

. . . It is outrageous that this conference on women's rights is being held in a country which currently imprisons women for practicing their faith and forces many to have abortions.

I strongly support Senator HUTCHISON's amendment. It is essential for the rest of the world to know that Americans continue to value women in their roles of mothers, and that we believe that the traditional family is an important element to maintain a strong and healthy culture.

Several Senators addressed the Chair.

Mr. DOLE. Has the Senator from Texas finished?

Mrs. HUTCHISON. I had about 2 more minutes.

Mr. DOLE. The Senator from Texas had the floor, so I will yield the floor and then I will ask for the floor on the completion of her remarks.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I will just finish. I think the Senator from Indiana said very well exactly what this amendment would do. It expresses a sense of the Senate that our delegates from America should represent our American values, and the importance that we place on the family and on the role of motherhood. I think it is very important that we recognize that we have new experiences available, new opportunities for women that have come along in the last few years. But these continuing changes in our society have never diminished the unique and important value of maternal care-giving. And our amendment just says very clearly that, if we have delegates to this conference, they should express these views.

I hope our colleagues will agree to this amendment. It is a sense of the Senate. I think it is very simple and straightforward. It really is the motherhood amendment, and I hope no one would choose to vote against it.

The PRESIDING OFFICER. The distinguished Republican leader.

CLOTURE MOTION

Mr. DOLE. 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 assistant 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 S. 908, the State Department Reorganization bill.

Bob Dole, Jesse Helms, John McCain, Fred Thompson, Olympia Snowe, Jim Inhofe, Lauch Faircloth, Spence Abraham, Trent Lott, Strom Thurmond, Larry E. Craig, Don Nickles, Mitch McConnell, Bob Smith, John Ashcroft, Nancy Landon Kassebaum.

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each.

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

MESSAGES FROM THE HOUSE

At 3:01 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1103. An act entitled, "Amendments to the Perishable Agricultural Commodities Act, 1930."

At 4:27 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2017. An act to authorize an increased Federal share of the costs of certain transportation projects in the District of Columbia for fiscal years 1995 and 1996, and for other purposes.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1103. An act entitled, "Amendments to the Perishable Agricultural Commodities Act, 1930"; to the Committee on Agriculture, Nutrition, and Forestry.

MEASURES PLACED ON THE CALENDAR

The following measure was read the first and second times by unanimous consent and placed on the calendar:

H.R. 2017. An act to authorize an increased Federal share of the costs of certain transportation projects in the District of Columbia for fiscal years 1995 and 1996, and for other purposes.

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. BIDEN:

S. 1094. A bill to amend the Federal Rules of Evidence relating to character evidence in sexual misconduct cases, and for other purposes; to the Committee on the Judiciary.

By Mr. MOYNIHAN: (for himself, Mr. ROTH, Mrs. MURRAY, Mr. BAUCUS, Mr. D'AMATO, Mr. GRASSLEY, Mr. BREAUX, Mr. HATCH, and Mr. PRYOR):

S. 1095. A bill to amend the Internal Revenue Code of 1986 to extend permanently the exclusion for educational assistance provided by employers to employees; to the Committee on Finance.

By Mr. D'AMATO:

S. 1096. A bill to amend the Immigration and Nationality Act to provide that members of Hamas (commonly known as the Is-

lamic Resistance Movement) be considered to be engaged in a terrorist activity and ineligible to receive visas and excluded from admission into the United States; to the Committee on the Judiciary.

By Mr. HATFIELD (for himself and Mr. PACKWOOD):

S. 1097. A bill to designate the Federal building located at 1550 Dewey Avenue, Baker City, Oregon, as the "David J. Wheeler Federal Building", and for other purposes; to the Committee on Environment and Public Works.

By Mr. HELMS (for himself and Mr. DOLE):

S. 1098. A bill to establish the Midway Islands as a National Memorial, and for other purposes; to the Committee on Armed Services.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BIDEN:

S. 1094. A bill to amend the Federal Rules of Evidence relating to character evidence in sexual misconduct cases, and for other purposes; to the Committee on the Judiciary.

RULE OF EVIDENCE LEGISLATION

Mr. BIDEN. Mr. President, I am introducing a bill today that I do not much like. It involves the so-called Dole-Molinari rules of evidence which the Congress included last year in the 1994 crime law. This provision made a radical change in the Federal Rules of Evidence. It took the unprecedented—and in my mind absolutely unwise and unwarranted—step of allowing unproven allegations of prior crimes to be used against a defendant at trial.

These new rules—which apply in sexual assault and child molestation cases—were added to the crime law over my strenuous objections. My objections were twofold, one substantive and one procedural. I will detail what I believe are the serious substantive problems with the new rules in a moment. First, I must point out that the way these rules were adopted by the Congress contravenes—indeed flaunts—the procedures we have used, with certain modifications, since 1948 for making alterations in the Federal rules.

I am talking about the Rules Enabling Act. That act allows for a thoughtful, inclusive process for considering any changes to the Federal Rules of Evidence—rules which have been on the books for many, many years and which have been relied upon by judges and litigants in countless cases. The Enabling Act process gives the Judicial Conference of the United States, the organization of America's Federal judges, and, ultimately, the Supreme Court a first cut at any proposed changes. The conference, through its various committees, solicits the views of judges, lawyers, and academics who have studied the rules, worked with the rules, and identified any problems with them. The process ensures that the public is given the chance to comment about proposed changes, and guarantees that these comments be considered by the rule-makers.

It is at that point—after the careful, detailed and encompassing review and drafting efforts of the conference—that the U.S. Supreme Court makes recommendations to the Congress for our acceptance or modification. This mechanism is designed to head off unwarranted changes and avoid unintended consequences. And it ensures that decisions about changes in the rules are made in a deliberative, cool-headed way, rather than in the heat of a political moment. Passing as we did the Dole-Molinari rules last year—in a whirlwind rush to bring crime bill negotiations to a close—we thumbed our noses at this most important and worthy process.

I did succeed in structuring the rule change in the crime law to ensure that we would have the benefit of the Judiciary's view, albeit after the fact. The provision was drafted to delay the implementation of the rules to allow the Judicial Conference to weigh in on the issue. This is how it works: The Dole-Molinari rules will go into effect unless we in the Congress repeal them outright or adopt the Judicial Conference recommendations.

I, for one, would prefer a complete repeal. And, I may point out, the Judicial Conference agrees with me. The Judicial Conference itself unanimously voted to oppose the new rules. They have called on us to reconsider our actions and change our minds. They, too, favor a repeal. But they are also pragmatic. So they have sent over a proposal—a most modest of proposals, in my view—to make the rules clearer, cleaner, and a little bit fairer. I am pragmatic as well, and I know that I stand no chance of having the rules repealed, so I am introducing the Judicial Conference recommendations today.

But before we discuss these modest recommendations, I would like to take a minute to talk about the Dole-Molinari rules, and why I believe they are such a bad idea. Here is the way these rules will work. A defendant is on trial for sexual assault. He claims he did not do it. He says that the complaining witness has fingered the wrong man. Under the Dole-Molinari rules, the prosecutor in this case will be able to go out and rummage around for any witness who will testify that, some long and blurry time ago, the defendant was sexually aggressive toward her.

It will not matter that this alleged prior event happened some 20 years ago. It won't matter that the woman never reported the incident to the police. It will not matter that the defendant was never charged or convicted of the crime. It won't matter that the evidence is highly unreliable.

No, none of that will matter. The only thing that will matter to the jury, when it hears this sort of evidence, is that this guy is bad news. And the jury will be able to make the following leap of logic: "Well, since he did it once, he probably did it again." Jurors will also

be able to say to themselves something like this: "I'm not so sure he committed this particular crime that he's now charged with. But he's a bad guy—he hurt that other woman, so it's OK for me to convict him today—he has it coming."

But wait a minute. It is a cardinal tenet of Anglo-Saxon criminal jurisprudence that the prosecution must prove that the accused committed the specific crime for which he now stands accused—not some other bad act and not merely that he is a lousy or wicked person. Or put another way: an accused must be tried for what he did—not for who he is.

Over 100 years ago, the Supreme Court in the case of *Boyd versus United States*, underscored the importance of the rule against character or propensity evidence. In that robbery case, the court said that evidence of earlier robberies—

Only tended to prejudice the defendants with the jurors—to draw their minds away from the real issue, and to produce the impression that they were wretches whose lives were of no value to the community.

Let us be honest about this. The whole point of these new rules is to increase the number of convictions in sexual assault and child abuse cases. And I believe, without a doubt, that they will do just that. But at the risk of stating what should be obvious: More convictions are not necessarily a good thing. What we want is more convictions of the guilty. If any of those who are convicted under the new rules are actually innocent—and I believe that this is precisely the danger at hand—there is cause only for horror, not celebration.

As Professor Wigmore—one of the preeminent evidence gurus of all time—has said about this sort of evidence: It is the natural tendency of the jury to give the evidence excessive weight—and either to allow it to bear too strongly on the present charge, or to see it as justifying a condemnation, irrespective of the accused's guilt of the present charge. This type of evidence has less to do—in my view—with the search for the truth, than with a blind desire for vengeance.

Now remember, I'm the guy who authored the Violence Against Women Act. It has been my crusade for the past 4 years to have violence against women taken seriously. I have increased the penalties for rape. I have talked to anyone who will listen about the epidemic of violence against women, and about our obligation—our urgent obligation—to put a stop to it now. I devoted an entire Judiciary Committee report to how the criminal justice system is not aggressive enough in its pursuit of rapists and other criminals who make women their targets. I, too, want to see more rapists and child abusers put behind bars. But not at the price of fairness. And not at the expense of what we know in our hearts to be right and just.

And let me clear up one more matter. Evidence of prior uncharged crimes is

admitted into evidence frequently. But it is admitted for a legitimate purpose—to help prove, for instance, a pattern of conduct, preparation, identity, plan, intent, or purpose. What we're talking about here is admitting evidence for what in my view—and which for hundreds of years has been considered—a patently illegitimate purpose.

But that's where we are. And the bill I'm introducing today—the Judicial Conference recommendations—doesn't change that. Like the Dole-Molinari rules, the Judicial Conference proposal makes a dramatic aboutface from current practice—and allows for the introduction of propensity or character evidence in sexual assault and child molestation cases.

But the Judicial Conference did make a few very modest changes—which the conference itself describes only as correcting ambiguities and possible constitutional infirmities while still giving effect to Congress' intent. Indeed, this proposal is so modest—and is so in keeping with the intent of the original rules' sponsors—that I will be very interested to hear what possible substantive objections anyone could have about them.

Here are the changes proposed by the Judicial Conference:

The proposal makes it clear that the rules are subject to the other Rules of Evidence. This is totally unremarkable. As everyone knows, all evidence introduced under a particular rule is subject to the other rules—like the rule against hearsay, and the rules allowing judges to balance the prejudicial impact of evidence against its probative value.

What is remarkable is that the Dole-Molinari rules were drafted in such a way as to seem mandatory—they could be read to require a judge to admit the evidence, regardless of whether its prejudice outweighs its probative value, and regardless of whether any other rule would be violated.

That would be wholly unprecedented. The rewrite simply makes it clear that these new rules will work just like all the others. And let me add: The sponsors of the new rules have consistently maintained that the rules are not meant to be mandatory rules of admission, and that the general standards of the Rules of Evidence will apply. This proposal by the Judicial Conference simply makes clear what the sponsors of the rules have forthrightly said is their intention.

The proposal itemizes the different factors that a judge should weigh in deciding whether to admit the evidence. Again, this is an unremarkable idea. It merely gives judges, who are having to completely change how they look at this evidence, some guidance.

It tells them: When you're deciding what to do about this evidence, here are some signposts to consider—like when the uncharged act took place; its similarity to the charged misconduct; the surrounding circumstances; and any relevant intervening events.

Again, there is nothing in this idea—simply to give judges some guidance—which would rub against the grain of the sponsors' intentions.

The Judicial Conference proposal would also allow the defendant to use similar evidence in rebuttal. The Dole-Molinari rules, as currently drafted, are unbalanced: under the rules, a defendant can't, in rebuttal, use prior specific instances of conduct to prove that he did not have a propensity to commit the charged crime.

Say, for example, a child testifies under the new rule that his father, the defendant, sexually assaulted him 5 years ago. The father can't put his other kids on the stand to say that he had not assaulted them—to help show that he does not have a propensity to assault children. The Judicial Conference proposal simply gives the defendant the same evidentiary rights as the prosecution.

The Judicial Conference proposal also makes a number of small minor changes. It consolidates the new rules into one—this is simply a clearer, cleaner drafting approach. The proposal also streamlines the definitions—without making any substantive changes—and makes the notice provisions a bit more flexible, and more in keeping with other notice and discovery provisions elsewhere in the rules.

As is by now clear, this is a very unassuming proposal. It allows for the introduction of propensity evidence. It doesn't require that the prior bad act have resulted in a conviction, or even that it have been the subject of a complaint or charge. It doesn't even require that the evidence of the prior uncharged act be particularly reliable.

In fact, had this rule been proposed last year, I would have opposed it. I would have opposed it because I believe that propensity or character evidence should not be admitted into trial. Period. But I can count. And I know that I'm nearly alone on this one. That is why I am introducing this bill—the Judicial Conference recommendations—which only make a handful of modest, but important changes to make the bill clearer and a little bit fairer. I urge my colleagues to support this measure.

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

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

S. 1094

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

SECTION 1. CHARACTER EVIDENCE IN SEXUAL MISCONDUCT CASES.

(a) IN GENERAL.—(1) Rule 404(a) of the Federal Rules of Evidence is amended by adding at the end thereof the following:

“(4) CHARACTER IN SEXUAL MISCONDUCT CASES.—(A) Evidence of another act of sexual assault or child molestation, or evidence to rebut such proof or an inference therefrom, if that evidence is otherwise admissible under these rules, in a criminal case in which the accused is charged with sexual assault or

child molestation, or in a civil case in which a claim is predicated on a party's alleged commission of sexual assault or child molestation.

“(B) In weighing the probative value of such evidence, the court may, as part of its rule 403 determination, consider—

“(i) proximity in time to the charged or predicate misconduct;

“(ii) similarity to the charged or predicate misconduct;

“(iii) frequency of the other acts;

“(iv) surrounding circumstances;

“(v) relevant intervening events; and

“(vi) other relevant similarities or differences.

“(C) In a criminal case in which the prosecution intends to offer evidence under this subdivision, it must disclose the evidence, including statements of witnesses or a summary of the substance of any testimony, at a reasonable time in advance of trial, or during trial if the court excuses pretrial notice on good cause shown.

“(D) For purposes of this subdivision—

“(i) ‘sexual assault’ means conduct, or an attempt or conspiracy to engage in conduct, of the type proscribed by chapter 109A of title 18, United States Code, or conduct that involved deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person irrespective of the age of the victim, regardless of whether that conduct would have subjected the actor to Federal jurisdiction; and

“(ii) ‘child molestation’ means conduct, or an attempt or conspiracy to engage in conduct, of the type proscribed by chapter 110 of title 18, United States Code, or conduct, committed in relation to a child below the age of 14 years, either of the type proscribed by chapter 109A of title 18, United States Code, or that involved deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person, regardless of whether that conduct would have subjected the actor to Federal jurisdiction.”

(2) The first sentence of rule 404(b) of the Federal Rules of Evidence is amended by inserting “except as provided in subdivision (a)” after “therewith”.

(b) METHODS OF PROVING CHARACTER.—Rule 405 of the Federal Rules of Evidence is amended—

(1) in subsection (a) by inserting before the period in the first sentence “except as provided in subdivision (c) of this rule”; and

(2) by adding at the end thereof the following:

“(c) PROOF IN SEXUAL MISCONDUCT CASES.—In a case in which evidence is offered under rule 404(a)(4), proof may be made by specific instances of conduct, testimony as to reputation, or testimony in the form of an opinion, except that the prosecution or claimant may offer reputation or opinion testimony only after the opposing party has offered such testimony.”

By Mr. MOYNIHAN (for himself, Mr. ROTH, Mrs. MURRAY, Mr. BAUCUS, Mr. D'AMATO, Mr. GRASSLEY, Mr. BREAUX, Mr. HATCH, and Mr. PRYOR):

S. 1095. A bill to amend the Internal Revenue Code of 1986 to extend permanently the exclusion for educational assistance provided by employers to employees; to the Committee on Finance.

THE EMPLOYEE EDUCATIONAL ASSISTANCE ACT

Mr. MOYNIHAN. Mr. President, I rise today, on my own behalf and on behalf of Senators ROTH, MURRAY, BAUCUS, D'AMATO, GRASSLEY, BREAUX, HATCH,

and PRYOR, to introduce legislation that will reinstate and make permanent the tax exclusion for employer-provided educational assistance under section 127 of the Internal Revenue Code. This bill ensures that employees will be able to continue to receive up to \$5,250 annually in tuition reimbursements or similar educational benefits from their employers on a tax-free basis.

First enacted in 1978, section 127 has enabled over 7 million working men and women to advance their education and improve their job skills, without incurring additional income tax liabilities and a reduction in take-home pay. Without this provision, an employee would owe taxes on the value of any educational benefits provided by an employer that do not directly relate to his or her current job. For example, a clerical worker pursuing a college diploma who earns \$21,000 annually, and who receives tuition reimbursement for two semesters of night courses—worth approximately \$4,000—would owe additional Federal income and payroll taxes of \$1,200 on this educational assistance. The effects are even more severe if he or she lives in a State that uses the Federal definition of income for State tax purposes.

It is shortsighted to impose such a tax burden on employees seeking to further their education. For many low- and moderate-income employees, this cut in take-home pay is simply prohibitive, preventing them from enrolling in courses that would upgrade their job skills and improve their future career prospects. Without this investment in our employees' education, the ability of our work force to compete in the global economy erodes. By removing the requirement that educational assistance be job related in order to be tax-free, section 127 eliminates a tax burden on workers seeking to further their education and improve their career prospects.

Moreover, section 127 removes a tax bias against lesser-skilled workers. The tax bias arises because lesser-skilled workers have greater difficulty proving educational expenses are directly related to their current jobs due to their narrower job descriptions. Therefore, absent section 127, such lesser-skilled workers are more likely to owe taxes on employer-provided educational benefits than are higher-skilled, more senior workers.

Congress has never quite found sufficient revenue to enact section 127 on a permanent basis, opting instead for temporary exclusions. Since 1978, there have been 7 extensions of this provision. Most recently, the Omnibus Reconciliation Act of 1993 provided for an extension of section 127 through December 31, 1994. The exclusion has once again expired.

I hope that Congress will recognize the importance of this provision, and

enact it permanently. Temporary extensions create great practical difficulties for the intended beneficiaries. Employees cannot plan sensibly for their educational goals, not knowing the extent to which accepting educational assistance may reduce their take-home pay. As for employers, the fits and starts of the legislative history of section 127 have been a serious administrative nuisance. If section 127 is in force, then there is no need to withhold taxes on educational benefits provided; if not, the job-relatedness of the educational assistance must be ascertained, a value assigned, and withholding adjusted accordingly. Uncertainty about the program's continuance magnifies this burden, and discourages employers from providing educational benefits. The legislation that I introduce today would restore certainty to section 127 by extending it retroactively, to the beginning of this year, and then maintaining it on a permanent basis.

Mr. President, my previous efforts to extend this provision have enjoyed wide, bipartisan support. Encouraging workers to further their education and to improve their job skills is an important national priority, crucial for preserving our competitive position in the global economy. Permitting employees to receive educational assistance on a tax-free basis, without incurring significant cuts in take-home pay, is a demonstrated, cost-effective means for achieving these objectives.

Employee educational assistance is not an extravagant, free benefit for highly paid executives. It largely benefits low- and moderate-income employees seeking access to higher education and further job training. A survey undertaken by Coopers & Lybrand indicated that over 70 percent of recipients of section 127 benefits in 1986 earned less than \$30,000. In fact, lower-income employees are more likely to participate in educational assistance programs than those at the higher end of the income scale. Employees making less than \$30,000 participate at a much higher rate than those making above that income, and participation rates decline as salary levels increase. Moreover, employees making less than \$15,000 participate at almost twice the rate of those who earn over \$50,000.

Further, section 127 makes an important contribution to simplicity in the Tax Code. Without it, employers and the IRS would be required to determine, on a case-by-case basis, which employer-provided educational benefits are sufficiently related to the job to avoid treatment as taxable income.

Today, American workers are the most productive in the industrialized and developing world. Yet pressures from international competition and the pace of technological changes require continual adjustment by our work force. Retraining will thus be necessary to maintain and strengthen American industry's competitive position in the global economy. Section 127

permits employees to adapt and retrain without incurring additional tax liabilities and a reduction in take-home pay. By removing the tax burden from workers seeking retraining, section 127 enables employees displaced by foreign competition or technological change to learn new job skills.

Finally, section 127 has also helped to improve the quality of America's public education system, at a fraction of the cost of direct-aid programs. It has enabled thousands of public schoolteachers to obtain advanced degrees, augmenting the quality of instruction in our schools. A survey by the National Education Association a few years ago found that almost half of all American public school systems provide tuition assistance to teachers seeking advanced training and degrees. The Tax Code should not impose obstacles to this kind of shared effort toward improvement. This legislation, by making section 127 permanent, will ensure that it does not.

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

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

S. 1095

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

SECTION 1. PERMANENT EXTENSION OF EDUCATIONAL ASSISTANCE EXCLUSION.

(a) IN GENERAL.—Section 127 of the Internal Revenue Code of 1986 (relating to exclusion for educational assistance programs) is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

Mr. ROTH. Mr. President, we've all heard the axiom that the cultivation of the mind is the secret to a happy and productive life. Education not only provides untold benefits to the individual, but to society as a whole. In fact, the worth of education is increasing.

In 1980, a male college graduate made about 30 percent more than a male high school graduate. By 1988, he made about 60 percent more. In just 8 years, the premium for a college degree doubled—in comparison with a high school diploma.

On a social level, education is fundamental to the future well-being and competitiveness of America. Not only are well-educated men and women able to make greater contributions to our economy, but they make unquantifiable contributions to business, academia, and agriculture, as well as to our technical and communications resources.

The irony, Mr. President, is that while the value of higher education is increasing, the confidence of Americans to receive a higher education is declining. Polls shows that our countrymen are less and less optimistic about their ability to receive higher education. A full 55 percent think pay-

ing for college is more difficult now than it was 10 years ago, and 66 percent say it will be even more difficult 10 years now. Sixty percent believe even qualified people can't afford college.

The solution? Eighty percent of those polled say the best solution is to have financial support provided through work opportunities. This compares to 43 percent who call for more direct grants to students and even 62 percent for those who want more money for student loans.

The legislation I am cosponsoring today with Senator MOYNIHAN, is a welcomed and needed measure to encourage and assist employers to provide educational opportunities for their employees. What we seek to do with this legislation is permanently extend the exclusion for employer provided educational assistance. The exclusion, section 127, expired on December 31, 1994—7 months ago—and unless it is extended, employees will be taxed on their education benefits. They will owe both Federal and FICA taxes on the assistance they have received.

Mr. President, section 127 is legislation that has been approved before. We know that it is needed—that it is important. Congress has passed it in an effort to increase the participation of employers in assisting in the education of their employees. Under previous congressional action, tax-free benefits were made available for employees who wanted to improve their knowledge and skill in job-related studies. Beyond this, the law also allowed employees to participate in other studies. The only exclusions involved education in sports, games and hobbies, unless those studies were directly associated with their employment needs or were part of an overall degree program.

Congress has already established the need for section 127 and provided the legislation. What Senator MOYNIHAN and I are doing now is simply making it permanent. Our bill will allow employees to permanently receive up to \$5,250 annually in undergraduate tuition or similar educational benefits from their employers on a tax-free basis. It will be effective retroactively, going back to January 1, 1995—thus taking care of the 7 months that have lapsed since section 127 expired.

I encourage my colleagues to join Senator MOYNIHAN and me in passing this bill, reminding them of the importance of education as it pertains to the future of America. As Daniel Webster said when he stood on the Senate floor many years ago:

If we work marble, it will perish; if we work upon brass, time will efface it; if we rear temples, they will crumble into dust; but if we work upon immortal minds . . . we are then engraving upon tablets which no time will efface, but will brighten and brighten to all eternity.

By Mr. D'AMATO:

S. 1096. A bill to amend the Immigration and Nationality Act to provide that members of Hamas (commonly

known as the Islamic Resistance Movement) be considered to be engaged in a terrorist activity and ineligible to receive visas and excluded from admission into the United States; to the Committee on the Judiciary.

THE HAMAS EXCLUSION ACT OF 1995

• Mr. D'AMATO. Mr. President, I introduce the Hamas Exclusion Act of 1995. This bill was introduced in 1993, in conjunction with Representative PETER DEUTSCH in the House. I am introducing it again this year because of Hamas' continued role in disruption of the peace process as well as the recent detention of Mousa Mohamed Abu Marzook at JFK Airport in New York.

Hamas continues to use terrorism as a tool to disrupt the peace process. In doing so, it continues to kill innocent Israelis without concern for life. Between April 1994 and July 1995, Hamas has conducted at least 8 suicide bombings against Israeli targets, killing at least 52 people. This is murder plain and simple.

When U.S. immigration officials detained Marzook at JFK last week, they detained a man who held a place on the U.S. terrorism watchlist and according to the INS, is an "excludable alien based on his participation in terrorist activities."

I applaud President Clinton's recent actions against terrorism, especially his Executive orders against terrorist fundraising in the United States and the total embargo on trade with Iran for which I pushed. This latest action signals that the United States can no longer act as a haven for those who belong to terrorist organizations whose only wish is to kill and maim.

My bill is simple. It states that an alien who is an officer, official, representative, or spokesman of Hamas, is considered to be engaged in terrorist activity and therefore eligible to be excludable under the immigration statutes.

There can be no toleration of the actions of Hamas and groups like it, nor can we allow these groups to operate in the United States. While this bill is not the panacea, it will act to keep one group out. I urge my colleagues to join me in sending this strong message by cosponsoring this legislation.

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

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

S. 1096

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

SECTION 1. TERRORIST ACTIVITIES.

Section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)) is amended by adding at the end "An alien who is an officer, official, representative, or spokesman of Hamas (commonly known as the Islamic Resistance Movement) is considered, for purposes of this Act, to be engaged in a terrorist activity." •

By Mr. HATFIELD (for himself and Mr. PACKWOOD):

S. 1097. A bill to designate the Federal building located at 1550 Dewey Avenue, Baker City, OR, as the "David J. Wheeler Federal Building," and for other purposes; to the Committee on Environment and Public Works.

THE DAVID J. WHEELER FEDERAL BUILDING ACT OF 1995

Mr. HATFIELD. Mr. President, it is my honor to propose the designation of the Federal building in Baker City, OR, as the David J. Wheeler Federal Building.

Mr. David J. Wheeler was an outstanding citizen until his life came to a tragic end on April 26, 1995. Mr. Wheeler, a U.S. Forest Service engineer working the Wallowa-Whitman National Forest, was brutally murdered by two juveniles while on assignment in the Payette National Forest in Idaho. Mr. Wheeler's death has had a tremendous impact on the entire community in Baker City because he was an active civic leader involved in and committed to his hometown.

A true altruist, Mr. Wheeler was a member of the Baker City Rotary Club and was the president-elect at the time of his death. Mr. Wheeler volunteered as a coach at the local YMCA. In 1994 the Baker County Chamber of Commerce selected Mr. Wheeler as the Baker County Father of the Year. These honors are a clear illustration of the model citizen Mr. Wheeler was in his community.

The Federal building in Baker City is currently unnamed and houses the U.S. Post Office, Bureau of Land Management, and the U.S. Forest Service. To designate this building as the David J. Wheeler Federal Building is a tribute to an extraordinary American and will commemorate the contributions Mr. Wheeler selflessly provided to his community.

Mr. PACKWOOD. Mr. President, on April 26 of this year, the life of my fellow Oregonian, David Jack Wheeler, was snuffed out. He was murdered while working in the Wallowa-Whitman forest that he loved. David was an employee of the U.S. Forest Service, and he was an exemplary citizen of Baker City, OR. David was well-regarded in the community of Baker City because he was one of those individuals who didn't stop at just holding down a job and caring for a family. He gave back to his community. David worked to provide access for everyone to recreational and administrative facilities within the forest. He was a mentor and counselor to his coworkers. Because of this his community, friends, family, and employer would like to honor him by designating the Federal building located in Baker City as the David J. Wheeler Federal Building. I agree with these good people in this effort and so have sponsored a bill to make this happen. Folks in Baker City are right to honor David in this way. He gave so much to his community and this is a small thing to ask in return.

By Mr. HELMS (for himself and Mr. DOLE):

S. 1098. A bill to establish the Midway Islands as a National Memorial, and for other purposes; to the Committee on Armed Services.

THE BATTLE OF MIDWAY NATIONAL MEMORIAL ACT

Mr. HELMS. Mr. President, in less than a month, ceremonies in Hawaii will commemorate the United States victory over Japan and the end of World War II. The American people were devastated by the December 7, 1941, Japanese surprise attack on Pearl Harbor—undoubtedly, one of the most disastrous defeats in United States history. Victory at the Battle of Midway was a key element to the recovery of the United States Armed Forces and the ultimate victory on Japan.

Historians rank Midway as one of the most decisive naval battles of all time. It is only fitting, in my judgment, that American heroes of the Battle of Midway be given due recognition, and that is why the Battle of Midway National Memorial Act is so important.

Mr. President, if approved, this bill will: First, establish the Midway Islands as a National War Memorial; second, protect the historic structures associated with the Battle of Midway; and three, protect the surrounding environs, without cost to the taxpayers. The bill provides that the memorial be funded from revenues earned from private sector entities currently operating at the airstrip and the port facilities on Midway.

Historic victories such as Midway, Gettysburg, Yorktown, and Normandy are remembered by memorializing the hallowed ground upon which American blood was shed. The Midway Islands, and the surrounding seas where so many American lives were sacrificed, deserve to be memorialized as well.

Mr. President, during the month of June 1942, a badly outnumbered American naval force, consisting of 29 ships and other units of the Armed Forces, under the overall command of Adm. Chester W. Nimitz, outmaneuvered and out-fought 350 ships of the combined Japanese Imperial Fleet. The objectives of the Japanese high command were to occupy the Midway Islands and destroy the United States Pacific Fleet, but the forces under the command of Admiral Nimitz completely thwarted Japanese strategy. Victory at Midway was the turning point in the Pacific Theater.

The outcome of the conflict, Mr. President, was remarkable given the fact that U.S. Forces were so badly outnumbered. The United States lost 163 aircraft compared to 286 Japanese aircraft lost. One American aircraft carrier, the *U.S.S. Yorktown*, and one destroyer, the *U.S.S. Humman* were destroyed. On the other hand, the Japanese Imperial Navy lost five ships, four of the ships being the Imperial Navy's main aircraft carriers. Almost as devastating was the loss of most of the experienced Japanese pilots. At the end

of the day, 307 Americans had lost their lives. The Japanese navy lost 2,500 men.

So severe was the damage inflicted on the Imperial Japanese Navy by American airmen and sailors, that Japan never again was able to take the offensive against the United States or Allied forces.

Mr. President, victory over the Japanese was achieved, of course, by men and women from all the United States Armed Forces. Certainly at Midway, elements of each services—Navy, Marines, and U.S. Army Air Corps—were heavily engaged, closely coordinated, and paid a high price for their bravery. The Midway Islands should be memorialized to honor the courageous efforts of all the services when they were called upon to defend our Nation and its interests.

The heroism of many of American servicemen at Midway often required the ultimate sacrifice. Many of the Marine pilots, flying worn out and inferior planes, did not live to celebrate the victory at Midway. All but five torpedo-plane pilots who attacked the Japanese aircraft carrier task force—without protective air cover—were shot down. These pilots undoubtedly knew they were flying to an all but certain death.

But the sacrifice of these brave Americans was not in vain, Mr. President. When the battle ended, four Japanese aircraft carriers were sent to the bottom of the Pacific Ocean, and their highly experienced pilots were lost. Japanese naval aviation never recovered from this crippling blow, and the rest, as they say, is history.

Mr. President, the sacrifice and heroism of these men should never be forgotten—it is vital that our sons and daughters never forget what their fathers and grandfathers sacrificed for freedom. The Battle of Midway should be memorialized for all time, on the Midway Islands, on behalf of a grateful Nation.

Mr. President, I ask unanimous consent that a letter from four gallant Americans, each of whom was a hero of the Battle of Midway—Lt. Com. Richard H. Best, Capt. Robert M. Elder, Cap. Jack H. Reid, and Maj. J. Douglas Rollow—regarding the Midway Islands National Memorial Act, be printed in the RECORD.

Mr. President, I am grateful to these fine Americans for their service at the Battle of Midway and for their diligence in putting together this bill. I certainly commend other distinguished Americans for their contributions to this effort, including Dr. James D'Angelo, Adm. Tom Moorer, Adm. Whitey Feightner, Capt. Gordon Murray, Vice Adm. James Flatley III, Vice Adm. William Houser, William Rollow, and Anthony Harrigan.

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

INTERNATIONAL MIDWAY
MEMORIAL FOUNDATION, INC.,
Rockville, MD, May 30, 1995.

DEAR SENATOR HELMS: Please take a few minutes to read this letter to you from us, some of the survivors of the Battle of Midway. We seek nothing for ourselves—only for our Country.

Few battles in World War II were as pivotal as the Battle of Midway in 1942. Although the Battle of Britain and Stalingrad turned the course of the war in Europe, the Battle of Midway not only turned the course of the war in the Pacific, but most likely of the entire war. There the Imperial Japanese Fleet was defeated by a handful of U.S. Naval, Marine and Army aviators flying obsolescent aircraft. Lives were heroically lost. Had we not prevailed at Midway, Hawaii would have been lost, and the Pacific war fought on our West Coast.

Those of us who served in World War II have taken for granted that the generations who succeeded us would know of the enormous cost in lives paid to preserve freedom. We naively assumed that future generations would cherish and protect the values for which so many of our comrades died.

While other nations in the free world made the remembrance of World War II and the values it represented an imperative for their children, sad to say, our nation has not. Complacency replaced patriotism; revisionists replaced historians. Some would even have our children believe that the United States was the aggressor—insensitive to human life—particularly with regard to the end of the war in the Pacific.

We know the truth—we lived it; but our children do not. The International Midway Memorial Foundation believes that one of the best ways to preserve the teachings of World War II is to create World War II National Historic Battlefields. There our children, historians and others interested in that epic war for freedom can learn first hand, on site.

We now face the second battle of Midway. In September 1993, after over 90 years of stewardship, the United States Navy closed Midway as an operational base. The United States Fish and Wildlife Service (USFWS) has requested that Midway be turned over to itself primarily for use as a wildlife refuge.

The Foundation opposes the transfer of Midway to USFWS. Instead, we wish it declared a National Historic Battlefield, and administered by the U.S. National Park Service, in accordance with sound multiple use principles. Interested visitors can then not only see a beautiful island and its wildlife, but also learn of the historic battle fought there.

The Foundation will raise funds to help provide exhibits and materials to teach those visitors about the battle. Furthermore, visitors to Midway will generate funds, which in turn, will reduce if not eliminate the cost to our taxpayers of maintaining Midway.

In closing, we believe our dead at Midway deserve something better than a monument in a wildlife refuge. The few threatened species utilizing the Midway Atoll (primarily the Hawaiian Monk Seal and the Green Sea Turtle) can be amply protected under the multiple-use program we espouse.

Please help us. Please support legislation to create Midway as a National Historic Battlefield. Let us not lose the second battle of Midway.

Respectfully yours,

LCDR RICHARD H. BEST,
USN (Ret.).
CAPT. ROBERT M. ELDER,
USN (Ret.).
CAPT. JACK H. REID,
USN (Ret.).
MAJ. J. DOUGLAS ROLLOW,
USMCR (Ret.).

ADDITIONAL COSPONSORS

S. 304

At the request of Mr. SANTORUM, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 448

At the request of Mr. GRASSLEY, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 448, a bill to amend section 118 of the Internal Revenue Code of 1986 to provide for certain exceptions from rules for determining contributions in aid of construction, and for other purposes.

S. 529

At the request of Mr. GRAHAM, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 529, a bill to provide, temporarily, tariff and quota treatment equivalent to that accorded to members of the North American Free Trade Agreement (NAFTA) to Caribbean Basin beneficiary countries.

S. 758

At the request of Mr. HATCH, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 758, a bill to amend the Internal Revenue Code of 1986 to provide for S corporation reform, and for other purposes.

S. 794

At the request of Mr. LUGAR, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 794, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to facilitate the minor use of a pesticide, and for other purposes.

S. 837

At the request of Mr. WARNER, the names of the Senator from Utah [Mr. HATCH] and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 837, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 250th anniversary of the birth of James Madison.

S. 864

At the request of Mr. GRASSLEY, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 864, a bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes.

S. 877

At the request of Mrs. HUTCHISON, the names of the Senator from Colorado [Mr. BROWN], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 877, a bill to amend section 353 of the Public Health Service Act to exempt physician office laboratories from the clinical laboratories requirements of that section.