorhead, MN, where nearly 600 young men and women were getting their 4-year baccalaureate degrees and were getting ready to go out and find a job and make their way in the world. Yet, about half of the students that I had an opportunity to visit with indicated to me that they really did not yet have a job lined up. They were looking and had prospects here and there, but did not yet have a job lined up and did not yet know what they would do. That is not an unusual situation. It is a chronic problem in our country, even for college graduates, to find a good job, to find the right job that has a good income.

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

Printed on recycled paper containing 100% post consumer waste

No matter where you are on the economic ladder in this country, it is becoming more and more difficult to get a good job that pays good wages and has benefits. It certainly is true for those on the lowest rungs of the economic ladder, but it is also true increasingly for those who are among the most educated in our country.

I want to give a series of addresses in the Senate exploring the reasons that in the United States we see fewer and fewer good jobs and we see less opportunity. I want to talk a little about what we can do about that. I want to explore the relationship of the global economy, international trade, and the role of international finance in pushing our country into an economic corner with slower growth, fewer jobs, and lower wages.

I think, frankly, the root of much of the disaffection in this country relates to these issues. There is a great deal of anxiety, a great deal of political disaffection, a great deal of concern among the American people. And, I think it is because they see an economy that provides less opportunity than they are accustomed to seeing. Most people know that despite all of the rosy talk about news jobs and economic growth that they are now working harder for less money. Their children who graduate from college have a tough time to find a good job.

Those are the realities that face families in America. It causes them to be anxious about the future. It causes them to be angry about lost opportunity. I think it causes the kind of political, social, and economic turmoil we have in our country today.

I indicated on Sunday at the graduation speech just one symptom of this. Of course, there are a lot of reasons for what is happening in our economy. But I described in our country the inclination for us to buy and wear Chinese shirts, Mexican shorts, Malaysian shoes, watch television sets made in Taiwan, buy cars made in Japan, and then wonder where all the jobs went. Well, it is not hard to figure out where the good jobs went and where the good income is.

I am going to begin by citing some data that was released about an hour ago by U.S. Department of Labor on wages and jobs. Today the Bureau of Labor Statistics reported that 28,000 more manufacturing jobs were lost in April in the United States. That means that generally good jobs, higher wage jobs—because the manufacturing jobs are normally the better jobs—have been lost. They have been replaced by jobs with lower productivity and generally lower wages often in the service industries. It is not that those jobs are not worthwhile in the service industry. They are. But the problem is that we are losing so many good jobs and replacing them with lower paying jobs, largely in the service sector.

In fact, this morning's report is not surprising. I figured yesterday, when I knew the report was coming out this morning, that that is what the report would show. We would see that we would lose more manufacturing jobs in our country again last month because it has been going on and on and on for many, many years.

We are now in the 50th month of an economic recovery cycle. Everyone who knows about the business cycle knows there is contraction and expansion, an expansion phase and an economic recovery phase. We are now in the 50th month of a recovery that began in March 1991. Unfortunately, after 50 months of economic recovery we have lost more good jobs than we have gained. What's more, wages are not rising but they are falling.

I want to show this chart to compare what has happened in periods of American economic recovery following recessions. In nearly every circumstance in the last 35 years, we have seen a net increase in manufacturing jobs during the first 4 years of a recovery. There is just one exception, and that is now. In this, the 50th month, of this economic recovery, contrary to what happened to every other period in the last 35 years, we see over 400,000 lost manufacturing jobs. In other words, during an economic recovery, a period when you ought to have economic expansion, we are seeing a contraction in the good jobs in this country. We lose. And that is a symptom of the root of what is wrong in this country.

In fact, since 1985, just in the past 10 years, we have lost a million jobs in traded industries, which is manufacturing and agriculture and mining and all the sectors in which we produce things for sale.

People say, well, you may have lost those, but there were a lot of other jobs created. That is true. There were a lot of other jobs created in nontraded industries, that is, industries that are not subject to the competitive cycles of international trade.

It is interesting to me; if you take a look at what has happened with manufacturing employment in this country and the decrease in manufacturing employment and the generally diminished wage opportunity, you understand the consequences for the American people.

A chart was presented using Department of Labor information—presented, incidentally, by MBG Information Services—that shows what happened to growth in workers' compensation in this country from 1948 to 1973, a 25-year period, and then the growth in compensation during the next 22 years, up to the present, and that is the red line.

You will see that in the first 25 years of this 50-year post-Second World War period we had generally robust increased wages in this country. And then you will see that after the first 25 years, we have seen generally stagnant wages since the early 1970's.

It is not a myth. It is reality. This is what the American families have faced, and this is why they are so concerned about what is happening to their economic fortunes and opportunities for their families.

We have accumulated since 1980 a $1.4 trillion trade deficit, which I am going to relate to these issues at some point later—over a $1 trillion trade deficit in manufactured goods alone. Last year, this country suffered the single largest trade deficit in the history of the world.

This chart shows you the merchandise trade deficits of our country. This shows that last year we had the single largest merchandise trade deficit in the history of the world. Now, this must be repaid with a lower standard of living in the United States in the future. This is serious. This is a crisis. And no one but no one talks about it.

I am going to bring charts to the floor and describe how we have gotten to this point and why we have gotten to this point and what we can do about it. But it is safe to say that anyone who understands economics and understands what drives the American economy and what produces good jobs with good income understands this is a crisis. This is not President Clinton's fault. I am not suggesting this administration is at fault for these red bars or these red lines. In fact, this administration has been more aggressive than past administrations in dealing with some of these international economic problems, especially trade.

Unfortunately, this administration and every other past administration for 30 years has embraced the exact same trade policy. Our economic policy, and especially our trade policy, is rooted in a post-Second World War notion that much of what we do internationally relates to foreign policy, but not sound economic policy for this country's interests.

The chart on American worker compensation suggests that this Nation's economic policies were, fortunately, serving its citizens' interests during the first 25 years after World War II. But we now see evidence across America that our policies are contrary to America's economic interests, and yet we embrace the same failed international economic and trade strategy in which our country loses and others win.

We must find a way to put together a much better strategy. In order to do that we need to begin discussing a range of issues that deal with jobs, with income, with international trade and international finance. And we must especially strip away the myths and deal with the realities.

If we talk to people in this town today about trade, about economics, about our country's economy, you would find those whose job it is to sell a positive story say, ''Gee, I don't know what you are talking about. We are in the 50th month of an economic expansion. Our economic growth is robust and good. In fact, the Federal Reserve Board is worried about economic

growth being so high that it has increased interest rates seven times to bring economic growth rates down.''

They would give a scenario that suggests to you: What are we thinking of? America is in great shape. But, of course, the real test of whether our country's economy is in good shape is whether our citizens are able to find work at decent wages. You can have a bull market on Wall Street, you can have economic growth at 5 or 6 percent, and you can have unemployment at 2 percent, but if you have falling wages and lost opportunity, people in this country are not going to be convinced this economic strategy works for them or their families or for the future of this country.

We have a great deal of which to be proud and to celebrate about our economy in this country, about where we have been, about what we have done over 50 years, all over this world. We have helped; we have invested; we have nurtured; we have protected; we have been a part of what has built an enormously important private sector opportunity internationally that has expanded opportunity for many years.

What has happened in the last 25 of these 50 years is that we have become victims of a system that helps others and hurts us. That is what is at the root of the political disaffection in our country, I am convinced.

I noticed yesterday in the Wall Street Journal something that relates to what we are talking about today. Economic expansion, great opportunity, good times, bull market on Wall Street, and here is what the Wall Street Journal of Thursday, May 4, says in its feature story:

> Amid record profits companies continue to lay off employees.

This is the reality for the American families.

> Last week, Mobil Corporation posted soaring first quarter earnings. This week it announced plans to eliminate 4,700 jobs. While corporate profits were surging to record levels last year, the number of job cuts approached those seen at the height of the recession.

Corporate profits rose 11 percent in 1994, after a 13-percent rise in 1993, according to DRI/McGraw-Hill, a Lexington, MA, economic consultant. Meanwhile, corporate America cut 516,069 jobs in 1994, according to an outplacement firm, Challenger, Gray & Christmas in Chicago. That is far more than in the recession year of 1990 when 316,047 jobs were cut.

Let me restate that because I think it is important. In 1990, when we were in a recession, corporate America eliminated 316,000 jobs. Last year, when corporate profits were at a record level, we saw 516,000 jobs cut, eliminated, lost. Those are lost opportunities for America's workers.

Again, quoting from the same story:

> For employees, the latest layoffs, coming amid good times and fat profits, seem mean and arbitrary. It's the seemingly relentlessness of the job losses that aggravates most. Workers see this as a long-term trend that has little relationship to how their company is performing. Nobody feels very secure.

The article is a long article, and I commend people to read it. But it describes at its roots what is happening in our country today—record profits, fat opportunities for corporations. But, of course, corporations, the large corporations, are internationalists now. They are not American citizens who get up and say the Pledge of Allegiance and sing the ''Star Spangled Banner.'' It does not mean they are un-American. It just means they are searching for international profits. That is their interest; that is their responsibility to their stockholders. And if they can produce in Indonesia and sell in Pittsburgh and move the jobs from Pittsburgh to Indonesia, that is precisely what they will do, and it is precisely what they have done.

If their actions mean they will substantially increase America's trade deficit, then that is what they will do, because their interest is not in our trade deficit. Their interest is in their profit for their stockholders.

We must, Mr. President, begin to discuss these issues, these economic issues, international and national economic issues, in the context of what works for our country, what is best for America, what produces jobs and good income and opportunity for our country.

We must start thinking in those terms. We must change our thinking. Virtually every discussion you have about our economic policies in this town is a debate filled with myths. I hope in the next couple of weeks, in further presentations on these issues, to strip away some of those myths and try to talk about the economic realities. The economic reality is most American families sitting down to have their evening meal understand they are working harder, longer hours, but making less money.

Why? Because of a whole range of reasons dealing with national and international economic strategy and issues that we largely do not debate on the floor of the Senate. Without a new debate, one viewpoint persists: Our current economic strategy is good for America, and this globalization of trade is just fine; works just great. We have economic growth and that is all that really matters.

Well, all of the positive Government reports and news stories mean nothing to American families if they do not mean opportunity and do not mean decent jobs and do not mean decent incomes. And that is the dilemma.

We are, and this year have been, talking about the budget deficit in our Federal budget. It is a real dilemma and we must deal with it because it, too, is dangerous for this country. It injures our economic future.

But it is no more dangerous than this—the largest trade deficit in history. Or than this—in the 50th month of an economic expansion, to find that the numbers for last month show that we lost 28,000 additional manufacturing jobs. That is serious. When you lose the kind of manufacturing jobs we have lost in this country, you lose real opportunity. You lose the kind of economic propellant that moves families up the economic ladder, that moves families into the middle class. It was manufacturing jobs that did that, not minimum-wage service jobs. This is the dilemma we face today.

Now, I am going to bring some charts to the floor that talk about specifics, talk about international finance, talk about trade policy, talk about our trade with Japan, our trade policy with China, our trade policy with Mexico, and how that relates to what I am discussing here.

But, most importantly, when I do that, I want to see if we cannot finally begin, all of us, to strip away the myth and talk about what kind of strategy in the end will boost this country's fortune. Not necessarily what will boost all the aggregate numbers about economic growth, but, in fact, boost this country's fortune in the number of good jobs with good incomes that it creates for American families who want to work.

Mr. President, I yield the floor.

A CLEAR VIOLATION OF BASIC PRINCIPLES OF HUMAN DECENCY

Mr. DOLE. Mr. President, on Wednesday, the Capital of Croatia, was subjected to a vicious attack by militant Serb separatists. This was the second day in a row that Zagreb was attacked by rockets armed with cluster bombs. The attack occurred at noon, when civilians were out having lunch. The principal targets were the children's hospital and the national theater where a ballet company was rehearsing. Several people were killed and dozens were wounded, bringing the total number of casualties to about 200 people.

There are those who say that the Croatian Government provoked the attack, by conducting a military operation that returned a 200-square-mile area back to Croatian control. That argument misses the point. Nothing, I repeat, nothing, justifies an attack on innocent civilians—on children in this case. The U.S. Ambassador was right when he condemned these attacks at a clear violation of basic principles of human decency.

I am aware that it is U.N. practice to shift the blame and muddy the waters in their pursuit of neutrality between aggressors and victims. But, to do so—whether in this case, or in the case of attacks on civilians in Bosnia—is reprehensible.

Furthermore, if the United Nations were doing its job in Croatia—if the United Nations had implemented its mandate to demilitarize the sectors of Croatia under their control thereby clearing the way for reintegration of

these occupied territories—the Croatian Government may not have taken the action it did on Monday. Let us not forget, the occupied areas are part of the territory of Croatia. So while the international community should urge the Croatian Government and its forces to fully respect the human and civil rights of the population in the areas they have retaken, it should not urge Croatia to give up control of reclaimed territory.

NATIONAL SMALL BUSINESS WEEK—1995

Mr. PRESSLER. Mr. President, I rise today to recognize some very special businesses in my home State of South Dakota during National Small Business Week. Through work on the Senate Committee on Small Business for 17 of my 21 years in Congress, I know small businesses have not always enjoyed the recognition and attention they deserve. For too long, America's entrepreneurs have been taken for granted. These dynamic men and women play a critical role in this Nation's economy. During the last major recession, small businesses created 4.1 million jobs, while large firms reduced employment by 500,000 jobs. Without the spirit, drive, and determination of small businesses, our economy would not have been able to break out of the economic stagnancy of the early 1990's. Clearly, this sector of our economy is finally getting the respect it is due.

Wile credit availability has improved significantly and now appears stable, we must continue to monitor this situation. Without adequate financing, entrepreneurs will not be able to get out of the gate. Likewise, I am encouraged by recent efforts in Congress to decrease the burdens of Federal regulations and paperwork. And while the Senate still is deliberating S. 565, the Product Liability Fairness Act of 1995, I hope we will be able to protect small manufacturers from frivolous lawsuits by enacting sensible tort reforms.

Though we have worked to level the playing field for small businesses, small firms now face unique problems. America and the world are in the throws of an information technology revolution. The ability of an enterprise to use high-technology tools very well may dictate whether the business survives. We must ensure established and fledgling small businesses are able to be players in the technological arena. We must ensure small firms wishing to provide high-technology goods and services have access to credit and capital. Because the very nature of capital assets tends to be less tangible, small firms may have difficulty securing the traditional forms of collateral lenders often seek. Is it possible to put a value on the time, effort, and knowledge of a software developer? I do not know. However, from my position as chairman of the Senate Committee on Commerce, Science, and Transportation, I hope to identify solutions to these potential roadblocks.

Mr. President, I would be remiss if I also did not raise some of the unique challenges rural small businesses face. South Dakota's 1995 Small Business Person of the Year has defied conventional wisdom that says a successful manufacturing business must be located in an urban area. In 1982, Randy Boyd returned to his native Geddes, SD, where he joined his father in a gunsmith and gun repair business. By 1986, their operation hired three employees to assist in the manufacturing of gunstocks for shotguns and big game rifles. Since then, their venture has expanded to 25 full time, 10 part-time, and 10 contract employees. Boyd's Gunstock Industries, Inc., currently is one of the country's leading gunstock manufacturers.

I commend Randy Boyd for the well deserved honor of being named South Dakota Small Business Person of the Year. He is an inspiration to other entrepreneurs with a dream and a willingness to work hard to see that dreams take shape.

During my visit with Randy this week, I learned he would like to expand Boyds' Gunstock even further. Unfortunately, he has encountered a limitation many burgeoning small businesses face in rural States like South Dakota. Randy wants very badly to keep his operation in the small city of Geddes. In order to overcome the community's limited work force, Randy has aggressively pursued workers from surrounding communities. Though such efforts have been successful for Randy in the past, he is discovering that the city of Geddes lacks affordable housing for these new employees. Indeed, it would be a tremendous loss for the community if this opportunity is lost.

I will be working with Randy and the community of Geddes to try to resolve a problem that has become all too common for communities across my State. Private investments in real estate must be both appealing and lucrative. As I said during my visit with Randy, I will promote tax incentives that, in turn, will promote economic growth. It is important that we continue to cultivate a climate that will stimulate small business growth. We must reward and encourage entrepreneurs such as Randy Boyd to continue their efforts.

I again congratulate Randy for his success and the success of Boyds' Gunstock. I also would like to recognize some of my State's other businesses leaders. I congratulate: Arlin W. Anderson of the South Dakota American Legion, Veteran Small Business Advocate of the Year; William F. Carlson of Tower Systems, Inc., Small Business Exporter; John E. Brewer of Rushmore State Bank, Financial Services Advocate; Eileen Lunderman of the Sincangu Enterprise Center, Minority Small Business Advocate; Brenda Wade Schmidt of the Sioux Falls Argus Leader, Media Advocate, and Jan Steensland of Eyes on You magazine, Women in Business Advocate.

Each of these individuals has played a very important role in making small businesses the driving force behind South Dakota's vibrant economy. I am proud of their generous efforts. They have contributed tremendously to their neighbors and friends. It is the duty of Congress and the Federal Government to allow them to continue making such important contributions. Often this can best be achieved staying out of their way.

Again, Mr. President, I salute South Dakota's 1995 National Small Business Week Award winners and thank them for their efforts.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, as of the close of business yesterday, Thursday, May 4, the Federal debt stood at $4,854,832,235,127.63. On a per capita basis, every man, woman, and child in America owes $18,429.03 as his or her share of that debt.

Mr. DORGAN. I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. WELLSTONE. Mr. President, I rise to speak for a short period of time about several key pieces of reform legislation. I ask unanimous consent I be allowed to speak as in morning business.

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

POLITICAL REFORM LEGISLATION LONG PAST DUE

Mr. WELLSTONE. Mr. President, I rise to express my deep concern—and even some indignation—that several key pieces of reform legislation continue to be bottled up in the Congress, including the gift ban, the lobbying reform bill, and tough, sweeping campaign finance reforms. I am more convinced than ever that one of the key issues, maybe the root issue of American politics, is the way in which we now have to finance campaigns. And the sooner we move toward a system where we are able to get a lot of the bigger money out of politics and have a level playing field for incumbents and challengers and figure out how to do this in a sane way, the sooner we will have a much better political system.

The lobbying disclosure bill, a key piece of legislation that Senator LEVIN has taken important leadership on, is really simple and straightforward. But just to summarize, what this legislation says is that those who are actually

paid to lobby, hired to lobby, ought to be officially registered. This is in the spirit of accountability. Nobody is pointing the finger at those who lobby, or suggesting that somehow constitutional rights for citizens to petition our Government should be curtailed. We are simply saying that we ought to have openness and accountability in this political process by requiring all those who engage in lobbying activities to register.

But in addition to lobbying registration and campaign finance reform, what I want to focus on more specifically, at least for a short time, is the gift ban. It is very simple and very straightforward. Americans are watching closely to see if the new majority in the Congress delivers on its promise of reform. While some of the new Members ran for office on reform platforms, so far they have not produced much of anything. This should not come as a surprise, because many of those same people who talked about reform were the ones who blocked major reform last year in each of these areas. I think, toward the end of the last Congress—and I will just editorialize on this question—toward the end of the last Congress I think the effort to block the gift ban reform was more an effort to make sure that Democrats did not get any credit for it. It really had nothing to do with the high ground of good public policy. I believe the reform promises have rung hollow all along and they ring even more hollow today.

Mr. President, I have an editorial from the Washington Post, I believe it was yesterday. I ask unanimous consent that it be printed in the RECORD.

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

[From the Washington Post, May 5, 1995]

WOULD-BE REFORMERS

''Three times as many lobbyists are in the streets and corridors of Washington as were here 20 years ago,'' President Clinton declared in his State of the Union address last January. ''The American people look at their capital, and they see a city where the well-connected and the well-protected can work the system, but the interests of ordinary citizens are often left out.''

''The first duty of our generation is to re-establish integrity and a bond of honesty in the political process,'' said Newt Gingrich in 1990. ''We must punish wrongdoers in politics and government and pass reform laws to clean up the election and lobbying systems. We must ensure that citizen politics defeats money politics.''

Gosh—if they agree, why has so little happened in this Congress on behalf of political reform? In the grand days of January, Congress took a step forward with a bill requiring the House and Senate to live under many of the same labor and safety laws that are applied to the rest of the country. But the major items that might change the system, such as lobbying reform and new laws regulating campaign fund-raising and spending, have been, well, less than top priorities for either the new Congress or the president. Congress put on a big show over that crowd-pleasing issue, term limits. But a Congress intent on taking steps to restore public confidence does not have to resort to changing the Constitution. Simpler measures are available.

Simplest of all would be a ban on the various sorts of gifts lobbyists and others can now give, perfectly legally, to members of Congress. The rules covering members of Congress, who write the laws, are much looser than those in the executive branch, which enforces them. It would not take great legislative creativity to write a good bill. A fine proposal nearly passed Congress last year. It would ban all personal gifts from lobbyists and most gifts from non-lobbyists, including those famous ''charity'' golf and tennis tournaments through which interest groups can essentially give members of Congress and their families free vacations. A variant of the bill was introduced as an amendment in the Senate, but was voted down with the Republican leadership saying the timing was inopportune. Senate Majority Leader Robert Dole said he'd bring the issue back this month. We'll see.

A gift ban would not change everything in Washington. It's no substitute for reforming the campaign spending laws. But the ban is right on the merits and would be a potent way for members of Congress to back up their repeated professions that they want to get rid of business as usual in Washington, shake up the system etc. etc. etc.

In the last Congress, controlled by Democrats, Mr. Clinton failed to speak out forcefully for political reform until it was too late. He had pledged—beginning with that State of the Union speech—to fight hard for reform this time around. We're waiting. With the administration making such an issue of how lobbyists are involved in writing legislation in the new Congress, you'd think the reform issue would be a natural for the president. As for Mr. Gingrich, Mr. Dole and all those Republican freshmen who say they want to change things, they have the majority. Will they make good on their words?

Mr. WELLSTONE. This editorial in the Washington Post yesterday challenged the new congressional majority to enact a number of tough, sweeping political reform measures that have been proposed by a number of us in Congress but that have been bogged down for a number of years.

The Post observed in this editorial that the simplest and most straightforward of these reforms is legislation to impose a tough, sweeping ban on gifts, meals, vacation travel, and other perks—the same provisions that were killed at the end of the last Congress.

This is legislation that I have worked on with Senators LEVIN, FEINGOLD, LAUTENBERG, and others. Again, the simplest and most straightforward of the major items on the real reform agenda, if we are serious about not separating the lives we live from the words we speak, is legislation that would impose a tough sweeping ban on gifts, meals, vacation, travel, and other perks—the same provisions that were killed by a Republican-led filibuster in the waning days of the last Congress.

Mr. President, the President called for lobbying reform and a gift ban in his State of the Union Message. But nothing has been put forward by my colleagues in the majority. Frozen like deer in the headlights, with the exception of the Chair, they refused to move forward on the gift ban. Enthusiastic about slashing free or reduced-price school lunches, and the Chair is an exception, and I know there are some other colleagues that are an exception, but I will hold true that statement I am about to make—enthusiastic about slashing free or reduced-price lunches for children, reform opponents wither when it comes to eliminating free lunches for Members of the Congress. I mean some of the same colleagues who do not hesitate to vote to scale back school lunch programs are also the ones who voted to continue to allow free lunches for themselves.

I do not think this bitter irony will be lost on the American people. I intend to make sure, along with other colleagues, that in a very short period of time, as soon as appropriate, we will have this amendment out on the floor and we will have full-scale debate and every Senator will again be asked to vote on the simple proposition that there should be a ban on gifts, meals, vacation travel, and other perks from special interests to Members of Congress.

Mr. President, it is long past time for enactment of the gift ban. This bill would significantly change the Washington culture. It is larger than just the piece of legislation. People want to believe in this political process, and when people read about or find out that Senators or Representatives have this interest or that interest pay for vacations trips to resorts for a weekend to play golf or tennis or do whatever, people find that to be inappropriate. And they are right.

Mr. President, there is not a one of us that likes across-the-board indiscriminate bashing of public service. We would not be here if we did not believe in public service. But if you want people to have more confidence in the Congress, if you want people to have more confidence in this institution, and you want people to have more confidence in each individual Member, as a Senator representing our constituents back home, then we need to enact this tough gift ban legislation. We have delayed for far too long.

Mr. President, let me go back to this Congress. This legislation was killed at the end of the last Congress in the very last days. We then brought back the same provisions at the beginning of this session in January when we had the Congressional Accountability Act before us and we had a vote on the gift ban legislation. At that time, the majority leader essentially said that he intended to take up a gift ban bill in the next few months, and to have it on the Senate floor in May.

Mr. President, I remember this because, first of all, Senator LEVIN, myself, Senator FEINGOLD, Senator LAUTENBERG, all came out to the floor and we argued that the congressional accountability bill provided a great opportunity for us to impose a comprehensive ban on these special interest gifts. That was, we believed, in keeping with the general theme of accountability to the citizenry, and not

to special interests. That was voted down, on a virtually party-line vote.

At that time, the majority leader indicated that he intended to take up this legislation by the end of May, or sometime in May.

Then I came back with a sense-of-the-Senate resolution which would have simply put the Senate on record saying that we will take this up by the end of May. That too was voted down. I said, wait a minute. The majority leader just said that he intended to do this, so let's put the whole Senate on record that by May we will have this legislation back on the floor for full consideration. Let us have a vote to affirm what the majority leader had just said was his intention, because I just had this sort of feeling that people were going to continue to delay and delay, as had been done in the past.

Mr. President, let me just be clear. Now it is May and nothing has happened; zero, zippo, nada, nothing has happened. No hearings have been held. No bills have been introduced. Nothing to my knowledge on the gift ban legislation is scheduled for floor consideration any time soon.

So the question is: Where is the majority party on this issue, where are the Republicans with their version of gift reform? Since 37 Republicans, including the majority leader, already cosponsored at the end of last year the same provisions that we offered in January and will offer again, as I said, as soon as we have an appropriate vehicle on the floor, what changes do they intend to make in this bill? Do they intend again, as some did last year—to try to gut the provisions of the charitable vacation travel to golf and tennis hot spots like Vail, Aspen, Florida, or the Bahamas where Members are wined and dined as guests of lobbyists and other special interests? Because, if they intend to try to gut those provisions, we intend for there to be a major debate. We cannot pass something saying we are not going to take gifts with these huge gaping holes and loopholes.

Do they intend again to try to hollow out gift ban reforms by just slightly lowering the thresholds for expensive meals, sports tickets, and other gifts paid for by special interests here in Washington so that they can say they are for reform? That would be symbolic politics at its worst.

Let me just simply say to you, Mr. President, this is an idea whose time has come, and come, and come again. I have been working on this for just over 2 years now, and the real standard for gift ban reform is a tightened-up bill that Senator LEVIN and I, Senator FEINGOLD and Senator LAUTENBERG, put forth in January. We will come to the floor and we will offer tough gift ban legislation. I believe the overwhelming majority of Senators, Democrats and Republicans alike, should support it. We really have had extensive bipartisan support in some overwhelming votes for this legislation. But each time along the way somebody or some group of Senators figures out a way of sidetracking it.

The time is long past due for this reform. I think people in this country really are in a reform mood. And any Senator or Representative who believes that campaign finance reform or lobby disclosure or gift ban is just something that so-called good government groups are interested in, they are wrong. People want us to represent them well. They want this political process to be open and accountable. And many people, too many people, believe, and unfortunately I think they are right, that too few people have too much access to Senators and Representatives, and too many people, the vast majority of people, are left out of the decisionmaking loop, left out of the equation.

It is really time to get back to this reform agenda and finish up our work in this area. There are three critical parts, all of which I intend to one way or another help bring to the floor of the Senate for debate. One is campaign finance reform. That is fundamental. Another is the lobby disclosure, on which Senator LEVIN has taken a key leadership role. The other is the gift ban, where I will continue to work with Senators LEVIN, LAUTENBERG, FEINGOLD, and others.

I look forward to that debate. We will have that amendment out here on the floor soon and I think people in the country, whether they are Democrats, Republicans, or Independents, will hold us accountable.

I look forward to this debate. I look forward to this vote. I urge my colleagues to support our tough, sweeping gift ban legislation. I yield the floor.

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.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of Vermont, asks unanimous consent that the order for the quorum call be rescinded. And without objection, it is so ordered.

RECESS UNTIL 12:30 P.M.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of Vermont, asks unanimous consent that the Senate stand in recess until the hour of 12:30 p.m. today.

There being no objection, the Senate, at 11:36 p.m., recessed until 12:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. GRAMS).

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate resumed consideration of the bill.

Pending:

Gorton Amendment No. 596, in the nature of a substitute.

The PRESIDING OFFICER. The pending question is the Gorton amendment numbered 596 to the bill H.R. 956.

In my capacity as a Senator from Minnesota, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. SIMPSON. Mr. President, I ask unanimous consent that I might proceed for 15 minutes as if in morning business.

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

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

TWO U.S. SENATORS

Mr. SIMPSON. Mr. President, I just want to say a few words about two U.S. Senators, one recently deceased and one recently embarked on a spirited new part of life, both of them dear friends of mine—Senator John Stennis of Mississippi and Senator DAVID PRYOR of Arkansas.

SENATOR JOHN C. STENNIS

Mr. SIMPSON. Mr. President, Senator Stennis served with my father in the U.S. Senate. My father, Milward L. Simpson of Wyoming, served here from 1962 until 1966. He was a former Governor of Wyoming from 1954 until 1958, then came to the U.S. Senate, elected to fulfill a 4-year term, or remaining 4-year term, of a young man who had been elected to the Senate and died before he was sworn in. John Stennis and Mrs. Stennis immediately greeted my father when he came here in the most cordial way. They were very dear friends of my parents.

I must say that the philosophy of the western Senator, my father, and the southern gentleman, the Senator from Mississippi, were much the same with regard to national defense, fiscal matters, issues of substance in the social area, of the fabric of the country, and they became fast friends. I recall very distinctly my father called John Stennis ''Mr. Integrity.''

My father invited John Stennis, Senator Willis Robertson, and two other persons to Wyoming. I recall very distinctly. I was a young man practicing law in Cody, WY, and they asked me to join them. Dad took his two Senate friends fishing. You might imagine that John had not ever seen too much of Rocky Mountain trout fishing nor the attire that accompanies such activities. I will never forget him coming from his cabin, very nattily dressed, and he said, ''Milward, is this what we

wear when we fish for these trout?'' My father said, ''No, I think we need something more than that, something a little different.'' Off they went to enjoy a remarkable 2 days together.

My father loved John Stennis, and when my father was the recipient of the Milward L. Simpson Chair of Political Science at the University of Wyoming, John Stennis served as his honorary chairman, and said, ''If there is anything I can do for my friend, Milward Simpson, I will do it.'' So it was a great affection and relationship, a true friendship. Then when I, of course, came to the Senate, John Stennis was the first to greet me. He said, ''If there is anything I can do to help you or smooth your path here, let me do it.'' And he did.

He was more than charitable, kind, and attentive to me except, of course, when I tried to kill off the Tennessee Tombigbee Waterway. Then there was a definite strain in our relationship—momentary, fleeting. But he said, ''ALAN, I cannot believe that you would do that.'' And he was right. I did not believe I could, and did not. That great waterway is a great tribute to personally the perseverance of John Stennis.

But what he told me—and I shall never forget—he said ''ALAN, I have been watching you.'' I had been here maybe 4 years at the time. ''I have seen you work. I know how hard you work.'' He really buoyed me up. He said, ''You want to remember something in the Senate.'' He said, ''People come here, and some grow and some swell.'' I shall never forget the phrase. ''Some grow and some swell.'' Indeed, we know both categories. I think I have done a little of both. But when I did swell, I was put down a peg or two, to get back to growing instead of swelling.

So I want to just pay tribute to John Stennis, and I know my dear parents, both gone, too, would have wanted me to pay tribute to a very dear and lovely friend, and to his memory, which will certainly be present in this Chamber for the remainder of time. He was deeply loved, a man of great stature, and truly a wonderful gentleman, truly a gentleman.

So God bless his son and his daughter who survive him. They have a wonderful heritage.

SENATOR DAVID PRYOR

Mr. SIMPSON. Mr. President, let me just say a word about my friend, DAVID PRYOR.

DAVID PRYOR has determined that he will now retire from the Senate, and we came here together. We came here in the class of 1978. There was a class of 20, the largest class ever to come into the U.S. Senate at one time, 11 Republicans and 9 Democrats. We were very close. Those of us who are still here are still very close. In fact, in January of this year, the remaining group of us met together and had dinner together with our spouses, and shared the attitude of how can we make the place work a little better instead of just chopping ourselves to pieces, as we sometimes do. But that goes with the territory. That is politics. It was always a little rough and tumble, and it still will be, and ever shall be, world without end.

But DAVID PRYOR and Barbara—and there is a remarkable woman. She has chosen to take a little of a secondary role in the life of this wonderful man. Let me tell you, she is in every sense as much a part of DAVID's success in life and fiber as my own wife, Ann, is of mine.

So DAVID and I came here, and I was placed in the basement of the Russell Building because it was thought that I was No. 100. Well, the senior Senator from Wyoming had resigned an hour before the deadline of midnight of the New Year. So I was not 100; I was No. 88, which was a significant leapfrog. We have since changed that. We do not do that anymore. But nevertheless, thinking I was No. 100, they placed me in the basement of the Russell Building, with bars on the windows, which were not unfamiliar to me from some of my activities in youth. But, nevertheless, it looked like the sewers of Paris down in there.

But I was glad to have any kind of opportunity to be here, thrilled as we all are, and hope always will be, or we shall get out. DAVID PRYOR, who I had come to know in those early days, came to visit me in my dungeon surroundings, the durance vile. He said, ''This is quite an office you have here.'' I said, ''It is. But at least I am here.'' He said, ''You need something to brighten it up.'' I said, ''Well, that would be lovely. I think you are right.'' So later in the afternoon he mailed to me, hand carried by courier, a dead plant with the leaves dangling in grotesque, yellowish brown fashion. He said he thought that the plant matched the surroundings of what I had there. And then he later showed up personally to assure himself that I had received this beautiful plant to grace my new surroundings.

Well, that is part of DAVID. He is a wonderful friend, and he is a very serious man. He comes to this floor, and he defends his friend, his principal friend, who is a man named Bill Clinton, President of the United States. I used to come to this floor and defend my friend, a man I had known for 35 years named George Bush, President of the United States. And DAVID and I have often laughed at how it is when you are a close friend of a President, because when somebody is here tearing them up, your staff says, ''Get over there; they are doing something bad,'' and you end up dropping what you do and you come over to defend your friend. I have done that with George Bush, and I have seen DAVE do it with great loyalty for his friend Bill Clinton.

I have always admired him. I have worked with him. There is not a finer, more principled man, a man of remarkable honesty and directness, and a man to whom I once said, ''DAVID, did you run for president of the first grade? Because I don't think you have missed any part of politics. I think you have been in this since your birth.'' When you look at the public record that he leaves behind as a legislator, as a member of the Arkansas Assembly, a Congressman, a Governor, a Senator, the people of Arkansas love this man, and he could have been here as long as he wished. He has decided, however, to do something many, many of us think about more and more often, and that is stepping away, not with irritation or hostility or angst or anguish, just knowing that there are other things to do in life, stepping away just as a person such as Jack Danforth of Missouri—no regret, no recrimination, just stepping away.

That is what DAVID has chosen to do, and I just want to say that I wish him well. And he will do well. He looks spirited and relieved and released, had a snappy tan to his face, lilt to his step the other day—he had gone golfing, a shocking revelation.

And so to DAVID and to Barbara, special people of special depth, special substance and sensitivity, and their children, David, Jr., Mark, and Scott, who are great friends of our daughter Susan—they grew up together here in Washington—to DAVID and Barbara Pryor, with whom we have shared much, spent time together, talked of things much deeper than legislation, I say Godspeed. I join in wishing them well in a new chapter of their lives which will be very, very fulfilling to them, I am sure, knowing the type of people they are.

I thank the Chair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RECESS UNTIL 1:50 P.M.

Mr. DOLE. Mr. President, and my colleagues who are not on the floor but are probably in their offices, we are waiting for an amendment to be drafted. It may be another 15 to 30 minutes. Rather than have the Senate in session, I will move in a second that we recess for 30 minutes.

It is our hope to have an amendment prepared on which we will vote Monday, followed by a cloture vote on Tuesday. We are trying to reach that agreement, and right now they are in the process of drafting the amendment.

I move that we stand in recess until 1:50.

The motion was agreed to.

Thereupon, the Senate, at 1:16 p.m., recessed until 1:51 p.m.; whereupon, the

Senate reassembled when called to order by the Presiding Officer (Mr. COVERDELL).

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of Georgia, suggests the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MOVED BY TRIBUTE TO SENATOR JOHN C. STENNIS

Mr. BYRD. Mr. President, recently I received a letter from a Dr. Wayne M. Miller of Killeen, Texas. The letter was in reference to my recent eulogy for the late and beloved Senator John Cornelius Stennis.

Dr. Miller wrote that he was deeply moved by the tribute, so much so that he sat down and composed a poem after hearing it. I call attention to the letter and to the poem enclosed with it because it demonstrates not only the sensitivity and talent of the writer, but also the power and the passion which words can evoke.

In these days of often destructive, rude, and even dangerous rhetoric, let us stop and reflect on the tremendous power of our words.

Such reflection may help those of us in public life and in the media to strive to use our voices to inspire rather than to enflame.

Mr. President, I ask unanimous consent that Dr. Wayne M. Miller's letter and poem be printed in the RECORD.

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

KILLEEN, TX,
April 27, 1995.

U.S. Senator ROBERT C. BYRD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR BYRD, when I tuned in to a C-Span telecast last night, I caught the latter part of your eloquent tribute to the late Senator Stennis. It was truly one of the greatest speeches I have ever heard. To be sure, it had the two basic ingredients of a great speech: substantive thinking, and rhetorical skills to effectively express it.

Although I am not a West Virginian, I have admired your accomplishments and the stature of your leadership. I was reared just eighty miles north of Wheeling, in a small town of Harmony, Pennsylvania. After serving as chaplain in the Air Force, I became a field director for American Red Cross—and am now retired with that organization. For the past sixteen years I have been teaching composition and rhetoric at Central Texas College.

Would it be possible to have a copy of your outstanding speech? I would be ever so grateful!

I am so happy that we still have statesmen of your caliber in our nation's capital. I am enclosing a poem which I wrote after listening to you on television. It reflects, in some small measure, my responsiveness to your deeply, moving words.

Respectfully,

WAYNE M. MILLER.

Enclosure.

To the Honorable Mr. Byrd, Distinguished U.S. Senator from the State of West Virginia, after hearing the stirring tribute delivered on the floor of Congress for the late Senator John Stennis of Mississippi (1901–1995):

Your well selected words, like highly polished marble
(Uniquely Mr. Byrd's!)
Were fitted in a pyramid of architectural marvel—
Arousing such a sentiment in the shaping of your thoughts
Keen emotions were unharnessed from what common birth allots
And, untouted, undergirds
The daily warp and woof of our fabric of existence.

You talked about our too brief pilgrimage,
And you pricked our unsuspecting Achilles Heel
When you sharpened our awareness of fragility
That stamps the mold of our mortality—
And your sobering reflection of the little bird
That fluttered through the crack from the raging storm
Into the blinding light of the banquet hall,
And then, so very soon, fluttered out again—
Demonstrated our fitful wandering,
Our groping sightlessness, our straining stammering,
Our hurried exit from the ever-blinding light
Of the babbling banquet hall and ''much ado about nothing.''

You addressed so poignantly the human predicament
In the never ending journey ''east of Eden''—
Never ending, that is,
Until that special day of reckoning
When all our shattered dreams, our broken vows . . .
Will have their consummation
In all-glorious transformation
From the ugly to the beautiful
And the painful to the joyful
Where there will be no night,
No parting and no sorrow.

You led us like thirsting sheep
To the oasis of our being—
The wells of spiritual refreshment
Where first we saw the mirroring of our impoverished selves
And then experienced the waters that revive us
And show us the way of day.

You showed us what we are—
And what we can become
In the ''long journey into night''
While we suffer in our little rooms,
Waiting for the fateful end—
To be transposed by the Great Composer
From our dischords into harmonies,
Rejoicing with the Children of the Light.

WAYNE MEREDITH MILLER,
1995 Nominee for Poet of the Year.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

TRIBUTE TO NAOMI NOVER

Mr. DOLE. Mr. President, on April 22, the Washington journalism community lost one of its most enduring figures. For decades, Naomi Nover was a distinctive presence on Capitol Hill and at the White House, often claiming a front-row seat at Presidential news conferences. Known for her perseverance and her determination to continue her passion for journalism, Naomi fell ill last month while renewing her Senate press credentials. It was the first day for gallery members to renew their press cards, and as usual, Naomi was one of the first in line.

A native of Buffalo, NY, she and her husband Barney moved to Washington in 1936. After receiving a masters degree from George Washington University, she worked with her husband for the Denver Post, wrote a column called ''Washington Dateline,'' produced a radio program called ''Views and Interviews,'' and when Barney Nover retired from the Denver Post in 1971, Naomi cofounded the Nover News Bureau. After her husband passed away in 1973, Naomi established a journalism prize in his memory, the Barnet Nover Memorial Award, given for journalistic excellence at the annual White House Correspondents Association dinner.

Naomi's perseverance was legendary. Sam Donaldson tells an admiring story about the time Naomi was hit by a truck while crossing Pennsylvania Avenue. ''The vehicle was almost totalled,'' Donaldson says. ''She walked away without a scratch.'' President Clinton called her ''years of dedication to her craft and her efforts to cover events * * * a lesson to us all in hard work and the persistence of the human spirit.''

Mr. President, I know all my colleagues join me in sending our warmest condolences to Naomi's friends and family.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I say for the benefit of my colleagues and others who would probably like to get out of here, we are waiting for an amendment to be drafted. It is almost complete. Upon completion, it will be sent to the desk. Then there will be a cloture petition filed, and we will be able to leave for the day.

It should not be long. I am told 15 or 20 minutes.

THE STAKES IN LEGAL REFORM

Mr. DOLE. Mr. President, as we continue the legal reform debate, I think it is important to take a few minutes and focus on what is and is not at stake here.

What is at stake is whether we are going to continue with a legal system that is too costly, too long, and too unfair. What is at stake is whether the

powerful trial lawyers lobby will continue to protect their privileges through irresponsible scare tactics.

Because, let Members be clear, the last week has demonstrated not only that the American people—over 83 percent—want reform; a majority of the Senate wants reform too.

Only President Clinton and his trial lawyer allies defend the status quo.

What they will not do, however, is engage in a debate on the merits. I was disappointed to see President Clinton parrot the standard trial lawyer line that legal reform protected ''drunk drivers, murderers, rapists, and abusers of women and children.''

Mr. President, I have been here awhile, but I must say that I rarely have seen such an offensive twisting of the truth. President Clinton knows better and he should be ashamed of engaging in such tactics.

The truth is that we have State and Federal criminal codes to deal with these people. The real irony that is apparently lost on President Clinton is that those same criminal codes generally contain—in addition to prison terms—fines and penalties that are typically $5,000 or $10,000 for serious felonies.

Those criminal fines are only a very small fraction of the multimillion-dollar punitive damage award. So why is President Clinton not attacking the criminal code for protecting criminals? Why have his crime proposals not ever addressed this issue?

Because this is about politics, not policy. Our legal reforms focus on the civil code, not the criminal code. President Clinton knows that.

But President Clinton also knows who raised millions of dollars for him in 1992—the trial lawyers. And he knows who raised $25 million for Democrat House and Senate candidates between 1989 and 1994—the trial lawyers.

Think about it. There is a lot talk of special interests in this town, but no single-issue group comes anywhere close to bringing this much money to bear on Federal campaigns. And no other group is so generous and so exclusively for the party of President Clinton.

So, despite the evidence that there is bipartisan support for these reports—and expanding them so that every American can benefit—when the chips were down, the trial lawyers and President Clinton started trying to scare the American people.

And yesterday, that tactic worked. Only two Democrats voted for reform. But this tactic will fail in the end. I am proud that we are trying to pass legal reform that benefits as many Americans as possible. I will continue to work for reforms that help small businesses, and volunteer and charitable organizations.

I believe the American people see past the irresponsible rhetoric. They know we are continuing to fight for their interests.

But the reality, Mr. President, is that we cannot bring this debate to a close without bipartisan support. Forty-five Republicans did their part. Reform will not happen unless the Democrats put the interests of the American people ahead of the interests of the trial lawyers and their huge financial stake in the Democrat Party.

I plan to bring this bill to a vote again on Monday or Tuesday. The American people need and deserve these reforms, and I for one do not intend to allow scare tactics to deter us from our responsibility to pass a legal reform package.

We hope to bring this bill to a vote. We think the American people want Members to vote. We believe there is still a possibility because there is some bipartisan support. We will have to have 60 votes. That is what happens in this place. We need 60 votes to shut off debate, so we can pass even a narrowed product liability bill.

We believe it is a big step in the right direction and I hope we will have the bipartisan support that Senator ROCKEFELLER from West Virginia and Senator GORTON from Washington have been working for, for the past 2 weeks.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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.

MORNING BUSINESS

Mr. DASCHLE. Mr. President, I ask unanimous consent that there now be a period for morning business.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Governmental Affairs.

(The nominations received today are printed at the end of the Senate proceedings.)

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 761. A bill to improve the ability of the United States to respond to the international terrorist threat.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–864. A communication from the Secretary of Housing and Urban Development's Designee to the Federal Housing Finance Board, transmitting, pursuant to law, a report under the Inspector General Act; to the Committee on Banking, Housing, and Urban Affairs.

EC–865. A communication from the Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, the report of a Presidential Determination relative to the People's Republic of China; to the Committee on Banking, Housing and Urban Affairs.

EC–866. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, a report relative to transaction involving exports to Chile; to the Committee on Banking, Housing, and Urban Affairs.

EC–867. A communication from Chairman of the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report of the study on the impact of the payment of interest on reserves; to the Committee on Banking, Housing, and Urban Affairs.

EC–868. A communication from the Secretary of Transportation, transmitting, pursuant to law, the interim report on the Commercial Vehicle Information System feasibility study; to the Committee on Commerce, Science, and Transportation.

EC–869. A communication from the Secretary of Energy, transmitting, pursuant to law, the report for the Strategic Petroleum Reserve for the period October 1 through December 31, 1994; to the Committee on Energy and Natural Resources.

EC–870. A communication from the Director of the Federal Emergency Management Agency, transmitting, pursuant to law, notice relative to the Stafford Act; to the Committee on Environment and Public Works.

EC–871. A communication from the Chairman of the U.S. International Trade Commission, transmitting, a draft of proposed legislation to provide authorization of appropriations for the U.S. International Trade Commission for fiscal year 1997; to the Committee on Finance.

EC–872. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation entitled ''The U.S. Air Traffic Service Corporation Act''; to the Committee on Finance.

EC–873. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the report of a revised deferral and two revised rescission proposals; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Finance, to the Committee on Labor and Human Resources, and to the Committee on Environment and Public Works.

EC–874. A communication from the Secretary of Transportation, transmitting, pursuant to law, the report of the activities relating to the Deepwater Port Act for fiscal year 1994; referred jointly, pursuant to 33 U.S.C. 1519, to the Committee on Commerce, Science, and Transportation, to the Committee on Energy and Natural Resources, and to the Committee on Environment and Public Works.

EC–875. A communication from the Director of the Office of Management and Budget,

Executive Office of the President, transmitting, pursuant to law, the cumulative report on rescissions and deferrals for fiscal year 1995; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Agriculture, Nutrition, and Forestry, to the Committee on Banking, Housing, and Urban Affairs, to the Committee on Commerce, Science, and Transportation, to the Committee on Environment and Public Works, to the Committee on Labor and Human Resources, and to the Committee on Small Business.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HELMS, from the Committee on Foreign Relations:

Treaty Doc. 102–15 Treaty With Panama on Mutual Assistance in Criminal Matters (Exec. Rept. 104–3)

TEXT OF THE COMMITTEE-RECOMMENDED RESOLUTION OF ADVICE AND CONSENT

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Treaty between the United States of America and the Republic of Panama On Mutual Assistance in Criminal Matters. With Annexes and Appendices, signed at Panama on April 11, 1991. The Senate's advice and consent is subject to the following two provisos, which shall not be included in the instrument of ratification to be signed by the President:

Nothing in this Treaty requires or authorizes legislation, or other action,by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.

Pursuant to the rights of the United States under this Treaty to deny requests which prejudice its essential public policy or interest, the United States shall deny a request for assistance when the Central Authority, after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior government official who will have access to information to be provided under this Treaty is engaged in or facilitates the production or distribution of illegal drugs.

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. DASCHLE (for himself, Mr. BIDEN, Mr. KOHL, Mrs. FEINSTEIN, and Mr. DODD):

S. 761. A bill to improve the ability of the United States to respond to the international terrorist threat; read the first time.

By Mr. HARKIN:

S. 762. A bill to implement General Accounting Office recommendations regarding the use of commercial software to detect billing code abuse in Medicare claims processing, and for other purposes; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DASCHLE (for himself, Mr. BIDEN, Mr. KOHL, Mrs. FEINSTEIN, and Mr. DODD):

S. 761. A bill to improve the ability of the United States to respond to the international terrorist threat; read the first time.

THE OMNIBUS COUNTERTERRORISM ACT OF 1995

Mr. DASCHLE. Mr. President, since the terrible bombing in Oklahoma City more than 2 weeks ago, we have been forced to consider what the society should do in self-defense against potentially deadly maniacs who think that killing defenseless people is a way to send a political message or effect political change.

This is an enduring challenge for a democracy. We have faced it before. There is no easy answer.

We cannot afford to give the terrorists what they want to achieve—the subversion of our free institutions—in the effort to prevent their terrorist acts. But we cannot remain complacent in the face of determined threats either.

The President has sent to Congress his proposal to give Federal law enforcement additional resources and tools to use in combating domestic and international terrorism on American soil. It includes commonsense expansion of FBI investigative authorities in counterterrorism cases, such as access to credit reports and travel and hotel records, which are routinely available to State and local law enforcement authorities in criminal investigations.

It will speed the process of adding chemical taggants to explosives, as well as moving more aggressively into taggant and related explosives research.

It will expand the FBI's ability to use trace-and-track devices and pen registers to capture the phone numbers dialed from or coming in to a particular telephone. It does not abandon the requirement of American law that no phone may be tapped without an explicit warrant, issued only when there is probable cause to suspect criminal activity.

The package of proposals includes added penalties and some broader Federal felony offenses, whose purpose is to conform the law with respect to explosives to the existing law that covers firearms.

Coupled with the President's earlier antiterrorism bill directed at international terrorism, this is a sound step to respond to a national threat without throwing overboard the civil rights of law-abiding citizens.

The consensus of those who work in this field is that, although the cold war is over, the war against terrorism is just beginning. Experts make some chilling—and compelling—arguments.

In the century preceding the Oklahoma City bombing, although terrorist groups were numerous, and although horrible murders, kidnapings, and other crimes by them were frequent, there were fewer than a dozen terrorist attacks that cost more than 100 lives.

There is reason to fear, according to experts, that this trend is shifting. Where once terrorists would take hostages and threaten the lives of 1 or 2 or 20 people if their demands were not met, they no longer issue specific demands. They take fewer and fewer hostages.

Instead, they attack more soft targets, where civilian casualties are bound to be higher. They are aiming less at a particular demand and more at terrorizing the entire society.

They build more car bombs and undertake more suicide attacks; they attack civilians in crowds—airplanes, subways, and office buildings. They make fewer explicit demands, but their broader demands are more apocalyptic.

If this trend continues, instead of a cold war atmosphere of threat and counterthreat, of massive nuclear stockpiles poised to strike each other's targets, we face the prospect of random violence—impossible to predict, impossible to counter, impossible to explain.

A civilized society can live with many fears. We lived with the fear of nuclear holocaust for almost 50 years, yet our society became freer throughout that time. The great advances in civil rights and protections against Government were postwar.

But no civilized society will survive the threat of random terror. It cannot. We must be able to feel secure as we travel to our workplaces each day, as we sit at our desks or man our service counters—that we will end the day predictably, by going home, making dinner, performing the normal pattern of tasks and duties we face.

If we ever reach the point where randomized terror can paralyze us, can make Americans distrust each other—distrust the safety of the next few hours—the terrorists will have won, because we will be what they want us to be: an atomized nation, without community, without security, without anything except fear for immediate individual survival.

That is where these people want to take us. We have to combat this, without becoming savages, without losing our perspective, without succumbing to paralyzing fear.

It is not going to be easy. If the experts are right, and apocalyptic terrorism is what the future holds, we will face challenges our system has never before been forced to face. We will have to ask ourselves questions that we have never before raised.

A growing number of terrorist groups believe they are fighting a holy war. That change has changed the nature of what they are prepared to do, the risks they themselves are prepared to run, and the damage they are prepared to inflict.

This change presents us, as a society, with a challenge as well. Americans are of diverse faiths, but we are among the

most religious people in the industrialized world today. We respect the faith of others, and we respect the demands of their religion. Our respect for religious belief is not enshrined only in our first amendment. It is an instinctive American habit not to second-guess the faith of your neighbor.

And yet, if terrorism comes claiming religious sanction, we have to face it. And this bill will help us.

Since 1990, 40 percent of all terrorist acts worldwide have been committed explicitly against American targets. That is, in large part, because the success of our society is a standing refutation of the beliefs of many of these groups. Unless our system can be destroyed, their vision cannot be vindicated.

This is believed by domestic groups as well as groups overseas.

Reports that some Americans think they have to shoot down military helicopters on routine training missions are surfacing. A Member of Congress has even proposed requiring Federal law enforcement agents to be formally deputized by local authorities before they can carry out their responsibilities. Reports of threats against local officials have discouraged involvement in local government meetings in some regions.

I do not believe that words alone cause terrorist acts. I do not think anyone seriously believes so. But I do believe that a culture is comprised of many factors, feeding into its hopes and fears, and I do believe that a culture changes as the factors feeding its hopes and playing on its fears change.

When people in the mainstream become careless with words, they breach barriers that create a new set of assumptions. Barriers, once breached, are permeable in both directions. The lunacy of the fringe enters the mainstream even as the careless or calculated words of the mainstream create a new defining normalcy. Senator MOYNIHAN has spoken about a society that redefines deviancy. Those aggressively seeking to make their mark on our society should examine how they are defining normalcy.

We are warned by the Tokyo subway bombing earlier this year that weapons of mass destruction need not be explosives. Easily manufactured chemical and biological weapons can be as deadly and effective when the goal is to terrorize a community.

Before it collapsed, the Soviet Union operated the largest biological warfare production facility in the world, employing 15,000 scientists. These people had developed a form of bubonic plague that was resistant to 26 antibiotics, a form of fast-spreading meningitis, agents that could be introduced into water systems or into the air in climate-controlled buildings.

Today, these people face the economic collapse of the system that supported them as highly paid and privileged specialists. All they need to recreate their deadly work is carried in their own brains. The temptation to sell that knowledge outside of Russian borders cannot be ignored at a time when the value of their monthly wages has fallen to less than $70.

Again, this threat is not limited to international terrorists. In August 1994, our own FBI arrested two members of a group calling itself the Patriots' Council in Minneapolis. This group was concocting ricin, a neurotoxin that can be produced from the common castor bean plant.

An equally deadly potential is the contamination of a conventional bomb with radioactivity. Since May 1994, there have been 39 separate incidents of nuclear materials diversion in Eastern and Southern Europe. It is not necessary for radioactive material to be made into an explosive device like a bomb. The contamination of a conventional bomb with radioactive materials is simpler; its terrifying effect would be as great.

These threats are not speculative. Unfortunately, they are all too real.

We cannot and must not succumb to the temptation of regarding everyone with oddball notions as a potential threat. But, unfortunately, neither can we write off all oddballs as harmless.

It is the goal of the President's counterterrorism approach that we be able to make the distinctions between the harmless and the potentially dangerous before the dangerous are able to strike again, not afterward.

I believe it is a balanced package of proposals that does not go too far. We should pass this legislation promptly, without detouring into the partisan political minefields some have suggested.

Curtailing the appellate rights of prisoners on death row is not going to change the murderous intentions of terrorist groups. The extraneous politically motivated inclusion of these kinds of provisions does a disservice to the cause of counterterrorism. It does not move us forward; it is intentionally and purposefully divisive.

I very much regret that this is on the agenda of some in the wake of a national tragedy. I would hope that these issues could be abandoned for the time being, out of respect for the families of the victims of the Oklahoma bombing and so that we may enact the necessary counterterrorism legislation expeditiously. We have plenty of time for politics later. This is a time that demands unity.

Mr. President, I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

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 or other real or personal property within the United States. These are the types of violent actions that terrorists most often undertake. The provision encompasses any such activity which is in violation of the laws of the United States or any State, 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 branches 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 which the alien is a citizen. Moreover, some other statutes base criminal jurisdiction on the involvement of an alien as the perpetrator or victim. *E.g.,* 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 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 affecting 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.

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 was undertaken by one co-conspirator 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 of 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 airline 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 aides 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 or 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, officers, 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 reaches such crimes committed outside the United States only when the offender is later found in the United States. There is, however, good reason 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.'' *Mathews 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 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 way 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 exists, 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 a 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 provisions of the Bail Reform Act, the judge may deny release altogether upon determining that no condition(s) of release would assure the aliens 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 information. 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 or the source of 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 its 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 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 choose 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 virture of a felony arrest. Accordingly, escape by a 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 dipomatic 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 re-entering 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)(1) 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 or being a terrorist organization if it, or any of its subgroups, engages in 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 the 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 had 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 ''weapon'' 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 add 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 of 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 a organization designated by the President unless such activity is done in 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 on behalf of a designated organization, (1) to transmit, 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 transmit, 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, literacy, 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 Secetary 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 extraterritorial 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(l) 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 definition 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 (EGDN), 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 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 manufactured 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 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 representatives 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 explosives 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 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 treat 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 the 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. (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 or 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.

TITLE VIII—SUBSTANTIVE INVESTIGATIVE ENHANCEMENTS

Sec. 801. Pen registers and trap and trace devices in foreign counterintelligence and counterterrorism investigations.

Section 801 permits the FBI to use pen register and trap and trace device statutes—already available in routine criminal cases—in foreign counterintelligence investigations. Pen registers are devices which record signals pulsed or toned—simply put, the number dialed, while trap and trade devices record the number from which a call originates, simply put, Caller ID. Neither device permits the monitoring of the actual conversation taking place.

Sec. 802. Disclosure of information and consumer reports to FBI for foreign counterintelligence purposes.

Section 802 permits the FBI to obtain access to consumer credit reports in foreign counterintelligence matters. These are the same reports available on request to car salesmen and real estate agents and to the FBI, by grand jury subpoena, in routine criminal cases. Without the information in these reports, the FBI cannot determine where terrorists hold their assets and accordingly a major part of the investigations is lost. The grand jury subpoena process is not available in foreign counterintelligence matters because these are not necessarily criminal in nature.

Sec. 803. Study and requirements for tagging of explosive materials, and study and recommendations for rendering explosive components inert and imposing controls on precursors of explosives

Section 803 requires the Department of the Treasury to study the action of taggants—microscopic particles which will survive combustion and which are unique by manufacture and date and which therefore will serve to identify the source of an explosive—as well as whether it is possible to render certain chemicals inert and whether certain explosives precursors can be controlled. The study must be completed within one year of enactment.

The provision also requires Treasury to promulgate regulations regarding the addition of these taggants by private manufacturers and criminalizes possession, transfer and other conduct respecting explosives not containing taggants. The criminal provision does not become effective until 90 days after the promulgation of the regulation requiring the taggant addition.

Sec. 804. Access to records of common carriers, public accommodation facilities, physical storage facilities and vehicle rental facilities in foreign counterintelligence and counterterrorism cases.

Section 804 permits the FBI access to the same records already available to the DEA by administrative subpoena in routine narcotics investigations and which are available to the FBI and all other law enforcement agencies in criminal cases where a grand jury subpoena may properly be obtained.

Hotels and motels, storage facilities, airlines, trains and vehicle rental companies all provide services and maintain records which are often of extraordinary value to law enforcement—no less in foreign counterintelligence and counterterrorism cases.

Records would be produced pursuant to a special written request which would be signed by a person with a title no lower than Assistant Special Agent In Charge. Such an individual is generally a senior person considered middle-management within the FBI structure.

Sec. 805. Limitation of statutory exclusionary rule.

Section 805 would simply extend to warrants issued to conduct electronic surveillance, the same ''good faith'' standard which

already exists by Supreme Court decision as to routine search warrants. There is no policy basis to apply a different standard to electronic surveillance warrants than is applied to other warrants.

Sec. 806. Authority for wiretaps in any terrorism-related or explosives felony.

Section 806 would expand the circumstances under which electronic surveillance orders for oral and/or wire intercepts could be issued by a court, to include any felony when an appropriate high-ranking Department of Justice official certifies that the ''felony involves or may involve domestic or international terrorism.'' While most such felonies are already covered in the Electronic Communications Privacy Act of 1986 (ECPA), 18 U.S.C. §2510, *et seq.*, there are occasions when those engaged in terrorism may have violated statutes which are not enumerated. In such instances, although the statute may not ordinarily merit status as a predicate under ECPA, the specific actions of the target(s) may raise the seriousness of the statute to a level where an ECPA order is appropriate.

Section 106 would also expand the list of predicate crimes to include felony explosives violations. Such violations are key to terrorism and violent crime prosecutions and accordingly a key predicate to ECPA orders which may be required in such cases.

Sec. 807. Temporary emergency wiretap authority involving terroristic crimes.

Section 807 would simply permit the issuance of emergency wiretap orders—already available in organized crime cases—to situations involving domestic or international terrorism. Such orders are only valid for 48 hours but are essential because this period of time is sufficient to permit the FBI to obtain a court-ordered warrant, a process which may take as long as the 48 hours permitted.

Sec. 808. Expanded authority for roving wiretaps.

Section 808 removes a needless impediment to the issuance of roving wiretaps—wiretaps which protect individual rights because the ''tap'' follows the target from phone to phone rather than remaining on one phone which others may use—by deleting the requirement that the government, which must show that the target is using multiple phones lines, is doing so in order to avoid routine surveillance.

This is a hard standard to meet and bears no direct relevance to whether the roving wiretap ought to be authorized by a court. Although roving wiretaps have been authorized since at least 1986, the additional requirement of proof of motive has foiled several major investigations.

Sec. 809. Enhanced access to telephone billing records.

Section 809 would allow the FBI to obtain telephone billing information already available in routine cases by way of grand jury subpoena. Although toll records are already available, information such as address, length of service and local calling information is essential in many investigations and the very same information is used by many telephone companies for routine marketing and sales promotion programs.

Sec. 810. Requirement to preserve evidence.

Section 810 would require telephone companies to preserve their records on demand, for at least 90 days, possibly more, until a court order to preserve records can be obtained. Although most mainstream phone companies already preserve their records for more than this period of time, the growth of small companies in the industry has resulted in services which discard records after very short periods of time. Such information is of critical importance in a wide variety of investigations.

Sec. 811. Permission to request military assistance with respect to offenses involving chemical and biological weapons.

Section 811 would permit the Attorney General to request military assistance in cases involving chemical and biological weapons. New subsections enacted by section 811 and codified at §§175(c) and 2332b(c) would provide a limited exception to the Posse Comitatus Act to permit the military to provide technical assistance to federal law enforcement officials in enforcing these subsections. Technical assistance could include assistance in investigations, in conducting searches, in evidence collection, and in disarming and disabling individuals but would not include authority to arrest. Further, these subsections do not authorize any intelligence agency to engage in any activity that is not otherwise authorized by law or executive order.

Section 811 would also amend current law concerning chemical weapons to include all chemical weapons, whether in gaseous form or not. Under existing law, chemical weapons are covered, only if in gaseous form. Accordingly, an individual who poisoned a city's water supply with a pellet of dioxin would not be chargeable under current law because the pellet was not in gaseous form until it was dropped into the water

Sec. 812. General reward authority of the Attorney General.

Section 812 would remove the existing $500,000 cap on the Attorney General's reward authority and would also permit the Attorney General to receive funds from other agencies so as to permit ''pooled'' awards when multiple agencies are involved. The Administration intends to submit complementary appropriations language on this subject.

TITLE IX—SUBSTANTIVE PROSECUTIVE ENHANCEMENTS

Sec. 901. Possession of stolen explosives.

Section 901 would expand federal statutes which already criminalize the knowing possession of stolen firearms to include stolen explosive materials.

Sec. 902. Protection of Federal employees on account of the performance of their official duties.

Section 902 would expand federal criminal murder and assault jurisdiction to include all federal employees and their immediate families. The provision would also include the uniformed services of the military. Under existing federal law, only certain enumerated federal employees are protected under federal law and as federal employees become targets—not only as the result of their specific job titles, but merely because they are federal employees—the need for federal protection grows.

TITLE X—CRIMINAL PENALTIES

Sec. 1001. Mandatory penalty for transferring a firearm knowing that it will be used to commit a crime of violence.

Section 1001 would increase from a maximum to a minimum of 10 years, the sentence of imprisonment which must be imposed when an individual transfers a firearm knowing that the firearm material will be used to commit a crime of violence or a drug trafficking crime. Because such knowledge makes the crime more serious, there is a greater need for punishment.

Sec. 1002. Mandatory penalty for transferring an explosive material knowing that it will be used to commit a crime of violence.

Section 1002 would create a parallel offense to that involving firearms when an individual transfers explosives material knowing that the material will be used to commit a crime of violence or a drug trafficking crime.

Sec. 1003. Increased period of limitations for National Firearms Act.

Section 1003 would extend the current three-year statute of limitations which applies to certain serious weapons offenses, to five years, the same statute of limitations as applies to virtually all other felony offenses under federal criminal law. Some of the offenses covered include the possession of machineguns, sawed-off shotguns, silencers and explosive devices.

TITLE XI—FUNDING

Sec. 1101. Civil monetary penalty surcharge and telecommunications carrier compliance payments.

Section 1101 creates a mechanism to pay for the costs of implementing digital telephony programs. Subject to appropriations action, a surcharge of 40 percent is added to each civil monetary penalty at the time it is assessed by the United States or an agency thereof. The Administration intends to submit complementary appropriations language on this subject.

Mr. BIDEN. Mr. President, 2 weeks ago, terrorists destroyed the Federal building in Oklahoma City, took hundreds of lives, and destroyed the lives of thousands of others. Federal, State, and local investigators continue the search for those responsible for that heinous act.

In the weeks since the attack, there has been renewed focus on S. 390, the President's comprehensive counterterrorism bill I introducing in February with Senators SPECTER and KOHL.

Today, I am pleased to join with Senator DASCHLE and others in introducing expanded counterterrorism legislation, which contains additional proposals to assist law enforcement in the fight against terrorism.

As I said in February, I believe we must take strong action to counteract terrorism. Now, in the wake of the Oklahoma City bombing, it is clear that we must focus our attention not just on foreign terrorists, but on domestic American terrorists as well.

There are steps we can take, and this bill combines them. We should ensure that law enforcement has the tools and resources it needs to effectively investigate and prevent terrorist acts, whatever their origin.

At the same time, we should not, in the heat of the moment, pass legislation that we—and the American public—will later regret. Our freedoms and our Constitution are simply too valuable to be put at risk in a hurried rush to respond to this terrible tragedy.

Several important provisions in this bill come from S. 390, introduced earlier this year. For instance, the bill expands the circumstances in which we can prosecute crimes committed overseas which affect our interests.

It also prohibits persons from raising funds for foreign terrorist organizations, implements treaties on plastic explosives, and takes a number of other important actions.

New provisions in this bill add to that effort by providing enhanced authority to obtain records in foreign counterintelligence investigations through letter requests from the FBI. This allows access to records such as consumer credit reports and hotel/motel records.

Because foreign counter-intelligence investigations may not involve a criminal prosecution, a grand jury subpoena may not be an option in these cases.

This bill now also revises current wiretap laws to provide authorization for wiretaps in connection with any felony if the Department of Justice certifies that it is connected to foreign or domestic terrorism, and it allows for emergency wiretaps in terrorism investigations.

The bill also alters the standards to obtain a so-called roving wiretap—targeted at a person moving from phone to phone or using pay phones.

In addition, the bill allows use of the military to investigate offenses involving chemical and biological weapons.

And it allows the Department of the Treasury to promulgate regulations requiring explosives manufacturers to use methods making the explosives traceable, known as taggants.

While I believe many of the provisions now under consideration in this bill are useful and desirable, I do share some of the concerns about the bill.

Specifically, I want to examine closely the need for and the full scope of the additional authority sought for law enforcement in wiretapping and in collecting records, particularly where domestic groups are targeted.

As I said in February, I am also concerned about the alien terrorist removal provisions, which would allow secret evidence to be used to deport a person.

Our judicial system generally requires that a defendant be given the evidence to be used against him—so that he can prepare a defense. Unseen, unheard evidence simply cannot be defended against, and raises the possibility of erroneous decisions.

I also believe we should look closely at proposals which would ban fundraising for organizations which the President designates as terrorist.

The first amendment rights of association and free speech are at the heart of our system of government. While we should not allow people to knowingly support terrorism, we also must ensure that legitimate political activities are not curtailed.

We must examine these and other issues closely before acting on terrorism legislation.

But I do believe we should act. Americans enjoy freedoms unlike those in any other country on the planet. But freedoms bring responsibilities.

Incidents like the Oklahoma City bombing have no place in our free and democratic society, which allows full expression of all types of political views through legitimate means. There is simply no excuse for turning to violence in a society with open airwaves, uncensored newspapers, and regular and free elections of the peoples' representatives.

By Mr. HARKIN:

S. 762. A bill to implement General Accounting Office recommendations regarding the use of commercial software to detect billing code abuse in Medicare claims processing, and for other purposes; to the Committee on Finance.

THE MEDICARE BILLING ABUSE PREVENTON ACT OF 1995

• Mr. HARKIN. Mr. President, I am introducing the Medicare Billing Abuse Prevention Act to implement recommendations of the General Accounting Office concerning abusive and improper billing practices that are costing the American taxpayer and individual Medicare beneficiaries billions of dollars. There is controversy over what should be done concerning Medicare. But, I am hopeful that we will all agree that medical providers should receive what they are entitled to and should not receive payments based on improper billings.

Last year, I along with the chairman and ranking member of the Budget Committee asked the GAO to look at how much Medicare loses because of its inability to prevent and detect abusive and inappropriate billings by health care providers. We specifically asked them what savings the taxpayers and Medicare beneficiaries might realize if Medicare was to use the commercially available state of the art computer programs to detect and stop abusive payments.

GAO has done their usual excellent work. The results of their review are dramatic. Medicare's system for detecting abuse is failing and it's costing American taxpayers and senior citizens millions every day. Taxpayers and those on Medicare could save roughly $4 billion over the next 5 years if Medicare harnessed the power of the private sector and used state of the art anti-abuse equipment.

Although I believed we had a problem, the GAO has uncovered losses from improper billings that are far larger than I expected. They also suggested a straightforward solution that will conservatively save the Medicare trust fund about $640 million per year and Medicare beneficiaries over $140 million a year in their out of pocket costs. Those estimates are based on four separate samples of 200,000 actual filed claims each that were processed with commercially available software developed by four separate computer companies that now provide the software to commercial users, primarily insurance companies.

I was pleased to hear that the great majority of medical care providers billed the Government correctly. The losses were the results of billings submitted by 8 percent of providers. I do want to point out that all errors are not purposeful. But, whatever the reason, the Medicare trust fund should have the best protections against improper payments.

In a hearing held by the Subcommittee on Labor, Health and Human Services, Education and Related Agencies today, I believe that a solid case was made for immediate action. Losses are mounting by about $2 million for every day we wait.

Many in Congress are proposing dramatic cuts in Medicare and Medicaid to pay for tax cuts and reduce the deficit. They are suggesting that senior citizens and the disabled, most of whom live on limited, fixed incomes, pay more for Medicare. And they are suggesting dramatic cuts in payments to doctors, hospitals, and other health care providers—cuts that will either reduce health care access and quality of care for older Americans, or simply be shifted on to the millions of working Americans who have private health insurance.

While Medicare for years led the health care field in technology, today it has been left in the dust. While most of the Nation's leading private health insurers and managed care plans are saving billions by using this state of the art equipment, Medicare lags behind. In fact, many of the same private health insurers that Medicare contracts with to process its claims use this new technology on their private sector business but can't use the same to bring American taxpayers and seniors Medicare savings. This is part of the reason why Medicare's costs are rising faster than private sector health care costs.

The GAO had four private companies that have developed sophisticated computer technology to detect and stop billing abuse run a representative sample of doctors bills Medicare had already checked and paid through their systems. The private sector systems found instance after instance where Medicare, with its outdated computer technology, paid abusive or inappropriate bills that should have been denied. The most common form of billing abuse identified was unbundling, where a doctor performs a procedure and bills Medicare not only for the full procedure, but also for components of the procedure. For example, a doctor bills Medicare $5,000 for gall bladder surgery, but also bills Medicare $1,000 for the incision and closing the wound. Medicare is paying twice for the same service. Other examples of unbundling abuses identified include: billing for multiple visits to the same patient on the same day; billing separately for injections and chemotherapy administration when those injections are simply a component of the chemotherapy administration; and, billing for excessive numbers of Pap smears for the same woman on the same day.

Billing abuses that the commercial computer systems would identify include mutually exclusive procedures, the use of an inappropriate assistant at surgery, duplicate billings, and global fee period violations where one charge might cover a physician's services for 30 days after surgery and the doctor separately charges for services provided during that time period.

The GAO indicates that it would cost around $20 million or less to install the private sector technology in Medicare. And they have clearly demonstrated that such an investment would save Medicare taxpayers and beneficiaries over $3.9 billion in 5 years. So, for every dollar we invest, taxpayers will get a $200 return. I call that a bargain. I want to reiterate: for every day we fail to invest, taxpayers will lose about $2 million. And more will be lost by individual Medicare patients, sometimes thousands of dollars by a single individual. I call that a scandal.

The Billing Abuse Prevention Act will do three things.

First, it will provide a definite time when commercially available computer systems shall be in actual use to catch billing code abuses by all of the 32 Medicare contractors who examine Medicare billings so errors and abusive billing practices can be caught. HCFA has been given 90 days from the date of enactment to set out the exact requirements under which the 32 Medicare contractors shall have a computer checking system in place. And, it requires that the contractors actually have the system in use within 180 days after enactment.

It is my hope and expectation that this can be done more quickly than that. HCFA should now begin the process to develop the criteria without waiting for the legislation to pass. With the full cooperation of the agency, I am hopeful that the HCFA implementing requirements could be ready by the time the President signs the bill. That will allow the contractors to move more quickly as well.

Many of the 32 contractors are already using the commercially available systems to review private insurance claims. But, some modifications of the systems will be needed to modify the program to match HCFA billing practices. And, the contractors will want to review all of the systems that are available that meet HCFA's criteria and go through the appropriate procurement practices.

Second, the legislation provides that the Secretary of Health and Human Services may keep information about the system confidential. If that is not done, detailed information about the system could be used, to some degree, to get around the system's safeguards. The legislation also provides that the proprietary information about the systems are not to be released. If it became available, the companies that created it might lose a significant part of their investment since other companies could acquire the technical details of the systems. The Secretary is expected to release appropriate information about the system which is in the public interest.

It is important to use commercially available systems because we already know they work and we can put them into place relatively quickly with minor modifications. We save time which results in real savings and we avoid what might be a large development cost if HCFA tried to create their own system. Another advantage of commercial systems is that they will be continually improved as the private development companies work to further improve their systems to acquire a larger share of the private marketplace.

Third, the Secretary shall order a review of all of the existing regulations and guidelines governing Medicare payment policies and billing code abuse to see what modifications might be appropriate to maximize the benefits of the computer checking systems and avoiding improper payments.

I urge that this legislation be rapidly considered and passed.●

ADDITIONAL COSPONSORS

S. 326

At the request of Mr. HATFIELD, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 326, a bill to prohibit United States military assistance and arms transfers to foreign governments that are undemocratic, do not adequately protect human rights, are engaged in acts of armed aggression, or are not fully participating in the United Nations Register of Conventional Arms.

S. 440

At the request of Mr. WARNER, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of S. 440, a bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

S. 483

At the request of Mr. HATCH, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 483, a bill to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for the other purposes.

S. 607

At the request of Mr. WARNER, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 607, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 692

At the request of Mr. GREGG, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 692, a bill to amend the Internal Revenue Code of 1986 to preserve family-held forest lands, and for other purposes.

AMENDMENTS SUBMITTED

COMMONSENSE PRODUCT LIABILITY REFORM ACT

COVERDELL (AND DOLE) AMENDMENT NO. 690

Mr. COVERDELL (for himself and Mr. DOLE) proposed an amendment to the amendment No. 596, proposed by Mr. GORTON, to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Product Liability Fairness Act of 1995''.

TITLE I—PRODUCT LIABILITY

SEC. 101. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) CLAIMANT.—The term ''claimant'' means any person who bring a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) CLAIMANT'S BENEFITS.—The term ''claimant's benefits'' means the amount paid to an employee as workers' compensation benefits.

(3) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term ''clear and convincing evidence'' is that measure of degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(4) COMMERCIAL LOSS.—The term ''commercial loss'' means any loss or damage to a product itself, loss relating to a dispute over its value or consequential economic loss the recovery of which is governed by the Uniform Commercial Code or analogous State commercial law, not including harm.

(5) DURABLE GOOD.—The term ''durable good'' means any product, or any component of any such product, which has a normal life expectancy of 3 or more years or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(6) ECONOMIC LOSS.—The term ''economic loss'' means any pecuniary loss resulting from harm (including any medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent that recovery for the loss is permitted under applicable State law.

(7) HARM.—The term ''harm'' means any physical injury, illness, disease, or death, or damage to property, caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(8) INSURER.—The term ''insurer'' means the employer of a claimant, if the employer is self-insured, or the workers' compensation insurer of an employer.

(9) MANUFACTURER.—The term ''manufacturer'' means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product), and who designs or formulates the product (or component part of the product), or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, constructs, designs, or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another person; or

(C) any product seller that is not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(10) NONECONOMIC LOSS.—The term ''noneconomic loss''—

(A) means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; and

(B) does not include economic loss.

(11) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(12) PRODUCT.—

(A) IN GENERAL.—The term ''product'' means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term ''product'' does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; and

(ii) electricity, water delivered by a utility, natural gas, or steam.

(13) PRODUCT LIABILITY ACTION.—The term ''product liability action'' means a civil action brought on any theory for harm caused by a product.

(14) PRODUCT SELLER.—

(A) IN GENERAL.—The term ''product seller'' means a person who—

(i) in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term ''product seller'' does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(15) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(16) TIME OF DELIVERY.—The term ''time of delivery'' means the time when a product is delivered to the first purchaser or lessee of the product that was not involved in manufacturing or selling the product, or using the product as a component part of another product to be sold.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) ACTIONS COVERED.—Subject to paragraph (2), this title applies to any product liability action commenced on or after the date of enactment of this Act, without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR DAMAGE TO PRODUCT OR COMMERCIAL LOSS.—A civil action brought for loss or damage to a product itself or for commercial loss, shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable State law.

(b) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes a State law only to the extent that State law applies to an issue covered under this title.

(2) ISSUES NOT COVERED UNDER THIS ACT.—Any issue that is not covered under this title, including any standard of liability applicable to a manufacturer, shall not be subject to this title, but shall be subject to applicable Federal or State law.

(c) STATUTORY CONSTRUCTION.—Nothing in this title may be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(8)) or the threat of such remediation.

(d) CONSTRUCTION.—To promote uniformity of law in the various jurisdictions, this title shall be construed and applied after consideration of its legislative history.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Notwithstanding any other provision of law, any decision of a circuit court of appeals interpreting a provision of this title (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 103. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title filed by a claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant, only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant; or

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect a product if the product seller had no reasonable opportunity to inspect the product that allegedly caused harm to the claimant.

(b) SPECIAL RULE.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101 (14)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term ''product liability action'' means a civil action brought on any theory for harm caused by a product or product use.

SEC. 104. DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—Notwithstanding any other provision of law, a defendant in a product liability action that is subject to this title shall have a complete defense in the action if the defendant proves that—

(1) the claimant was under the influence of intoxicating alcohol or any drug that may not lawfully be sold over-the-counter without a prescription, and was not prescribed by a physician for use by the claimant; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for the accident or event which resulted in the harm to the claimant.

(b) CONSTRUCTION.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

SEC. 105. REDUCTION FOR MISUSE OR ALTERATION OF PRODUCT.

(a) GENERAL RULE.—

(1) IN GENERAL.—Except as provided in subsection (c), in a product liability action that is subject to this title, the damages for which a defendant is otherwise liable under applicable State law shall be reduced by the percentage of responsibility for the harm to the claimant attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, the express warnings or instructions of the defendant if the warnings or instructions are determined to be adequate pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this title, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) STATE LAW.—Notwithstanding section 3(b), subsection (a) of this section shall supersede State law concerning misuse or alteration of a product only to the extent that State law is inconsistent with such subsection.

(c) WORKPLACE INJURY.—Notwithstanding subsection (a), the amount of damages for which a defendant is otherwise liable under State law shall not be reduced by the application of this section with respect to the conduct of any employer or coemployee of the plaintiff who is, under applicable State law concerning workplace injuries, immune from being subject to an action by the claimant.

SEC. 106. UNIFORM STANDARDS FOR AWARD OF PUNITIIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—The amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall not exceed 2 times the sum of—

(A) the amount awarded to the claimant for economic loss; and

(B) the amount awarded to the claimant for noneconomic loss.

(2) SPECIAL RULE.—

(A) The amount of punitive damages that may be awarded in any civil action against an individual whose net worth does not exceed $500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization which has fewer than 25 full-time employees, shall not exceed:

(1) Two times the sum of—

(a) the amount awarded to the claimant for economic loss; and

(b) the amount awarded to the claimant for non-economic loss; or

(2) $250,000,

whichever amount is lesser.

(B) Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in any civil action whose net worth does not exceed $500,000 or against an owner of an unincorporated business, or any partnership corporation, association, unit of local government, or organization which has fewer than 25 full-time employees, if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(3) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(c) BIFURCATION AT REQUEST OF EITHER PARTY.—

(1) IN GENERAL.—At the request of any party, the trier of fact in a product liability action that is subject to this title shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If any party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

SEC. 107. UNIFORM THE LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), a product liability action that is subject to this title may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered, the harm that is the subject of the action and the cause of the harm.

(2) EXCEPTIONS.—

(A) PERSON WITH A LEGAL DISABILITY.—A person with a legal disability (as determined under applicable law) may file a product liability action that is subject to this title not later than 2 years after the date on which the person ceases to have the legal disability.

(B) EFFECT OF STAY OR INJUNCTION.—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed after the 20-year period beginning at the time of delivery of the product.

(2) STATE LAW.—Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

(3) EXCEPTIONS.—

(A) A motor vehicle, vessel, aircraft, or train that is used primarily to transport passengers for hire shall not be subject to this subsection.

(B) Paragraph (1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 20 years, but it will apply at the expiration of that warranty.

(C) Paragraph (1) does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action that could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action pursuant to this title not later than 1 year after the date of enactment of this Act.

SEC. 108. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action that is subject to this title, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

SEC. 109. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) GENERAL RULE.—

(1) RIGHT OF SUBROGATION.—

(A) IN GENERAL.—An insurer shall have a right of subrogation against a manufacturer

or product seller to recover any claimant's benefits relating to harm that is the subject of a product liability action that is subject to this title.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A), the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this title, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN NOTIFICATION.—Except as provided in subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the employer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this title, the manufacturer or product seller attempts to persuade the trier of fact that the harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the employer.

(b) RIGHTS OF EMPLOYER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an employer shall, in the same manner as any party in the action (even if the employer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is presented to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

SEC. 110. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered under this title.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the ''Biomaterials Access Assurance Act of 1995''.

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term ''biomaterials supplier'' means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any person who brings a civil action,or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered hard as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR.—With respect to an action brought on behalf or through a minor, such term includes the parent or guardian of the minor.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(ii) a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term ''component part'' means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant nonimplant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term ''harm'' means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term ''implant'' means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term ''manufacturer'' means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term ''medical device'' means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(8) RAW MATERIAL.—The term ''raw material'' means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(10) SELLER.—

(A) IN GENERAL.—The term ''seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for ham allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant cause by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterial supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterial supplier as a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant; and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a seller because the related manufacturer meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary,

if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (21) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSE TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) Basis of ruling on motion to dismiss.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 207. APPLICABILITY.

This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this Act, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this Act.

NOTICE OF HEARING

SUBCOMMITTEE ON POST OFFICE AND CIVIL SERVICE

Mr. ROTH. Mr. President, I would like to announce that the Subcommittee on Post Office and Civil Service, of the Committee on Governmental Affairs, will hold hearings on May 15 and May 22, 1995, on Federal pension reform.

The hearings are scheduled for 2 p.m. in room 342 of the Dirksen Senate Office Building. For further information, please contact Dale Cabaniss, chief counsel, or John Roots at 224–2254.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources to receive testimony on administration of timber contracts in the Tongass National Forest, and administration of the Tongass Timber Reform Act of 1990.

The hearing will take place Thursday, May 18, at 9:30 a.m. in room SD 366 of the Dirksen Senate Office Building in Washington, DC.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Mark Rey at (202) 224–2878.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON ACQUISITION AND TECHNOLOGY

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on Acquisition and Technology of the Committee on Armed Services be authorized to meet at 9 a.m. on Friday, May 5, 1995, in open session, to receive testimony on the implications of the revolution in military affairs in review of S. 727, the National Defense Authorization Act for fiscal year 1996, and the future years defense program.

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

ADDITIONAL STATEMENTS

TERRORISM IN AMERICA

● Mr. KOHL. Mr. President, in light of the recent bombing in Oklahoma City, I rise today to speak about a related, but equally serious problem confronting both the world community and the United States. This problem is international terrorism.

As a world superpower, the United States has an obligation to help maintain peace and stability and to promote democracy throughout the globe. By doing this we create and strengthen many international friendships. At the same time, however, we encounter those who disagree with our goals and actions. Most of this criticism comes peacefully; some of it, unfortunately, comes violently.

The culmination of this violence results in such incidents as the bombing of Pan Am flight 109—where 189 Americans died over Locherbie, Scotland—or the bombing of the World Trade Center, where 6 Americans were killed and more than 1,000 were injured by a terrorist act on our own soil. Fortunately, these large scale anti-American incidents are more the exception than the rule.

However, American citizens are often the victims of many smaller international terrorist incidents. Of course, this does not mean that the average American citizen should fear a terrorist attack while walking to the local grocery store. In fact, between 1988 and 1994 there were only 10 terrorist attacks throughout all of North America, compared with the 973 attacks in Latin America, 906 in Western Europe, and 628 in the Middle East. Relatively speaking, Americans are still quite safe in their own country.

The problem occurs when U.S. citizens are working, living, and traveling abroad. In fact, in 1994 approximately 21 percent of all terrorist attacks were directed at American targets. This, Mr. President, is a relatively large percentage. Since Americans can be found in every corner of the Earth, it would be near impossible for the U.S. Government to ensure the safety of all of its nationals. What, then, can be done to help protect American nationals and their property from the threat of terrorism?

The answer: We must strike at the roots of international terrorist organizations. This, Mr. President, is the goal of the Omnibus Counter-Terrorism Act of 1995, which I introduced along with Senators BIDEN, SPECTER, and others. This legislation will make it a crime to raise funds within the United States for terrorist organizations while simultaneously enhancing the Government's ability to expel those aliens who are, or have been, engaged in terrorist activities.

Mr. President, the sad truth is that fundraising for international terrorism now has its roots in America—and has even reached the Midwest. In fact, in 1993 a group of Palestinian immigrants, linked to the infamous Abu Nidal terrorist organization, actively raised money here for terrorism abroad. Surprisingly, this terrorist cell extended from St. Louis to Dayton to Racine, WI. After their arrest, three of the men were accused of plotting to kill American Jews and to blow up the Israeli Embassy in Washington on behalf of the Abu Nidal. They admitted to smuggling money and information, buying weapons, and planning terrorist activities. In July 1994, they pleaded guilty to Federal racketeering charges.

How can we work as hard to fight terrorism abroad, but allow foreign terrorism to flourish within our own borders? The Omnibus Counter-Terrorism Act will put an end to this ironic situation.

Mr. President, our legislation is simple, effective and straightforward. This bill will create a comprehensive Federal criminal statue to be used against international terrorists, while expanding current U.S. antiterrorism laws to apply to any terrorist attack on a U.S. citizen, regardless of location. By clarifying and elaborating on our current laws, this bill takes a firm and stand against terrorism both in the United States and abroad.

Mr. President, our Nation has the responsibility to promote stability and to protect our citizens throughout the world. International terrorists, however, undermine these goals and sabotage American interests. The Omnibus Counter-Terrorism Act of 1995 is not a perfect piece of legislation—we do need to make changes so that we do not circumscribe civil liberties. Nevertheless, this bill does take a step toward combating international terrorism. By preventing terrorist fundraising and enhancing antiterrorist laws, this act will strike at the roots of terrorism. Not only will it help to make the world safe for Americans, it will help to make the world safe for all.●

MONTANA MEAN TIME

● Mr. SIMON. Mr. President, Senator MAX BAUCUS and I were elected to the House of Representatives the same year, 1974, and through the years, I have been impressed by MAX BAUCUS' consistent and thoughtful leadership.

His stand and statement in behalf of the balanced budget amendment this year, in my opinion, was one of the high points of our debate.

But no action he has taken has shown more courage and more common sense than his op-ed piece in the New York Times titled, ''Montana Mean Time.''

It is a candid discussion of what is happening in his State.

It is easy for those of us in public life to duck these things. To MAX BAUCUS credit, he has not ducked.

I am proud to have him as a colleague, and I ask that his statement be printed in the RECORD.

The statement follows:

[From the New York Times, May 1, 1995]

MONTANA MEAN TIME

(By Max Baucus)

Since the Oklahoma City bombing, public attention has focused on private militias. I claim no great expertise on the movement as a whole, but I have watched it grow in my state. And as an example of the national phenomenon, the Montana militias deserve a close look.

We Montanans take pride in our low crime rate, and believe honest people can disagree without being disagreeable. Maybe extremist groups believe they can find a home in Montana because of our easygoing ways. The so-called Militia of Montana is one such group. At least one of its founders is associated with the neo-Nazi Aryan Nations. It says it exists so that ''if the Government uses its

force against the citizens, the people can respond with a superior amount of arms.''

The Militia of Montana frequently uses anti-Semitic code words like ''shadow government'' and ''banking elites.'' Its director, Bob Fletcher, defends this rhetoric this way: ''If the bulk of the banking elite are Jewish, is that anti-Semitic? The people who are doing this are the international banking elite, and if they are all Jews, so be it, but that's not the case. I don't care if they're Arabs or monkeys.''

Associated with the Militia of Montana is the more extreme Freemen movement. The Militia warns of tyranny to come; the Freemen say it exists today. A Freeman leader offers the following ''proof'': ''A Social Security card/number, marriage licenses, driver's licenses, insurance, vehicle registration, welfare from the corporations, electrical inspections, permits to build your private home, income taxes, property taxes.''

Look at the Freemen's racial theories. The same fellow who says marriage licenses are tyranny believes people who are not white are ''beasts.'' Only whites go to heaven; Jews are children of Satan.

The rhetoric of these groups embraces a range of enemies, from the Federal Government to ''the New World Order.'' Their real target, however, is local law enforcement. Nick Murnion, the Garfield County Attorney, recalls threats the Freemen made against him last year. ''They told me they weren't going to bother building a gallows. They were just going to let me swing from the bridge,'' he says.

A month ago, armed members of yet a third group, the North American Volunteer Militia, threatened the marshal in the town of Darby. He had pulled over a car whose license plates expired in 1992, and later describes what followed: ''They had weapons and they were shaking them at us and yelling that they were going to kill us. We backed off a little bit and then left because we could see that it could turn into a bloodbath.''

The good news is that ringleaders of the hate groups are few. Nick Murnion believes there are no more than 30 around Montana. Most refuse to pay taxes and obey the laws. They should be arrested, tried and jailed. Otherwise, the situation may worsen. As one prosecutor, County Attorney John Bohlman, says: ''The more the Federal and local law enforcement agencies behave with a hands-off attitude, the more bold and daring these groups become.''

But law enforcement is only part of it. Casual adherents of militias statewide are not criminals. And a united community can deal with them by taking a stand against hate.

Americans have the right to say what they believe. But with that right comes the responsibility to respect our neighbors, respect law enforcement and obey the laws.

In November 1993, a group of skinheads threw a bottle through the glass door of a Jewish family's in Billings. A few days later, they put a brick through a window of another Jewish household; a 5-year-old boy was in the room at the time.

In response, Billings rallied behind the Jewish community. The Billings Gazette printed a full-page drawing of a menorah, and people all over town pasted them in their windows. We held our biggest Martin Luther King Day march ever in February. And the skinheads fled.

The same treatment will work this time. Americans everywhere must speak out. We all must make hatemongers unwelcome in our towns and communities. And we must stand by the heroes in this struggle, the police and county prosecutors who stand up to the extremists.

It is that simple. And after Oklahoma City, it is about time.●

CONFERENCE ON AGING

Mr. DASCHLE. Mr. President, I want to congratulate the White House Conference on Aging which, as I understand it, just this afternoon passed a resolution that I ask unanimous consent be made part of the RECORD.

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

PROTECTING MEDICARE AND MEDICAID

Whereas Congress is beginning an historic debate on Medicare and Medicaid as the 1995 White House Conference on Aging deliberates on its recommendations to the Nation;

Whereas U.S. health care cost and coverage shortcomings continue to go unaddressed;

Whereas health care reform and the solvency of the Medicare Trust Fund are inextricably intertwined;

Whereas the opening session of the Conference heard statements of support for Medicare and Medicaid from both Democratic and Republican members of Congress; and

Whereas the President in his address challenged the delegates to come together on a multigenerational, bipartisan basis to address the problems facing the nation. Therefore, be it,

Resolved by the 1995 White House Conference on Aging to support policies that:

Address problems facing the Medicare and Medicaid programs in the context of broad-based health care reform, as the President has proposed;

Oppose massive cuts soon to be considered in Congress;

Protect Medicare and Medicaid from any steps backwards by way of reduced health care or long term care coverage;

Apply any savings that may come from changes in Medicare and Medicaid as a result of health care reform to strengthen the programs and expand coverage, including long term care, rather than to meet arbitrary deficit reduction targets;

Prohibit additional costs being put on beneficiaries that would make health care unaffordable;

Maintain quality, preserve choice of provider and oppose proposals that have the effect of financially coercing beneficiaries into plans that do not guarantee access to their own physicians;

Prohibit the use of savings in Medicare and Medicaid for tax cuts for well off citizens.

Mr. DASCHLE. Mr. President, the resolution is entitled ''Protecting Medicare and Medicaid.''

The important part of the resolution simply says:

Therefore, be it *Resolved* by the 1995 White House Conference on Aging to support policies that:

Address problems facing the Medicare and Medicaid programs in the context of broad-based health care reform, as the President has proposed;

Oppose massive cuts soon to be considered in Congress;

Prohibit the use of savings in Medicare and Medicaid for tax cuts for well-off citizens.

I think it is very important that everyone understand the ramifications of the proposals to cut Medicare in the budget resolution. It would simply be the largest insurance rate hike in Medicare history. The plan would cost $900 per person in additional out-of-pocket expenses for Medicare recipients by the year 2002, a total of about $3,500 over the next 7 years. We cannot accept that. I do not believe that the vast majority of the American people will accept it. Certainly, if this resolution is any indication, senior citizens across the country, represented by the White House Conference on Aging, will not accept it as part of our budget, as part of any plan relating to Medicare reform this year.

So I am very pleased with the action taken by the White House conference. I hope we can talk more about that in the coming days.

REMEMBERING VIETNAM 20 YEARS AFTER THE END OF THE WAR

Mr. DASCHLE. Mr. President, on April 24, 1964, Sergeant First Class Raymond Adams, a 10-year Army veteran, was killed by a hand grenade in South Vietnam. Sergeant Adams was 30 years old and married. More than 8 years later, on July 21, 1972, Specialist Fifth Class Steven Allen Trant died in South Vietnam. He was 21 years old, and had been in the Army less than a year.

They were the first, and the last South Dakotans to die in Vietnam. In between their too early deaths, our country was changed utterly.

More than 3 million Americans served in Vietnam. Hundreds of thousands were injured, some permanently, and more than 58,000 young Americans died in the war.

Today, 20 years after the last helicopter lifted off the roof of the American embassy in Saigon we pause to say thank you to all of the men and women who served in that long, sad war and to remember those who did not return.

One of the most important ways we can show our thanks, of course, is by making sure Vietnam veterans get the medical care and compensation they need for injuries they suffered in that war.

Every man or woman who puts on a uniform is at risk of harm. They accept that risk as part of their service. In return, we, as a nation, must accept responsibility to care for men and women if they are harmed during their military service.

Congress took a big step toward fulfilling that responsibility to Vietnam veterans in 1991 when we agreed to allow Vietnam veterans to receive compensation for nine different illnesses and disabilities caused by their exposure to agent orange.

The National Academy of Sciences is now investigating possible links between agent orange exposure and other illnesses. I suspect that additional illnesses will be added to the list of ailments for which Vietnam veterans may be compensated in the future, and I support the Academy in its continuing research.

It doesn't matter whether a wound is inflicted with a bullet or a piece of

shrapnel or a toxic defoliant. In each case, the wound is real, and so is our obligation to help the veteran who suffers it.

We also need more research into our health concerns of Vietnam vets.

In all, more than 682,000 Vietnam and Vietnam-era veterans are now disabled as a result of their military service.

And a respected study by the independent Research Triangle institute estimates that more than 960,000 men who fought in Vietnam and 1,900 women—nearly one in three Vietnam veterans—suffer from post-traumatic stress disorder. For some, the effects are few and fleeting. For others, they are chronic and debilitating.

So as we mark this 20th anniversary of the end of our Nation's most painful period this century, let us remember the words of Abraham Lincoln as he spoke them in his second inaugural to the Nation still grieving from another terrible war that divided our Nation. He said:

> Let us strive to finish the work that we are in, to bind up the Nation's wounds, to care for him who shall have borne the battle and for his widow and orphan, to do all which may achieve and cherish a just and lasting peace.

Let us show our thanks to Vietnam veterans this week, next week, and at all times in the future by pledging to give the Department of Veterans Affairs the resources it needs to keep the promises we made to all Vietnam veterans.

Let us show our thanks by strengthening community-based veterans health care centers, by making a commitment to keep veterans centers vital and independent. These centers do not duplicate the work of VA hospitals. They serve different people with different needs, and we ought to maintain them.

Finally, Mr. President, it is time for this Nation to move toward normalizing relations with Vietnam. I know the arguments against normalization, and I sympathize with them. I understand that the prospect of restoring diplomatic ties with Vietnam is painful to many Americans, especially those who have friends and family members among those who remain unaccounted for in Vietnam.

Experience has shown that it is precisely by expanding our ties with Vietnam that we are most likely to learn what happened to soldiers who never returned.

In the years when we had no contact with Vietnam, we made no progress on the question of those missing in action.

So I stand with my colleagues, Senator MCCAIN, Senator BOND, Senator KERRY of Massachusetts, and others on both sides of the aisle in urging that we move cautiously toward a fuller dialog with Vietnam in order to secure answers for the families and healing for our Nation.

We can never repay Sgt. Raymond Adams and Specialist Steven Trant or any of the other 58,000 Americans who lost their lives in Vietnam, but we can show our respect and our gratitude, and we can continue the effort to bind up the Nation's wounds from a war that, in some ways, still divides us.

MEASURE READ FOR THE FIRST TIME—S. 761

Mr. DASCHLE. Mr. President, I understand that S. 761, introduced earlier today by myself and Senator BIDEN, is at the desk.

The PRESIDING OFFICER. That is correct.

Mr. DASCHLE. Mr. President, I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill by title.

The bill clerk read as follows:

> A bill (S. 761) to improve the ability of the United States to respond to the international terrorist threat.

Mr. DASCHLE. Mr. President, I ask for the second reading.

The PRESIDING OFFICER. Is there objection?

Mr. COVERDELL. Mr. President, I object.

The PRESIDING OFFICER. There is an objection. This bill will be read for the second time on the next legislative day.

Is the Democratic leader finished?

Mr. DASCHLE. Yes.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276d–276g, as amended, appoints the following Senators as Members of the Senate Delegation to the Canada-United States Interparliamentary Group during the first session of the 104th Congress, to be held in Huntsville, ON, Canada, May 18–22, 1995:

The Senator from Iowa [Mr. GRASSLEY], and the Senator from Texas [Mrs. HUTCHISON].

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER. Without objection, the Senate will resume the pending business, which the clerk will report.

The bill clerk read as follows:

> A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. In my capacity as a Senator from Alaska, I suggest the absence of a quorum. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 690 TO AMENDMENT NO. 596

(Purpose: To provide for a uniform product liability law and to provide assurance of access to certain biomaterials)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Georgia [Mr. COVERDELL], for himself and Mr. DOLE, proposes an amendment numbered 690 to amendment No. 596.

Mr. COVERDELL. Mr. President, I ask unanimous consent further reading be dispensed.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

CLOTURE MOTION

Mr. COVERDELL. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

> We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on the pending substitute amendment to H.R. 956, the product liability bill:
>
> Slade Gorton, Dan Coats, Richard G. Lugar, John Ashcroft, Rod Grams, Kay Bailey Hutchison, Judd Gregg, Strom Thurmond, Jay Rockefeller, Trent Lott, Rick Santorum, Larry E. Craig, Bob Smith, Don Nickles, R.F. Bennett, John McCain, Connie Mack.

Mr. COVERDELL. 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.

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

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

CLOTURE MOTION

Mr. COVERDELL. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

> We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on the pending substitute amendment to H.R. 956, the product liability bill:
>
> Slade Gorton, Dan Coats, Richard G. Lugar, John Ashcroft, Rod Grams, Kay Bailey Hutchison, Judd Gregg, Strom Thurmond, Jay Rockefeller, Trent Lott, Rick Santorum, Larry E. Craig,

Bob Smith, Don Nickles, R.F. Bennett, John McCain, Connie Mack.

UNANIMOUS-CONSENT AGREEMENT

Mr. COVERDELL. Mr. President, I ask unanimous consent that when the Senate resumes the pending bill, H.R. 956, on Monday, May 8, at 12 noon, that it be in order for first-degree amendments to be filed at the desk until 1 p.m., and second-degree amendments to be filed by 3 p.m. on Monday.

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

Mr. COVERDELL. Mr. President, I further ask that at the hour of 4 p.m., the Senate proceed to a cloture vote on the Coverdell-Dole amendment, and the mandatory quorum under rule XXII be waived.

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

Mr. COVERDELL. Mr. President, I ask that Saturday count as the intervening day, under the provisions of rule XXII.

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

Mr. COVERDELL. Mr. President, I ask unanimous consent that Senator ROCKEFELLER's name be stricken from both cloture motions just filed.

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

PROGRAM

Mr. COVERDELL. Mr. President, for the information of all Senators, cloture was filed on the new substitute amendment and, therefore, unless an agreement can be reached regarding substantial second-degree amendments to the substitute, there will be a cloture vote at 4 p.m. Monday.

If an agreement is reached on the second-degree amendments, cloture would be postponed until Tuesday, and the votes, 4 p.m. on Monday, would be on or in relation to those second-degree amendments.

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

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

ORDERS FOR MONDAY, MAY 8, 1995

Mr. COVERDELL. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 11 a.m. on Monday, May 8, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business not to extend beyond the hour of 12 noon with Senators permitted to speak for up to 5 minutes each, with the exception of the following: Senator FEINSTEIN, 15 minutes; Senator BYRD, for up to 30 minutes.

I further ask consent that at the hour of 12 noon the Senate resume consideration of H.R. 956, the product liability bill.

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

RECESS UNTIL 11 A.M., MONDAY, MAY 8, 1995

Mr. COVERDELL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 3:53 p.m., recessed until Monday, May 8, 1995, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate May 5, 1995:

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

JOHN W. CARLIN, OF KANSAS, TO BE ARCHIVIST OF THE UNITED STATES, VICE DON W. WILSON, RESIGNED.

U.S. POSTAL SERVICE

ROBERT F. RIDER, OF DELAWARE, TO BE A GOVERNOR OF THE U.S. POSTAL SERVICE FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 8, 1995, VICE JOHN N. GRIESEMER.

ROBERT F. RIDER, OF DELAWARE, TO BE A GOVERNOR OF THE U.S. POSTAL SERVICE FOR THE TERM EXPIRING DECEMBER 8, 2004. (REAPPOINTMENT)

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S6193–S6226

Measures Introduced: Two bills were introduced, as follows: S. 761 and 762. **Page S6202**

Product Liability Fairness Act: Senate continued consideration of H.R. 956, to establish legal standards and procedures for product liability litigation, taking action on amendments proposed thereto, as follows: **Pages S6198, S6225–26**

Pending:

(1) Gorton Amendment No. 596, in the nature of a substitute. **Page S6198**

(2) Coverdell/Dole Amendment No. 690 (to Amendment No. 596), in the nature of a substitute. **Page S6225**

A motion was entered to close further debate on Amendment No. 690, listed above, and, by unanimous-consent agreement, a vote on the cloture motion will occur on Monday, May 8, 1995. **Page S6225**

A second motion was entered to close further debate on Amendment No. 690, listed above, and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on the second cloture motion could occur on Tuesday, May 9, 1995. **Page S6225**

A unanimous-consent agreement was reached providing for further consideration of the bill on Monday, May 8, 1995. **Page S6226**

Executive Reports of Committees: The Senate received the following executive report of a committee:

Treaty with Panama on Mutual Assistance in Criminal Matters, with two provisos (Treaty Doc. 102–15). (Exec. Rept. 104–3) **Page S6202**

Appointments:

Canada-U.S. Interparliamentary Group: The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276d–276g, as amended, appointed Senators Grassley and Hutchison as members of the Senate Delegation to the Canada-U.S. Interparliamentary Group during the First Session of the 104th Congress, to be held in Huntsville, Ontario, Canada, May 11–22, 1995. **Page S6225**

Nominations Received: Senate received the following nominations:

John W. Carlin, of Kansas, to be Archivist of the United States.

Robert F. Rider, of Delaware, to be a Governor of the United States Postal Service for the remainder of the term expiring December 8, 1995.

Robert F. Rider, of Delaware, to be a Governor of the United States Postal Service for the term expiring December 8, 2004. **Page S6226**

Measures Read First Time: **Page S6201**

Communications: **Pages S6201–02**

Executive Reports of Committees: **Page S6202**

Statements on Introduced Bills: **Page S6202**

Additional Cosponsors: **Page S6217**

Amendments Submitted: **Page S6217**

Notices of Hearings: **Page S6223**

Authority for Committees: **Page S6223**

Additional Statements: **Pages S6223–25**

Recess: Senate convened at 10 a.m., and recessed at 3:53 p.m., until 11 a.m., on Monday, May 8, 1995. (For Senate's program, see the remarks of the Acting Majority Leader in today's RECORD on page S6226.)

Committee Meetings

(Committees not listed did not meet)

MEDICARE PROGRAM

Committee on Appropriations: Subcommittee on Labor, Health and Human Services, and Education held hearings to examine waste, fraud, and abuse in the Medicare Program, receiving testimony from Frank Reilly, Director, Accounting and Information Management Division, IRM–HEHS Group, General Accounting Office; Steve Pelovitz, Associate Administrator, Health Care Financing Administration, Department of Health and Human Services; Nancy Boyer, Equifax Analytical Services, Inc., Fairport, New York; John T. Kelly, GMIS Incorporated, Malvern, Pennsylvania; and Leroy Henrich, Blue Cross/Blue Shield of Oregon, Portland.

Subcommittee will meet again on Thursday, May 11.

AUTHORIZATIONS—DEFENSE

Committee on Armed Services: Subcommittee on Acquisition and Technology held hearings on S. 727, to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense and to prescribe military personnel strengths for fiscal year 1996, focusing on the implications of the revolution in military affairs, receiving testimony from Adm. William A. Owens, USN, Vice Chairman, Joint Chiefs of Staff; Andrew W. Marshall, Director, Net Assessment, Department of Defense; and Andrew Krepinevich, Defense Budget Project, and Daniel Gouré, Center for Strategic and International Studies, both of Washington, D.C.

Subcommittee will meet again on Wednesday, May 17.

House of Representatives

Chamber Action

The House was not in session today. Its next meeting will be held at 12:30 p.m., Tuesday, May 9.

Committee Meetings

No committee meetings were held.

Joint Meetings

EMPLOYMENT SITUATION

Joint Economic Committee: Committee held hearings to examine the employment-unemployment situation for April, receiving testimony from Katherine G. Abraham, Commissioner, Bureau of Labor Statistics, Department of Labor.

Committee recessed subject to call.

CONGRESSIONAL PROGRAM AHEAD

Week of May 8 through 13, 1995

Senate Chamber

On *Monday,* Senate will resume consideration of H.R. 956, Product Liability Fairness Act.

During *the balance of the week,* Senate expects to continue consideration of H.R. 956, Product Liability Fairness Act, and may consider S. 534, Interstate Transportation of Municipal Solid Waste; S. 652, Telecommunications Competition and Deregulation Act; conference reports, when available; and any cleared legislative and executive business.

(Senate will recess on Tuesday, May 9, 1995, from 12:30 p.m. until 2:15 p.m., for respective party conferences.)

Senate Committees

(Committee meetings are open unless otherwise indicated)

Committee on Appropriations: May 9, Subcommittee on Defense, to hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on National Guard and Reserve programs, 9:45 a.m., SD–192.

May 9, Subcommittee on Military Construction, to hold hearings on proposed budget estimates for fiscal year 1996 for military construction programs, focusing on the Navy and Air Force, 10 a.m., SD–138.

May 10, Subcommittee on Agriculture, Rural Development, and Related Agencies, to hold hearings on proposed budget estimates for fiscal year 1996 for Food, Nutrition, and Consumer Service, Department of Agriculture, 10 a.m., SD–138.

May 11, Subcommittee on Transportation, to hold hearings on proposed budget estimates for fiscal year 1996 for the Federal Transit Administration, Department of Transportation, 9:30 a.m., SD–192.

May 11, Subcommittee on Interior, to hold hearings on proposed budget estimates for fiscal year 1996, Thursday, for the Bureau of Indian Affairs, Department of the Interior, 10 a.m.; for the Indian Health Service, Department of Health and Human Services, 1 p.m.; Thursday at 10 a.m. and Thursday at 1 p.m., SD–116.

May 11, Subcommittee on Foreign Operations, to hold hearings on proposed budget estimates for fiscal year 1996 for foreign assistance programs, focusing on the Agency for International Development, 10:30 a.m., SR–325.

May 11, Subcommittee on Labor, Health and Human Services, and Education, to hold hearings to examine access to abortion clinics, 2 p.m., SD–138.

May 11, Subcommittee on Commerce, Justice, State, and Judiciary, to hold hearings on proposed legislation authorizing supplemental appropriations for disaster assistance for the Oklahoma City bombing, 2 p.m., SD–608.

May 12, Subcommittee on VA, HUD, and Independent Agencies, to hold hearings on proposed budget estimates for fiscal year 1996 for the Environmental Protection Agency, the Council on Environmental Quality, and

the Agency for Toxic Substances and Disease Registry, 9:30 a.m., SD–192.

May 12, Subcommittee on Legislative Branch, to hold hearings on proposed budget estimates for fiscal year 1996 for the Secretary of the Senate, the Sergeant at Arms and Doorkeeper of the Senate, the Senate Legal Counsel, and the Senate Office of Fair Employment Practices, 10 a.m., SD–116.

Committee on Armed Services: May 9, Subcommittee on Personnel and Subcommittee on Readiness, to hold joint hearings on S. 727, authorizing funds for fiscal year 1996 for military activities of the Department of Defense, and the future years defense program, focusing on military family housing issues, 9 a.m., SR–232A.

May 9, Subcommittee on SeaPower, to hold hearings on S. 727, authorizing funds for fiscal year 1996 for military activities of the Department of Defense and the future years defense program, focusing on the Department of the Navy's implementation of its strategy for Littoral Warfare, 9:30 a.m., SR–222.

May 10, Full Committee, to hold hearings with the Committee on the Judiciary to examine the role of the military in combating terrorism, 1:30 p.m., SD–106.

May 11, Subcommittee on Readiness, to resume hearings on S. 727, authorizing funds for fiscal year 1996 for military activities of the Department of Defense and the Future Years Defense Program, focusing on environmental, military construction, and BRAC programs, 2:30 p.m., SR–222.

Committee on the Budget: May 8, business meeting, to mark up a proposed concurrent resolution on the fiscal year 1996 budget for the Federal Government, 10 a.m., SH–216.

Committee on Energy and Natural Resources: May 10, to hold hearings on the nomination of James John Hoecker, of Virginia, to be a Member of the Federal Emergency Regulatory Commission, Department of Energy, 9:30 a.m., SD–366.

May 10, Full Committee, to hold hearings on the Federal Energy Regulatory Commission's Notice of Proposed Rulemaking and Supplemental Proposed Rulemaking, Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities (Docket No. RM95–8–000), and Recovery Stranded Costs by Public Utilities and Transmitting Utilities (Docket No. RM94–7–001), 2 p.m., SD–366.

Committee on Environment and Public Works: May 9, Subcommittee on Superfund, Waste Control, and Risk Assessment, to resume oversight hearings on the implementation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 9 a.m., SD–406.

May 10, Full Committee, business meeting, to mark up S. 440, to provide for the designation of the National Highway System, 10 a.m., SD–406.

May 11, Subcommittee on Superfund, Waste Control, and Risk Assessment, to resume hearings oversight hearings on the implementation of the Comprehensive Environmental Response, Compensation, and Liability Act, 1:30 p.m., SD–406.

Committee on Foreign Relations: May 10, to hold hearings on the nominations of Larry C. Napper, of Texas, to be Ambassador to Latvia; Peter Tomsen, of California, to be Ambassador to the Republic of Tajikistan; Lawrence Palmer Taylor, of Pennsylvania, to be Ambassador to the Republic of Estonia; Jenonne R. Walker, of the District of Columbia, to be Ambassador to the Czech Republic; and James Alan Williams, of Virginia, for the rank of Ambassador during his tenure of service as the Special Coordinator for Cyprus, 10 a.m., SD–419.

May 11, Subcommittee on Near Eastern and South Asian Affairs, to hold hearings to examine United States Assistance Programs in the Middle East, 10 a.m., SD–419.

Committee on Governmental Affairs: May 8, Subcommittee on Post Office and Civil Service, to hold hearings to review the implementation of the Ramspeck Act, which allows congressional employees to transfer to executive branch positions under certain circumstances, focusing on procedures and restrictions of the law, 2:30 p.m., SD–342.

Committee on the Judiciary: May 10, Subcommittee on Immigration, to hold hearings on verification of applicant identity for purposes of employment and public assistance, 9:30 a.m., SD–226.

May 10, Full Committee, to hold hearings with the Committee on Armed Services to examine the role of the military in combating terrorism, 1:30 p.m., SD–106.

May 11, Subcommittee on Terrorism, Technology, and Government Information, to hold hearings to examine issues relating to the Internet system, 9:30 a.m., SD–226.

May 11, Subcommittee on Immigration, to hold oversight hearings on the Immigration and Naturalization Service, Department of Justice, 2:30 p.m., SD–226.

Committee on Labor and Human Resources: May 9, Subcommittee on Disability Policy, to hold joint hearings with the House Committee on Economic and Education Opportunity Committee's Subcommittee on Early Childhood, Youth and Families on the 20th anniversary of the implementation of Part B of the Individuals With Disabilities Education Act, 9 a.m., SH–216.

May 11, Subcommittee on Disability Policy, to hold hearings to examine proposed legislation relating to the education of individuals with disabilities, 10 a.m., SD–430.

Committee on Rules and Administration: May 11, to hold hearings to examine management guidelines for the future of the Smithsonian Institution, 9:30 a.m., SD–106.

Committee on Veterans' Affairs: May 11, to hold hearings on the reorganization of the Veterans Health Administration, and the requirement of 38 U.S.C. 510(b) for the Department of Veterans Affairs to provide 90 days notice to the Congress before an administrative reorganization may take effect, 10 a.m., SR–418.

Select Committee on Intelligence: May 10, to hold closed hearings on intelligence matters, 2 p.m., SH–219.

Special Committee on Aging: May 11, to hold hearings to examine ways the private sector can assist in making long-term care more affordable and accessible, 9:30 a.m., SD–562.

House Chamber

Monday, the House will not be in session.

Tuesday, consideration of the following Suspension: H.R. 1139, Striped Boss Conservation Amendments Act of 1995; and consideration of H.R. 1361, Coast Guard Authorization Act of fiscal year 1996 (open rule, 1 hour of general debate).

Balance of the week, the program will be announced.

House Committees

Committee on Agriculture, May 9, Subcommittee on Livestock, Dairy, and Poultry, hearing on the Effects of the Elimination of the Wool and Mohair Program on the American Sheep and Wool Industry, 2 p.m., 1302 Longworth.

May 10, Subcommittee on Department Operations, Nutrition, and Foreign Agriculture, hearing on the Food Stamp Program and Electronic Benefit Transfer Systems, 9:30 a.m., 1300 Longworth.

May 11, full Committee, hearing on General Farm Bill Issues, 9:30 a.m., 1300 Longworth.

Committee on Appropriations, May 9, Subcommittee on National Security, on 1996/1997 Air Force Budget Overview, 1:30 p.m., H–140 Capitol.

May 9, 10, and 11, Subcommittee on VA, HUD and Independent Agencies, on EPA, 10 a.m. and 1:30 p.m., 2360 Rayburn on May 9 and 10 and H–143 Capitol on May 11.

May 10, Subcommittee on Commerce, Justice, State, and Judiciary, on United Nations Peacekeeping, 10 a.m., and on Commission on Security and Cooperation in Europe, 2 p.m., H–309 Capitol.

May 10, Subcommittee on National Security, on Air Force Acquisition 10 a.m., and on Bomber Modernization, 1:30 p.m., 2360 Rayburn.

May 11, Subcommittee on Commerce, Justice, State, and Judiciary, on EEOC, 10 a.m., H–309 Capitol.

May 11, Subcommittee on National Security, executive, on Intelligence, 10 a.m., and on Air Force Airlift Programs, 1:30 p.m., H–140 Capitol.

Committee on Banking and Financial Services, May 9, to mark up Glass-Steagall reform legislation, 10 a.m., 2128 Rayburn.

May 12, Subcommittee on Housing and Community Opportunity, hearing on Homesteading and Neighborhood Restoration; followed by a markup of legislation concerning homesteading and homeownership, repeal of one-for-one replacement requirements on public housing and an extension and revision of the section 515 Rural Rental Housing Program, 9:30 a.m., 2128 Rayburn.

Committee on the Budget, May 10, to mark up the Fiscal Year 1996 Budget Resolution, 10 a.m., 210 Cannon.

Committee on Commerce, May 10, 11, and 12, Subcommittee on Telecommunications and Finance, hearing on the following: H.R. 1555, Communications Act of 1995; H.R. 514, to repeal the restrictions on foreign ownership of licensed telecommunications facilities; H.R. 912, to permit registered utility holding companies to participate in the provision of telecommunications services; H.R. 1556, to amend the Communications Act of 1934 to reduce the restrictions on ownership of broadcasting stations, and other media of mass communications; and related telecommunications reform legislation, 10 a.m., 2123 Rayburn.

May 11, Subcommittee on Energy and Power, hearing on H.R. 558, Texas Low-Level Radioactive Waste Disposal Compact Consent Act, 9:30 a.m., 2218 Rayburn.

May 11, Subcommittee on Health and Environment, oversight hearing on HIV Testing on Women and Infants, 1 p.m., 2322 Rayburn.

Committee on Economic and Educational Opportunities, May 9, Subcommittee on Postsecondary Education, Training and Life-Long Learning, hearing on Title IX, 9 a.m., 2175 Rayburn.

May 11, full Committee, hearing on H.R. 743, Teamwork for Employees and Managers Act of 1995, 9:30 a.m., 2175 Rayburn.

May 12, Subcommittee on Oversight and Investigations, hearing on the District of Columbia Schools, 9:30 a.m., 2175 Rayburn.

Committee on Government Reform and Oversight, May 9, Subcommittee on Government Management, Information, and Technology, to continue oversight hearings on National Performance Review, with emphasis on Strengthening Departmental Management, 2 p.m., 311 Cannon.

May 9, Subcommittee on Human Resources and Intergovernmental Relations, oversight hearing on Department of Veterans Affairs: ''Opportunities for Cost Savings,'' 10:30 a.m., 2247 Rayburn.

Committee on House Oversight, May 9, Task Force on Contested Election, hearing on Thirty-Sixth Congressional District of California, 10 a.m., 1310 Longworth.

May 10, full Committee, to consider pending business, 10 a.m., 1310 Longworth.

Committee on International Relations, May 8, Subcommittee on International Operations and Human Rights, to mark up H.R. 1561, American Overseas Interests Act, 10 a.m., 2255 Rayburn.

May 9, full Committee, hearing on H.R. 1561, American Overseas Interests Act, 10 a.m., 2172 Rayburn.

May 10, full Committee, to mark up H.R. 1562, Foreign Affairs Agencies Consolidation Act of 1995, 10 a.m., 2172 Rayburn.

May 11 and 12, full Committee, to mark up H.R. 1561, American Overseas Interests Act, 10 a.m. on May 11 and 9 a.m. on May 12, 2172 Rayburn.

Committee on the Judiciary, May 9, hearing on Telecommunications: The Role of the Department of Justice, 9:30 a.m., 2141 Rayburn.

May 10, Subcommittee on the Constitution, hearing on authorization and oversight of the Environment and Natural Resources Division of the Department of Justice, 10 a.m., 2237 Rayburn.

May 11, Subcommittee on Commercial and Administrative Law, hearing on the Reauthorization of the Administrative Conference of the United States, 10 a.m., B–352 Rayburn.

May 11, Subcommittee on Courts and Intellectual Property, hearing on the following bills: H.R. 1443, Court Arbitration Authorization Act of 1995; H.R. 1445,

to amend rule 30 of the Federal Rules of Civil Procedure to restore to stenographic preference for depositions; S. 464, to make the reporting deadlines for studies conducted in Federal court demonstration districts consistent with the deadlines for pilot districts; and S. 532, to clarify the rules governing venue, 10 a.m., 2226 Rayburn.

Committee on Resources, May 9, hearing on H.R. 70, to permit export of certain domestically produced crude oil, 11 a.m., 1334 Longworth.

May 9, Subcommittee on Energy and Mineral Resources, oversight hearing on Sodium mineral leasing issues: what is ''Fair market value'' royalty on trona, and what are the implications on the export market for soda ash? 2 p.m., 1324 Longworth.

May 9, Subcommittee on National Parks, Forests and Lands, oversight hearing on Federal Land Exchange Policies and Regulations, 10 a.m., 1324 Longworth.

May 10, full Committee, hearing on the Endangered Species Act, 2 p.m., 1324 Longworth.

May 10, Subcommittee on Native American Affairs, hearing on H.R. 1448, to amend the Indian Child Welfare Act of 1978 to require that determinations regarding status as an Indian child and as a member of an Indian tribe be prospective from the date of birth of the child and of total membership of the member, 2 p.m., 1324 Longworth.

May 11, Subcommittee on National Parks, Forests and Lands, oversight hearing on Recreation Fees on Federal Lands, 10 a.m., 1324 Longworth.

May 11, Subcommittee on Water and Power Resources, to mark up H.R. 1122, Alaska Power Administration Sale Act; followed by a hearing on the following bills: H.R. 930, to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner; H.R. 1070, to designate the reservoir created by Trinity Dam in Central Valley project, CA, as ''Trinity Lake''; and legislation to reauthorize the Water Resources Institute, 10 a.m., 1310 Longworth.

Committee on Rules, May 9, to consider H.R. 961, Clean Water Amendments of 1995, 1:30 p.m., held H–313 Capitol.

Committee on Standards of Official Conduct, May 9 and 11, executive, to consider pending business, 4 p.m., HT–2M Capitol.

Committee on Transportation and Infrastructure, May 11, Subcommittee on Aviation, hearing on the Denver International Airport: What Went Wrong? 9 a.m., 2167 Rayburn.

Committee on Veterans' Affairs, May 11, Subcommittee on Hospitals and Health Care, to mark up the following: H.R. 1384, to amend title 38, United States Code, to exempt certain full-time health-care professionals of the Department of Veterans' Affairs from restrictions on remunerated outside professional activities; and measures to extend expiring authorities (to adjust locality-based nurse anesthetist pay rates and to provide care for disorders possibly associated with exposure to ionizing radiation or Agent Orange), 9:30 a.m., 334 Cannon.

May 12, Subcommittee on Compensation, Pension, Insurance and Memorial Affairs, hearing on Veterans Benefit Administrations' processing of compensation claims, with an emphasis on Persian Gulf war claims, and oversight of P.L. 103–446, the Veterans' Benefits Improvement Act of 1994, 9:30 a.m., 334 Cannon.

Committee on Ways and Means, May 9, Subcommittee on Oversight, hearing on the Targeted Jobs Tax Credit, the Exclusion for Employer-Provided Educational Assistance, the Orphan Drug Credit and Other Temporary Tax Provisions, 10 a.m., 1100 Longworth.

May 10, Subcommittee on Human Resources, hearing on Federal Adoption Policy, 11 a.m., B–318 Rayburn.

May 10, Subcommittee on Oversight, hearing on the Research and Experimentation Tax Credit and the Allocation of Research Expenses Under Internal Revenue Code Section 861, 10 a.m., 1100 Longworth.

May 11, Subcommittee on Trade and the Subcommittee on Rules and Organization of the House of the Committee on Rules, joint hearing on Extension of Fast Track Trade Negotiating Authority, 10 a.m., 1100 Longworth.

May 12, Subcommittee on Health, hearing on Health Insurance Portability, 10 a.m., 1100 Longworth.

Permanent Select Committee on Intelligence, May 9, executive, hearing on Intelligence Personnel, 2 p.m., H–405 Capitol.

May 11, executive, to consider pending business, 10 a.m., to be followed by, executive, hearing on extension of the legal authority for DOD commercial activities to provide security for DOD intelligence collection activities abroad, H–405 Capitol.

Joint Meetings

Joint hearing: May 9, Senate Committee on Labor and Human Resources' Subcommittee on Disability Policy, to hold joint hearings with the House Committee on Economic and Education Opportunity Committee's Subcommittee on Early Childhood, Youth and Families on the 20th anniversary of the implementation of Part B of the Individuals with Disabilities Education Act, 9 a.m., SH–216.

Next Meeting of the SENATE

11 a.m., Monday, May 8

Senate Chamber

Program for Monday: After the recognition of two Senators for speeches and the transaction of any morning business (not to extend beyond 12 Noon), Senate will resume consideration of H.R. 956, to establish legal standards and procedures for product liability litigation.

Next Meeting of the HOUSE OF REPRESENTATIVES

12:30 p.m., Tuesday, May 9

House Chamber

Program for Tuesday: Consideration of the following Suspension: H.R. 1139, Striped Bass Conservation Amendments Act of 1995; and

Consideration of H.R. 1361, Coast Guard Authorization Act of fiscal year 1996 (open rule, 1 hour of general debate).

Congressional Record The public proceedings of each House of Congress, as reported by the Official Reporters thereof, are printed pursuant to directions of the Joint Committee on Printing as authorized by appropriate provisions of Title 44, United States Code, and published for each day that one or both Houses are in session, excepting very infrequent instances when two or more unusually small consecutive issues are printed at one time. ¶The Congressional Record is available as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated each day the Congressional Record is published. The database includes both text and graphics from the beginning of the 103d Congress, 2d Session (January 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet swais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as swais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the Congressional Record Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays. ¶The Congressional Record paper and 24x microfiche will be furnished by mail to subscribers, free of postage, at the following prices: paper edition, $112.50 for six months, $225 per year, or purchased for $1.50 per issue, payable in advance; microfiche edition, $118 per year, or purchased for $1.50 per issue payable in advance. The semimonthly Congressional Record Index may be purchased for the same per issue prices. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington, D.C. 20402. ¶Following each session of Congress, the daily Congressional Record is revised, printed, permanently bound and sold by the Superintendent of Documents in individual parts or by sets. ¶With the exception of copyrighted articles, there are no restrictions on the republication of material from the Congressional Record.