SENATE—*Tuesday, March 12, 1991*

(Legislative day of Wednesday, February 6, 1991)

The Senate met at 2:30 p.m., on the expiration of the recess, and was called to order by the Acting President pro tempore [Mr. KERREY].

PRAYER

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

Let us pray:

Let us come before his presence with thanksgiving, and make a joyful noise unto him with psalms. For the Lord is a great God, and a great King above all gods.—Psalm 95:2,3.

Almighty God, we have much for which to be thankful. As men and women return from the Persian Gulf and are welcomed by their loved ones and all Americans, we rejoice afresh in the brevity of the war and the minimum of casualties. But even as we rejoice at the homecomings we remember those who are brought home in caskets and greeted with deep sorrow by their loved ones, a sorrow that seems almost compounded by the joy of those returning home safely.

Gracious Father, we commend to Your love and comfort and care those who sorrow. We pray for any prisoner of war who has not been returned, for those who are missing in action and for their loved ones. And we pray that, as rapidly as possible, peace and order may be restored.

Midst our thanksgiving, loving Lord, we remember those who have been held hostage for so long: Terry Anderson, Thomas Sutherland, Jesse Turner, Joseph James Cicippio, Edward Austin Tracy, and Alann Steen. Grant that their freedom may soon come to pass.

In the name of the Prince of Peace we pray. Amen.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

THE JOURNAL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXTENSION OF TIME FOR MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that today, following the time reserved for the two leaders, there be a period for morning business not to extend beyond 4 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. MITCHELL. Mr. President, for the information of Senators, under a previous unanimous-consent agreement, I have the authority, following consultation with the Republican leader, to proceed to S. 578, a bill to authorize supplemental appropriations for the Department of Defense for Operation Desert Storm and for other purposes.

The distinguished Republican leader and I met earlier today. We intend to meet again shortly, and it is my hope that we can work out an arrangement whereby we will be able to proceed later today, at 4, if possible, if not, as soon thereafter as possible, to consider this legislation, I hope in a manner that will permit its prompt enactment.

This legislation includes the benefits for the men and women who served in the Desert Storm operation and, of equal importance to them and to all of us, their families. So I hope that we can proceed with that later today. We will be consulting further, and I hope to have an announcement on that shortly.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the remainder of my leader time.

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

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

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOGNITION OF THE REPUBLICAN LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

Mr. DOLE. I thank the Chair.

(The remarks of Mr. DOLE pertaining to the introduction of S. 611 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period for morning business until 4 o'clock. Senators are permitted to speak therein for not to exceed 10 minutes each.

The Senator from Texas.

Mr. BENTSEN. I thank the Chair.

(The remarks of Mr. BENTSEN, Mr. ROTH, and Mr. SEYMOUR pertaining to the introduction of S. 612 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SPECTER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

INTERNATIONAL CRIMINAL COURT TO TRY WAR CRIMES

Mr. SPECTER. Mr. President, I seek recognition to amplify evidence in support of a pending sense-of-the-Senate resolution to establish an international criminal court to try war crimes.

This issue was presented on the floor of the Senate last week, and a vote was deferred on Thursday afternoon because of scheduling difficulties with some Senators who would be necessarily absent; and the schedule was established where the vote would occur this week after another scheduled vote, to make sure that as many Senators were present as were possible. But there have been some intervening events since last week which are worth placing on the RECORD, Mr. President.

A report by the Philadelphia Inquirer specifies:

The eight U.S. Air Force pilots released last week by the Iraqis were "treated in a very severe fashion, and were physically injured," a ranking Air Force doctor reported yesterday. An initial examination of the airmen at Andrews Air Force Base showed that some had lost as much as 30 pounds during their confinement because of a daily diet of a few slices of pita bread and broth. Brigadier General Robert Pol told the news conference that several had contracted intestinal parasites.

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

A report by the Washington Post today specifies Iraqi treatment of pilots as "severe." U.S. officials cite malnutrition, duress, and delayed medical care.

Over the weekend, the New York Times, on Sunday, reported a United States plan to bomb Iraq if poison chemical gas was administered to the internal population of Iraq. One such report, although not cited in this New York Times article, specified that a chemical weapon had been used against the dissidents within Iraq, but that the shell was so old and antiquated that it malfunctioned.

Mr. President, the additional evidence which is coming to light, and increasing acts of barbarousness on the part of Iraq, I submit, underscores the necessity for Iraqi officials, from President Saddam Hussein on down, to be on notice that they will be held responsible for war crimes.

Last week considerable detail was specified about the atrocities against Kuwait, which would warrant war crimes trials in an international court, under an analogy to Nuremberg after World War II. Similarly, there were atrocities against prisoners of war and atrocities against other civilians, and the firing of some 39 Scud missiles into civilian populations in Israel, without any conceivable military objective.

Mr. President, this additional information, I think, underscores the necessity for a very strong vote by the sense of the Senate on our determination to establish an international criminal court to try war crimes. This would be a followup to previous acts by this body. In 1986 a resolution was adopted, on the initiation of this Senator, for an international court to try terrorists; in 1988 a resolution was initiated by this Senator on an international court to try drug dealers; and, last year, there was a provision in the foreign aid bill which calls for a report from the President by October 1, 1991, and a report from the U.S. Judicial Congress.

But the evidence is mounting that the international criminal court to try war crimes is very much needed, and this additional information, I think, will lend an additional evidentiary base.

Mr. BAUCUS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Montana is recognized.

THE NORTH AMERICAN FREE TRADE AGREEMENT

Mr. BAUCUS. Mr. President, last week the administration requested authority to negotiate a free trade agreement with Mexico and Canada. This agreement builds upon the recently concluded FTA with Canada. The negotiations have been dubbed the North American Free Trade Agreement or NAFTA negotiations.

I feel considerable pride of authorship in the concept of a NAFTA. One of my first major projects when I came to the Senate in 1979 was to include an amendment in the 1979 Trade Act to require the administration to study the NAFTA concept. At the time, the idea was received with great skepticism, but it has slowly gained acceptance over the last 12 years. I ask unanimous consent that the text of the provision in the 1979 Trade Act and a statement I made at the time appear in the RECORD directly following my remarks.

BENEFITS OF A NAFTA

Why attempt to negotiate an FTA with a developing country, like Mexico?

The International Trade Commission attempted to answer that question in their recent study:

* * * an FTA with Mexico will benefit the U.S. economy overall by expanding trade opportunities, lowering prices, increasing competition, and improving the ability of U.S. firms to exploit economies of scale.

If the United States, Mexico, and Canada were to eliminate internal trade barriers it would create a single market of 360 million consumers—by far the largest in the world. A secure market of this size would create an enormous competitive advantage for U.S. business vis-s-vis their Asian and European competitors.

Further, opening the Mexican market could have enormous commercial benefits for the United States. Mexico is already the United States' third largest trading partner. The Salinas government has undertaken a significant trade liberalization over the past 4 years. Tariffs are down from as high as 100 percent to an average of just over 10 percent, and a number of trade barriers have been dismantled. This unilateral market opening has expanded United States exports to Mexico from $12.4 to $28.4 billion in 4 short years. During that same period, the annual United States trade deficit with Mexico shrunk from $5.7 billion to $1.8 billion.

But Mexican tariffs are still more than twice as high as United States tariffs and import licenses are still required for many products. Further, Mexico's tariffs are not bound at current levels by international agreement. If the Salinas government were to change policy or be replaced, Mexico's tariffs could be raised as high as 50 percent and other barriers reimposed. A free trade agreement with Mexico could break down remaining trade barriers and prevent old ones from being reerected.

Mexico is also the United States' second largest source of oil imports behind Saudi Arabia. An FTA could help assure a reliable supply of oil from Mexico and help to lessen dependence on the Persian Gulf.

CONCERNS ABOUT MEXICO

However, thcugh the potential benefits of an FTA with Mexico are large so are the risks. Negotiating an FTA with Canada was relatively easy. The United States and Canada are at the same level of development. Both maintain similar labor and environmental standards. And both share a common language.

Unfortunately, none of those things are true with regard to Mexico. Mexico remains a developing country with all the accompanying human rights and environmental problems usually found in developing countries.

To link Mexican economy with the United States economy is to build a bridge that spans 100 years of economic development. Such a negotiation raises particular concerns in three areas.

First the wage rate differential between the United States and Mexico is large. Wages in Mexico are only one-quarter to one-fifteenth of United States wages. Under an FTA this would seem to create a tremendous incentive for labor intensive industries in the United States to move to Mexico—causing massive job losses in the United States.

Various economic analysis suggest that this problem may be overstated. Most suggest net gains in U.S. employment. Nonetheless, in a number of U.S. sectors large job losses are likely.

In order to win approval of a United States-Mexican FTA, the administration must develop a comprehensive plan to address these job losses. In some sectors, that will mean tariff snapbacks and special safeguard measures to address import surges. In others, it could mean long transition periods.

The United States Government must also take a hard look at revamping worker adjustment assistance programs to deal with displacements that may result from free trade with Mexico. This administration has been openly hostile to trade adjustment assistance and this year proposed repealing the program. If we are going to sacrifice some low wage jobs in order to create new higher wage jobs, we must create a training ladder to help the displaced workers fill the new jobs. We must work to see to it that those who lose jobs because of an FTA with Mexico, are able to share the benefits of free trade.

Second, Mexico has not vigorously enforced its environmental laws. Most experts concede that Mexico has a fairly sound set of environmental laws on the books, but it doesn't devote sufficient resources to enforcing those laws. If an FTA were concluded under current circumstances, an incentive could be created for United States business to move to Mexico to avoid United States environmental regulations. This could create job losses in the United States and spawn new pollution.

Environmental issues do not fit well into a trade negotiation. But before a trade agreement is approved by the Congress, the United States must ensure that adequate environmental regulations are on the books and enforced in Mexico.

Finally, Mexico does not impose adequate worker's rights standards. As is the case with environmental regulations, an FTA could create an incentive for United States businesses to move to Mexico to exploit the workforce. Clearly, this is intolerable. We cannot allow free trade if it means more child labor and more workers working under unsafe conditions. As is the case with the environment, these issues should be addressed before a trade agreement is approved by Congress.

I have already announced that I intend to support an extension of the administration's fast track negotiating authority. This will allow the administration to begin negotiations with Mexico and Canada aimed at producing a NAFTA.

However, I do have serious concerns about negotiating an FTA that involves Mexico. In the end, I will be taking a hard look at any agreement produced by those negotiations. Such an agreement must be in the United States commercial and economic interest, it cannot simply be disguised foreign aid for Mexico.

Further, before the negotiations begin, Mexico must live up to all the commitments it has made to the United States in previous trade negotiations involving intellectual property protection.

Finally, the concerns that I have just laid out on wage rates, environmental standards, and worker's rights must be addressed either in or concurrently with the FTA negotiations.

Those are high standards. But if the Administration negotiates with these objectives in mind, they are achievable. The United States has great leverage with Mexico in the negotiations. After all, the U.S. market is the most prosperous in the world.

Given my past involvement with this issue, I would deeply regret voting against a North American Free Trade Agreement. But unless such an agreement measures up to these standards, I would have no choice but to vote to reject it.

Mr. President, I ask unanimous consent that material on this subject be printed in the RECORD at this point.

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

SEC. 1104. STUDY OF POSSIBLE AGREEMENTS WITH NORTH AMERICAN COUNTRIES.

(a) IN GENERAL.—Section 612 of the Trade Act of 1974 (19 U.S.C. 2486) is amended by inserting "(a)" before "It" and by adding at the end thereof the following:

"(b) The President shall study the desirability of entering into trade agreements with countries in the northern portion of the western hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions within 2 years after the date of enactment of this Act. The study shall include an examination of competitive opportunities and conditions of competition between such countries and the United States in the agricultural, energy, and other appropriate sectors.".

(b) CLERICAL AMENDMENTS.—

(1) The caption of section 612 of such Act is amended to read as follows:

"SEC. 612. TRADE RELATIONS WITH NORTH AMERICAN COUNTRIES.".

(2) The table of contents of such Act is amended by striking out the item relating to section 612 and inserting in lieu thereof the following new item:

"Sec. 612. Trade relations with North American countries.".

Senator BAUCUS. The hearing of the International Trade Subcommittee will come to order. I want to welcome today all of the witnesses who are here to testify.

Today's hearing is the first of several I plan to conduct during the next few months to examine trade between the United States, Canada, Mexico and other nations in the northern portion of the Western Hemisphere.

To most Americans trade with Mexico and Canada means one thing: oil. Mexico's recent discoveries of vast reserves of oil and natural gas are an attractive alternative to Middle East oil.

At a time when lines at gasoline stations have reappeared and weekend closings are again common, such a large supply of oil on our southern border looks even more tempting.

Canada has in the past been a major supplier of energy to the United States. In my home State of Montana, Canada remains a major source of oil for refineries in Billings.

Several bills have been introduced this year that encourage energy cooperation among the three nations. Several proposals to establish a North American Common Market have come forward. We are a long way from that kind of relationship. Our neighbors are rightfully cautious about such talk and even the mention of common markets and free trade zones legitimately and correctly cause concern.

This Nation's relationship with Canada and Mexico is much more complex than simply oil. The United States conducts more trade with Canada than with any other nation by a wide margin.

In 1977, the United States sold over $25.7 billion worth of products to Canada compared to $10.5 billion to Japan. Americans bought nearly $39 billion worth of imports from Canada compared to $18 billion from Japan.

The value of U.S. trade with Canada in 1978, totaling $62 billion, is more than the amount of U.S. trade with all of the members of the European Common Market.

We are also Mexico's largest trading partner, buying 70 percent of its exports. Last year, trade between the United States and Mexico totaled $12.7 billion, up 34 percent over 1977.

Trade with Mexico and Canada is one-quarter of this Nation's total international trade. Obviously, decisions made here have a dramatic impact in their capitals and upon their people.

Today, I hope we can begin to look beyond the statistics. We should look at the quality of our relationship with these nations.

How is our Government organized to handle North American affairs?

What do Mexico and Canada want in return for selling us their oil and other resources? How willing are American firms to share their research and development with the Canadian and Mexican firms?

How do we reduce and eliminate both tariff and nontariff barriers to trade? How do we provide some organization to the dozens of agreements that now govern trade?

These are some of the questions that I hope we can examine. Also, I am inserting at this point in the record a more complete statement for the record.

[The material referred to follows:]

"The purpose of the hearings we are beginning today is to focus public and Congressional attention on the current status of North American relations in the field of trade and other areas, and to encourage serious thinking—both within and outside of our government—about the future direction of these relations.

"Today's witnesses will address themselves primarily to issues in United States-Canadian and United States-Mexican relations. However, we should at the outset note that a systematic study of the possibilities for greater cooperation among the countries of the northern portion of the Western Hemisphere should also include consideration of the nations of the Caribbean as well.

"We are witnessing an interesting change in American perceptions of our two large neighbors. Traditionally, little attention has been paid to the extensive and varied bond between our country and Canada and Mexico: We have tended to take them for granted.

"Fortunately, this is now changing. This increased American interest is a product of our own domestic needs. As our economy has slowed down and our balance of payments deficit has steadily risen, we have paid increasing attention to international trade. And as the energy crunch has become more acute, we have become more aware as a nation of the foreign sources of our energy. Analysis of where we stand in regard to energy or to trade leads inevitably to a discussion of our relations with our two major neighbors.

"Already the vastness and intricacy of the existing ties are apparent. Canada and the United States are each other's largest trading partner. The total value of U.S. trade with Canada alone ($62 billion in 1978) is slightly more than U.S. trade with all of the members of the European Common Market, and exceeds U.S. trade with the OPEC nations as a group.

"The statistics in relation to United States-Mexican trade are no less impressive. We are Mexico's largest trading partner, taking approximately 70 percent of their exports. Mexico ranks within the top five of the nations with whom we trade. In 1978, trade between the United States and Mexico totaled $12.7 billion, up 34% from $9.5 billion in 1977.

"In the field of energy, Canada's importance as a source of fossil fuel and hydroelectric generation, as well as a conduit for Alaskan oil has loomed large. Similarly, the monumental recent discoveries of oil and gas reserves in Mexico must inevitably enter our calculations about sources of future energy needs. Our interest in Mexican and Canadian

energy resources has been matched by a desire in both of those countries to protect their natural resources, and to use them imaginatively and sparingly for the important tasks of their own national development.

"Energy and trade are only two facets of the complex interrelationship. Migration patterns, cultural concerns and questions of national identity make difficult any simple analysis of cross border patterns.

"The simple fact is that our own needs have propelled us to look more closely than ever before at North America as an economic unit, and, not to the surprise of experts, we are discovering the strength of this continent as an economic entity. Without doubt, the United States, Canada and Mexico taken together, form the largest single, and most vital economic trading block in the world. It is the seat of three vibrant democratic nations, and the home of aspiring and energetic populations.

"The opportunities appear almost limitless, but there can be no doubt that there are significant obstacles to greater cooperation.

"The task which confronts us as nations is to develop structures which will allow us to work together to our mutual benefit.

"Legislation has been introduced into this Congress to encourage cooperation among the three nations, especially in the field of energy. Today some witnesses may speak about the proposed legislation and while this would be welcome we should not lose sight of the fact that this hearing and ones which will follow are primarily educational and informational in nature. We are looking for answers, but in fact, we are just beginning to formulate the right questions.

"We must assess the full panoply of the existing relationships. For instance, I believe that there is far more governmental contact at the state and province levels than is commonly realized. These should be adequately catalogued.

"We must know more about our ability as a government to improve existing relations. I am concerned that our relations with the two nations are too often compartmentalized within our own administration with the net result that our right hand does not know what our left is doing.

"We must study further the reactions and sentiments of the people of Canada and Mexico themselves to the possibilities of increased cooperation. No progress is likely if we are insensitive to their views. There is a long legacy in both Canada and Mexico of suspicion of American motives. We must conduct ourselves in such a way to convince our neighbors that we are interested in arrangements that help us all, not just arrangements that help us get all of theirs.

"We must seek out and listen to the views of all important elements of the American economy and pay particular attention to the concerns of this country's working men and women.

"We must honestly ask ourselves whether, given the great differences in economic development between Canada and Mexico, it makes sense to try to deal with the two nations as part of a trilateral entity. Are we better off forgetting about continentalism and focusing on promoting better bilateral relations with each? I frankly do not know the answers to these questions, and I want to have this Committee promote public discussion of them.

"The next decade may see profound change in our relations with our two neighbors, brought about by significant domestic developments in each. Mexico will undergo serious stress as it copes with the important questions that will be raised concerning the internal distribution of its new oil wealth. How this wealth will be used, by whom, and for whom, are likely to be the central issues of Mexican politics in the next decade. It will be a time of profound questioning. Similarly, in Canada, it is likely that the next decade will see a period of continued national self examination. The very unity of Canada is being called into doubt and while this is a question solely for Canadians to decide among themselves, it will be foolish for the United States to remain unaware or unconcerned about possible ramifications for ourselves.

"I am pleased that today we shall hear from not only spokesmen from the Executive Branch, but from individuals from private industry and the academic world, as well as representatives of private opinion in both Mexico and Canada. They will each express to us in their views about the need and possibility for increased hemispheric cooperation. Hopefully, today we shall begin a process—which is likely to be long and arduous—which will lead to greater understanding."

Senator BAUCUS. I hope this hearing will necessarily be the beginning of a very long search into the general question, but also one that is delicate and sensitive to the countries and the people concerned.

We will begin with our first witness, the Honorable Alan Wolff, Deputy Special Representative for Trade Negotiations. Mr. Wolff, you are certainly no stranger to this committee. We are happy to have you here. You may proceed in any manner that you wish.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Chair recognizes the Senator from Delaware [Mr. BIDEN].

Mr. BIDEN. I thank the Chair. I realize we all stood seeking recognition. I think so far we have been recognized in the order we arrived, and I appreciate the Chair doing that.

(The remarks of Mr. BIDEN and Mr. SEYMOUR pertaining to the introduction of S. 618 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Chair recognizes the Senator from Montana [Mr. BAUCUS].

THE ADMINISTRATION'S NATIONAL ENERGY STRATEGY

Mr. BAUCUS. Mr. President, with the successful conclusion to the Persian Gulf war, Americans are begining to shift their attention to some of our pressing domestic issues. With 8.2 million workers unemployed last month, pulling the economy out of the recession has to be No. 1 on our agenda.

But close behind it must be development of a national energy strategy. The war has brought home to all of us the fragility of our energy policy. And it should renew our determination to build a comprehensive policy that will help ensure our future.

Two weeks ago, the administration released its long awaited comprehensive national energy strategy. But now that it has been unveiled, it is difficult to see how it could have taken 18 months to develop. It is not new and it is not comprehensive. And it certainly does not look to the future.

In fact, the administration's energy policy continues to suffer from the tunnel vision of the past 10 years. It continues to chase the mirage of cheap oil while it shuns energy conservation and efficiency.

The single-minded pursuit of oil for the past decade has kept American families and businesses vulnerable to oil price shocks. It has reduced our ability to compete with Japan, Germany, and other nations in the world marketplace. And it has contributed to global warming, air pollution, and other environmental problems.

Some have said that his strategy is flawed because it is not balanced with more conservation measures. I disagree. The administration's energy policy is flawed because it has no broader vision for the future.

The administration's policy makes drilling for oil in our offshore waters and in the Arctic refuge's wilderness a panacea. But is this really a sound energy policy?

Mr. President, only about 6.1 billion barrels of oil—some 3 percent of the Nation's total oil reserves—lie within the Arctic refuge and the undeveloped areas of the Outer Continental Shelf. Even if all these protected areas were exploited to full capacity, it would only supply about a year's worth of oil.

Furthermore, the United States has only 4 percent of the world's oil reserves, with much of what is left is inaccessible or expensive to develop. No matter how hard we try—no matter how much of our natural heritage we destroy—we will never be able to produce enough oil to insulate ourselves from oil price shocks.

After all, from virtually the start of the Persian Gulf crisis, Alaskan oil has sold for the same price as oil that was imported from the Persian Gulf. So would any oil from Arctic refuge or the OCS.

Of course, our national energy strategy must not abandon domestic oil production. Our policy should provide economic incentives to put the oil rigs in Montana and elsewhere around the country back to work extracting known oil reserves. It should encourage more thorough exploration and development of the tens of millions of acres already under lease. Strikes in some of these areas already have proven to be far more promising than originally thought.

But, unfortunately, production is not a total panacea. And it never will be. In addition to production, we must also be much more efficient. We must conserve.

Our energy appetite also is costly to the global environment. Energy con-

sumption is the single largest contributor to global warming.

The United States is the leading contributor of greenhouse gases that threaten the Earth's climate. With 5 percent of the world's population, the U.S. accounts for about 20 percent of the world's emissions. U.S. carbon dioxide emissions originate almost exclusively from burning oil and other fossil fuels.

Yet, while most of the developed countries are seeking to stabilize or reduce greenhouse gas emissions, particularly carbon dioxide, the administration comes forward with a plan that calls, not for reductions in use of fossil fuels, but for continued heavy reliance on oil and for increasing carbon dioxide emissions.

Tomorrow, the Environmental Protection Subcommittee will hold a hearing to examine these very issues.

Mr. President, the path laid out by the administration will not secure this Nation's future. Only through increased energy conservation and efficiency can we find enhanced security, a more competitive economy, and a cleaner environment.

The way to protect ourselves from huge, overnight increases in the price of oil—to prepare ourselves now for the future—is to use oil more efficiently and to become less dependent upon it.

Our energy policy should weigh our options and pick the best buys first. Clearly, we must enhance conventional and renewable production. But even more, clearly, energy efficiency is the cheapest and most immediate solution we have to increased oil prices.

The Japanese, German, Swedish, and other foreign competitors already use half as much energy per capita as we do in the United States.

By increasing automobile fuel efficiency by 1.5 miles per gallon per year over 7 years, we could save as much oil as Iraq and Kuwait would have produced. An increase in fuel economy standards to 40 miles per gallon could save as much as 8 billion to 9 billion barrels of oil by 2010.

A sound energy policy is one that plans for the future. It is one that relies primarily on energy conservation and efficiency, along with renewable energy resources, to protect America's environment and its economy. And, yes, its future.

I intend to work closely with the majority leader and my other colleagues to see that the energy bill the Senate considers later this year does just that.

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

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

The Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair.

(The remarks of Mr. GRAHAM pertaining to the introduction of S. 620 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. Who seeks recognition?

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

THE STRENGTH OF THE ECONOMY

Mr. EXON. Mr. President, it is quite obvious why various important matters are being addressed on the floor of the Senate today and the latter part of last week. With the winding down of hostilities in the gulf, at least the wonderful, successful conclusion of that particular exercise and the fact that the Secretary of State is now involved in serious discussions in the region attempting to at least set the groundwork for some long-term peace in that region that we have not seen, it is obvious that the Senate is turning itself to other extremely important domestic matters, including the budget, the crime bill and the 100-day challenge that was presented to the Congress by the President in his recent address to the joint body.

I suspect, though, as we go into these troubled times, we had better have a little better understanding than I think is generally understood about the strength of the economy in the United States of America, or the lack thereof: Where are we going in the future; what are the problems that we have, finally, maybe at long last recognized from the past; what have we learned from those mistakes or actions; and how are we going to use some of the experiences that we have had with regard to charting a successful economic course for the future?

Suffice it to say the ever growing budget deficit is obviously going to continue to mushroom in the future, with the fact we have already passed legislation that in essence authorizes the national debt of the United States to keep soaring on up to about the $5 trillion figure. To put that in perspective for just a moment, Mr. President, I would simply cite that in 1980 we were under $1 trillion in total national debt; it is estimated that within the next couple of years, 12 years later, we are going to hit the $5 trillion national debt figure—an astonishing increase. Nothing like it has occurred in our modern history.

Unless we are wise enough to begin to chart a different course to correct that, then the economy of the United States is going to continue to be run in a state of disrepair.

I am very much concerned about the overall standard of living of the United States of America and am wondering whether or not the current downturn we are seeing may be a signal we are going to begin to pay for the excesses of the past with some hard economic choices in the future.

Nevertheless, there are some options available to us as long as we understand what the situation is and what we face and how we can best, through study and consultation and bipartisanship, move into a new, aggressive future for the United States of America as we approach the beginning of a new century.

In that regard, I have two articles I will be entering into the RECORD in just a few moments by two individual Americans, Prof. Wallace C. Peterson of the University of Nebraska economics department, and Mr. Eliot Janeway. Both of these individuals are friends of mine and I listen very carefully when they speak.

First, I will briefly quote from an article written by Professor Peterson and delivered to the Missouri Valley Economics Association in March of this year. I quote from the first page:

> In this paper I shall argue for a different—and I think a better—measure of recession or depression. This measure is the real income of the average worker or family. Why real income? This is because real income determines material living standards, and our standard of life is the best measure of economic progress.

Jumping then, Mr. President, to page 3 of this same article, I quote:

> From a 1973 peak year of $327.45 in constant (1982–84) dollars, real weekly earnings slipped to $276.95 during the 1982 recession. In the recovery and long expansion of the 1980s they climbed back up to only $270.32. Thus, 16 years after the watershed year of 1973 and in spite of the vaunted prosperity of the Reagan years, the real weekly income of a worker in 1989 was 17.4 percent below the level reached in 1973!

Jumping ahead then once again, Mr. President, to pages 10 and 11 of that article, I quote:

> For example, between 1979 and 1987 the number of jobs in the American economy expanded by nearly 15 million. But of these new jobs, 50.4 percent paid an annual wage below the poverty level ($11,610 in 1987), 37.7 percent paid a wage classified as "middle" ($11,611 to $49,443), and only 11.9 percent could be called "high wage" jobs (over $46,444). Representative of many of the jobs in the broadly-based service sector are wages in retail trade, which is where many workers displaced from manufacturing eventually find themselves. Wages are not only significantly lower than wages in manufacturing, but the gap between the two sectors has worsened. In 1950, for example, weekly wages in retail trade averaged 68.7 percent of weekly earnings in manufacturing. By 1989, the ratio had dropped to 44 percent.

Moving ahead, once again, Mr. President, in that same article to pages 12 and 13, I quote:

Four-fifths of American families saw their average income decline over this period. Only families in the top 20 percent gained.

Continuing on page 13:

Closely related to this is a second factor, the increasing internationalization of the American economy. Workers in routine production activities like manufacturing find themselves competing in the global labor markets, markets in which wages are frequently much lower than in the United States. Because, too, many corporations have become genuine multinational firms, they often find it easier to shift their operations to low wage areas in the Third World rather than attempt to pass high wages on to the consumer in the domestic economy.

Finally from this same article, on pages 16 and 17, I further quote:

And finally, I would ask, where are the economists? In the January 14, 1991 issue of Business Week, the headline over the magazine's story about the ASSA convention in Washington, D.C. between Christmas and New Year's read, "7,000 Economists—And No Answers." This is a sad commentary on the state of the profession. Economists outside the neoclassical mainstream have a long and successful history—from the American institutionalists to John Maynard Keynes—of creating the intellectual capital that nourished liberal Western governments seeking to tame the worst excesses of market capitalism. It is time to get out of the ivory tower and get on with the business of rebuilding this stock.

Mr. President, I ask unanimous consent that following my remarks the entire article by Professor Peterson, with the attachments thereto, be printed in the RECORD.

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

(See exhibit 1.)

Mr. EXON. Mr. President, likewise I am going to quote briefly from an article that appeared in the Atlanta Journal and Constitution by Eliot Janeway of February 27, 1991:

The threat of a Middle Eastern oil war should serve as an invitation for the superpowers to repeat that memorable chapter of aeronautical history in an underground setting. Working together, the two countries can reactivate the Soviet Union's huge oil fields.

The closing paragraph:

The United States is overdue the satisfaction of solving one of its foreign money problems to its advantage. Substantial political and strategic benefits will follow. When they do, perhaps Washington will be emboldened to offer its perennial food surplus in further payment for cheap, good-quality Soviet oil.

Mr. President, I ask unanimous consent that the article by Mr. Janeway be printed in the RECORD.

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

(See exhibit 2.)

EXHIBIT 1

THE SILENT DEPRESSION*

(By Wallace C. Peterson)

The words "recession" and "depression" have long been associated with substandard levels of output and employment. As is well-known—even by the lay public—the standard definition of a recession is two quarters marked by a decline in real GNP. By this standard, the nation has experienced nine recessions, including the current downturn, since the end of World War II.

In this paper I shall argue for a different—and I think better—measure of recession or depression. This measure is the real income of the average worker or family. Why real income? This is because real income determines material living standards, and our standard of life is the best measure of economic progress. A recession—or a depression—interrupt progress, so if real income stops growing, it is reasonable to regard the economy as being in a depressed state. Furthermore, this approach leads us directly to the productivity question. In the final analysis, productivity is the ultimate determinant of the economic well-being of individuals, families, and the nation.

Implicit in the argument offered in this paper is that employment as such no longer suffices as a basic measure of the economy's state of health. Since John Maynard Keynes's classic work, "The General Theory of Employment, Interest, and Income," appeared in 1936, the level of employment—or its counterpart, unemployment—has been standard macroeconomic benchmark for measuring prosperity or recession. There were good reasons for this, because over most of the post World War II period there was a strong correlation between jobs and the prosperity of the individual or family. This linkage no longer holds to the extent it once did.

If measures of real income for the worker and the family are accepted as the determining criteria for the economy's state of health, an important, even startling, conclusion follows. The economy has been in a depressed state since 1973—the last 17 years. Hence, the title, "The Silent Depression".

To develop and document this argument, I shall proceed as follows. First, I shall examine the key statistical evidence in support of the thesis. Second, I shall speculate about some of major causes for this condition, especially those causes of an institutional nature. Finally, I shall ponder the question of whether remedies exist for this situation.

THE STATISTICAL EVIDENCE

The statistical evidence for the "Long Depression" thesis rests upon what has happened to real weekly earnings in the private nonagricultural economy since 1947; upon changes in median family income measured in constant dollars in the same period; and upon the path of productivity changes since the end of World War II. These data are shown in both tabular and graphic form in the statistical appendix attached to this paper. They point to the conclusion that 1973 was a watershed year for the American economy, a year in which there was a fundamental change in direction in the trend lines for these key variables. There is no obvious explanation for this change, but it did happen. The fact that this change occurred in the same year as the first oil crisis may be sheer coincidence. Or, perhaps, the oil crisis stemming from the Yom Kippur war was the catalyst that activated other disruptive forces that had been smoldering beneath the surface of economic events. Either view is speculative. The data, however, are not speculative. After we have examined these data, we can search out the causes.

Table 1 (and Figure 1) traces out the path of average weekly earnings in constant dollars in the private nonagricultural sector from 1947 through 1989. The years from 1947 through 1973 were boom years, a time that Sir John Hicks described as the "Age of Keynes." Real weekly earnings grew at a substantial annual average rate of 1.84 percent, a trend that in combination with the increasing participation of women in the labor force put a middle class standard of life within the reach of growing numbers of American.[1] Abruptly after 1973 the rate of growth in real weekly earnings dropped. From a 1973 peak of $327.45 in constant (1982–84) dollars, real weekly earnings slipped to $276.95 during the 1982 recession. In the recovery and long expansion of the 1980s they climbed back to only $270.32. Thus, 16 years after the watershed year of 1973 and in spite of the vaunted prosperity of the Reagan years, the real weekly income of a worker in 1989 was 17.4 percent below the level reached in 1973! During this 16 year period, weekly earnings grew at a negative annual average rate of 1.16 percent. For large numbers of Americans middle class dreams for home ownership, vacations, and college for their children turned sour.

Essentially the same story, though slightly less harsh, is true for median family income measured in constant (1988) dollars. Table 2 (Figure 2) contains median family income data for the years 1947 through 1988. As with real weekly earnings, medium family income in constant dollars grew briskly from 1974 through 1973. The annual average rate of growth was 2.73 percent, a rate which would double family income in roughly a generation (25 to 30 years). It is this experience that is the source of the strengthened belief of the post World War II generation that children ought to do better economically than their parents. The rate of growth for family income between 1947 and 1973 was significantly higher than the rate of growth for real weekly earnings. The difference is accounted for the fact that, increasingly, wives and mothers are entering the work force to supplement the family income. In 1950, for example, families with a working wife had incomes 20 percent greater than those in which only the husband worked. By 1988, however, families in which the wife worked had incomes 57 percent greater than those in which the wife did not work.[2] This growing gap reflects not just the fact that more women in families are working, but also gains in the wages of women relative to those of men.

Again, and as with real weekly earnings, these gains came to an abrupt halt after 1973. Unlike real weekly earnings, however, the rate of growth for median family income did not turn negative. But it slowed to a mere trickle, the rate of increase for the 15 years from 1974 through 1988 being a minuscule 0.15 percent. The continued increase in working wives and mothers was the factor that saved real family income from an actual decline during these years. This near stagnation in family income since 1973 also explains why the generation that has come of age in the last decade doubts that their standard of living will even reach that of their parents, let alone exceed it.

Finally, let us turn to productivity, the most crucial variable of all. Productivity is the key to an improved standard of material life. If there is any one proposition upon which all economists can agree, this is probably it. The data on productivity changes are contained in Table 3 (Figure 3). From 1948 through 1973 productivity as measured by output per hour in the nonfarm business sector grew at an annual average rate of 2.51 percent, a rate that would double real output every 28 years. Then came the 1973 break in this healthy trend, with the overall growth in productivity dropping to 0.93 percent a

year. Unlike prior recoveries, the expansion after the 1981–82 recession resulted in only a weak recovery in productivity growth to an annual 1.58 percent rate. At this rate it would take 45 years for output to double. The mystery of the slowdown in the economy's rate of growth in productivity continues.

At this point the question of per capita income may come up. Hasn't per capita income in constant dollars been growing since 1974, and, if so, would not such growth invalidate the "silent depression" thesis? The answer to the first part of this question is yes, but not to the second part. Let us see why.

It is true that real per capita disposable income has continued to grow since the watershed year of 1973. However, there has been a sharp slowdown in the rate at which this measure has been growing. Between 1947 and 1973 real per capita income grew at an annual average rate of 2.94 percent, a rate that would allow disposable income per person to double in 24 years. Between 1974 and 1988 the annual rate of growth for this measure dropped to 1.61 percent, a rate of growth only about half the rate the economy experienced during the "Age of Keynes."[3] Further, at the slower 1974–1988 rate of growth, it would take almost 44 years for real per capita income to double. Thus, this slowdown in the growth rate for real per capita income reinforces the "silent depression" argument, even though the rate remained positive.

The more important issue is this: is growth in real per capita income a satisfactory measure of economic progress? This is the second part of the question previously asked. Even though it is often used for this purpose, it is, nonetheless, a seriously flawed measure. Since it is an arithmetic average, persons in the upper reaches of the income scale exert a disproportionate influence on the overall picture. Using the median rather than the mean gives us a better picture of what is actually taking place in the economy. Further, per capita figures don't capture the effect of recent changes in the distribution of income, an important part of the "silent depression" argument.

CAUSES OF THE SILENT DEPRESSION

Let us now turn to the matter of cause. Is it possible to identify the major economic factors responsible for the decay in economic well-being reflected in the decline in real earnings and family income, as well as the slowdown in productivity growth? The answer is yes, but it is a cautious yes. The reason is that the causal factors are of an institutional nature, wherein we find that cause and effect are often interlined. They are not the relatively simple macroeconomic variables of output and employment normally identified as the source of an economic downturn. The institutional character of the casual factors not only means that it is more difficult to describe them with precision, but complicates the problem of determining what corrective action ought to be taken. Let us now examine these factors, not necessarily in a definitive seuse, but from the perspective that this is where economists ought to direct their research if we are to understand what is really happening to the American economy.

High on the list of causal factors is America's institutionalization of "military Keynesianism." Military Keynesianism is the phrase coined by Joan Robinson in her 1971 Ely Lecture to the AEA in which she described the degree to which military spending has come to fill the potential gap between private investment and full employment savings in the American economy.[4] The extent to which President Eisenhower's warning about the dangers inherent in the military-industrial-complex has come true is reflected in the following facts. Between 1947 and 1989 military spending accounted for 76.7 percent of federal outlays for goods and services. Even with the Korean and Vietnam war years removed, this average is above 75 percent.[5] It is not unreasonable, therefore, to describe a society that for 43 years has devoted at least 75 percent of its output of collective goods at the national level to military purposes as one dominated by military Keynesianism.

One facet of this development which bears directly on America's productivity problem is the extent to which a significant portion of the nation's scientific and engineering talent has been involved in military-related research. Lloyd J. Dumas, Professor of Political Economy at the University of Texas at Dallas, estimates that in the 1970s and 1980s nearly 60 percent of federally-funded research and development activity was for "national defense." For the economy overall, Professor Dumas asserts that for at least three decades no less than 30 percent of the America's engineering and scientific personnel have been engaged in military-oriented research.[6] This development might not be so serious if, as the conventional wisdom has it, there were significant "spinoffs" from military to civilian technology. This, as Professor Dumas also shows, has not happened to any significant degree.[7] So America's widespread and continuing "braindrain" of scientific talent into military-related research must be counted as a major factor in the productivity crisis and our increasing inability to compete with Germany and Japan internationally.

In the long view, military Keynesianism and the domination of important sectors of the economy by the military-industrial-complex must be seen in the context of the provocative theory of "imperial overstretch" developed by Professor Paul Kennedy of Yale University.[8] Essentially, Professor Kennedy's argument is two-fold. First, every great power that has the will and determination to expand its domain and influence requires a solid economic base to support the military capability necessary for empire. Second, the cost of sustaining and projecting military power eventually exceeds and undermines the nation's economic base, leading therefore to imperial decline. This fate, Professor Kennedy argues, has overtaken the great empires of the past—from the Muslims to the British—and this, too, is the likely fate of the American empire.

A second causal factor involves significant changes in the output and employment structure of the American economy. From the perspective of the thesis of this paper, the most important development is a relentless decline in employment in manufacturing and goods production generally, plus a somewhat lesser fall in the share of the national output (GNP) originating in manufacturing and goods production. These changes are summarized in Table 4 in the Appendix.

The data can be quickly summarized. Between 1950 and 1989, manufacturing employment as a percent of all nonagricultural employment dropped from 33.7 to 18.1 percent. In the same period manufacturing output as a share of the GNP went from 29.1 to 19.7 percent, a smaller relative decline than for employment, but a decline nonetheless.

Does this matter? Or is it, as many economists maintain, simply a reflection of a "normal" process of growth, one in which the economy moves from agriculture, then to industry, and, ultimately, to knowledge-based services as the dominant form of economic activity? Perhaps. But if we look more critically at what has happened as we move toward a "post-industrial" economy, we might not be quite so sanguine.

The deteriorating state of real weekly earnings documented earlier stems partly from what has happened to productivity. However, it is also linked directly to the above structural changes in both employment and output. As workers are displaced from manufacturing, where do they go? Obviously to the extent that they find jobs elsewhere, those jobs are somewhere within the broad array of activities loosely classified as services. But the shift of workers out of manufacturing into services does not necessarily mean they are moving into the knowledge-based services where high incomes are the norm. More typically, it is the other way around. For example, between 1979 and 1987 the number of jobs in the American economy expanded by nearly 15 million. But of these new jobs, 50.4 percent paid an annual wage below the poverty level ($11,610 in 1987), 37.7 percent paid a wage classified as "middle" ($11,611 to $49,443), and only 11.9 percent could be called "high-wage" jobs (over $46,444).[9] Representative of many of the jobs in the broadly-based service sector are wages in retail trade, which is where many workers displaced from manufacturing eventually find themselves. Wages are not only significantly lower than wages in manufacturing, but the gap between the two sectors has worsened. In 1950, for example, weekly wages in retail trade averaged 68.7 percent of weekly earnings in manufacturing. By 1989, this ratio had dropped to 44.0 percent.[10]

What are knowledge-based service jobs? Professor Robert B. Reich of the John F. Kennedy School of Government at Harvard University, describes jobs that fall into this category as those in which the people involved produce "symbolic-analytic services."[11] By this he means jobs that involve the manipulation of information through data, words, and oral and visual symbols. A broad array of professions and jobs—from professors to lawyers to manipulators of money to scientists writers and artists, to architects and engineers to actors and entertainers—fall into Professor Reich's "symbolic-analytic services" category. This is a heterogenous group of workers, mostly white collar, college educated, highly skilled, and often possessing great mobility. Highly paid, these workers make up roughly 20 percent of the labor force. It is absurd to imagine that many displaced workers from manufacturing can find employment in these activities.

A third development that has an important bearing on the decay in real income involves the distribution of family income. Relevant data are found in Tables 5 and 6 in the paper's appendix. Table 5 shows the share in aggregate family income in quintals (fifths) for all families for selected years since 1950. What these data tell us is that there was a rough stability in income distribution from the end of World War II until the mid-1970s. After that family income became more unequal. By 1988 the share going to the lowest fifth of families had dropped from 5.4 percent in 1975 to 4.6 percent in 1988. This was a 14.8 percent relative decline. At the top of the scale, the highest fifth of families saw their percentage share rise in this same period from 41.1 to 44.0 percent, a 7 percent relative gain. For families in the top 5 percent of the income scale, their share rose from 15.5 percent in 1975 to 17.2 percent in 1988, a 10.9 percent relative gain.

The standard Lorenz curve percentage data contained in Table 5 do not capture the full

and dramatic magnitude of the changes in family income distribution that have been taking place in the American economy. For these we need to examine the data in Table 6. These data, also in constant dollars, show average family income arrayed by deciles (tenths). They were developed by the Congressional Budget Office.[12] Four-fifths of American families saw their average income decline over this period. Only families in the top 20 percent gained. For families at the very top, the gains were, indeed, spectacular. Those in the top 5 percent of the income scale had an average gain of $31,473, or 23.4 percent. For the very rich—the top 1 percent of families—the gain averaged $134,513, or 49.8 percent! As Kevin Phillips points out in his provocative book, "The Politics of Rich and Poor," there have been only two prior eras in American history that witnessed such a far-reaching change in the distribution of income and wealth toward families and persons at the top. The first was the Gilded Age of the late 1870s and 1880s, and the second was the 1920s.[13]

What accounts for this upheaval in the pattern of income distribution? Three factors are involved. The first has already been noted, namely the changing structure of employment in the United States. With the decline in employment in manufacturing, many workers have been thrust unwillingly into lower-paying work. Closely related to this is a second factor, the increasing internationalization of the American economy. Workers in routine production activities like manufacturing find themselves competing in global labor markets, markets in which wage levels are frequently much lower than in the United States. Because, too, many American corporations have become genuine multinational firms, they often find it easier to shift their operations to low wage areas in the Third World rather than attempt to pass high wages on to the consumer in the domestic economy. Finally, there are the recent changes in the tax laws, changes which have drastically reduced the degree of progression in the structure for all federal taxes.[14] Table 7 shows the changes in effective tax rates between 1977 and 1988 for all families arrayed by deciles. Families which benefitted most from tax law change in the 1980s are those in the top brackets. Some families in the income ranges below the top 20 percent actually experienced an increase in effective rates between 1977 and 1988. This was because of increases in Social Security taxes, whereas families at the very top—the upper 5 and 1 percent—received the most benefit from changes in the personal income taxes.

Aside from the fact that these well-documented shifts in the distribution of family income have played an important role in the deteriorating income situation for large segments of the population, they reflect another and much more ominous development. David Halberstam expressed fears about this in his recent book, "The Next Century."[15] Reporting on a conversation that he had with Lester Thurow, Professor of Economics and Dean of the Sloan School of Management at MIT, Halberstam said that Professor Thurow raised the disturbing question of whether America has an "establishment" or an "oligarchy." An establishment, Thurow went on to explain, consists of people at the very top—obviously wealthy—who realize that they cannot continue to succeed unless the larger society succeeds. An oligarchy, on the other hand, also involves the very wealthy at the top, but the wealthy in an oligarchy are indifferent to the fate of the rest of the society. In Thurow's view, modern-day Japan is run by an establishment, but many Latin American countries are run by an oligarchy.[16] America, both Halberstam and Thurow fear, is moving toward an oligarchy. This, too, is another consequence of the institutionalization of military Keynesianism.

ARE THERE REMEDIES?

I will conclude with a few brief remarks directed toward what is, perhaps, the toughest question of all. Are there remedies for the economy's silent depression? In principle, the answer is an easy yes. It is surely not beyond the wit of economists not trapped in the mainstream to devise a policy agenda to cope with the decline in our individual strength and international competitiveness; to restore progression in our federal tax system, thus helping reverse the drift toward a bipolar society of rich and poor astride a shrinking middle; and to direct our scarce scientific and engineering talent to those areas dedicated to the enhancement, not the destruction of human life. This is not a task for mainstream economists, who, on the whole, are content with the status quo. Like modern-day Candides they see our contemporary market-based capitalistic structure as the best of all possible economic worlds. If the task is to be done at all, it will be done by those outside the mainstream.

The more question is: will it be done? A realistic answer is probably not—at least not in the foreseeable future. There are several reasons for pessimism. A year ago with the collapse of the Soviet empire in Eastern Europe there was hope that America, too, might pull back from political and military commitments that are outrunning their economic base (imperial overstretch). No longer. Irrespective of the rightness or wrongness of the Gulf war, its legacy will be a greater—not a lesser—commitment to support client states around the globe.

Second, the federal government has neither the energy, the ideas, nor the leadership to turn the nation away from the illusions of empire, and, instead, seek to build a harmonious and just society here at home. Ever since Viet Nam shattered Lyndon Johnson's dream of a "Great Society" our two-party system of national government has been in a state of near paralysis, unable to bring its power and imagination to bear on national problems that cry out for national answers—the pathology of a growing "underclass," the decay within our great cities, the crumbling infrastructure, the crisis in public education, growing chaos in our "system" of medical care, to name only the most pressing.

And finally, I would ask, where are the economists? In the January 14, 1991 issue of Business Week, the headline over the magazine's story about the ASSA convention in Washington, D.C. between Christmas and New Year's read, "7,000 Economists—And No Answers." This is a sad commentary on the state of the profession. Economists outside the neoclassical mainstream have a long and successful history—from the American institutionalists to John Maynard Keynes—of creating the intellectual capital that nourished liberal western governments seeking to tame the worst excesses of market capitalism. It is time to get out of the ivory tower and get on with the business of rebuilding this stock.

FOOTNOTES

*Paper presented at the Missouri Valley Economics Association meeting, Kansas City, MO, February 28—March 2, 1991.

[1]In 1948 only one-third (32.7 percent) of women, married and unmarried, participated in the labor force. By 1973 the labor force participation rate for women had climbed to 44.7 percent. It has continued to rise, reaching 57.4 percent in 1989. See *Economic Report of the President* 1990, p. 335.

[2]U.S. Department of Commerce, Current Population Reports, Series P-60, No. 167, *Trends in Income by Selected Characteristics:* 1947 to 1988, 1990, p. 19.

[3]*Economic Report of the President*, 1990, p. 325.

[4]Joan Robinson, "The Second Crisis on Economic Theory," *The American Economic Review*, May, 1972.

[5]*Economic Report of the President*, 1990, p. 295.

[6]Lloyd Jeffy Dumas, *The Overburdened Economy* (Berkeley, University of California Press, 1986), pp. 208 ff.

[7]Ibid.

[8]Paul Kennedy, *The Rise and Fall of the Great Powers* (New York, Random House, 1987).

[9]United States Senate, Committee on the Budget, *Wages of American Workers in the 1980's* (Washington, D.C., U.S. Government Printing Office, 1988), p. x.

[10]*Economic Report of the President*, 1990, p. 344.

[11]Robert B. Reich, "As the World Turns," *The New Republic*, May 1, 1988.

[12]Congress of the United States, Congressional Budget Office, *The Changing Distribution of Federal Taxes:* 1975-1990, October, 1987.

[13]Kevin Phillips, *The Politics of Rich and Poor: Wealth and the American Electorate in the Reagan Aftermath* (New York, Random House, 1990).

[14]The Suits Index measures the degree of progression in the tax system. It is similar to the Gini coefficient which measures the degree of inequality in the distribution of income. For the Suits Index, an increase in its value means the tax system has become more progressive; a decline, the opposite. According to the Congressional Budget Office, the Suits Index dropped from .1025 in 1977 to .0696 in 1988, a major decline (32.1 percent) in the degree of progression in federal taxes. Congressional Budget Office, op. cit., p. 77.

[15]David Halberstam, *The Next Century* (New York, William Morrow and Company, Inc., 1991).

[16]Ibid., p. 124.

TABLE 1.—*Earnings in constant dollars:*[1] *1947–89*

Year:	*Earnings*
1947	204.37
1948	203.31
1949	211.09
1950	216.31
1951	227.53
1952	228.87
1953	238.80
1954	238.84
1955	252.68
1956	260.07
1957	260.96
1958	259.79
1959	270.72
1960	272.53
1961	279.05
1962	284.47
1963	289.08
1964	294.46
1965	304.02
1966	305.00
1967	304.91
1968	309.56
1969	312.29
1970	308.84
1971	314.35
1972	327.51
1973	327.45
1974	319.43
1975	303.96
1976	308.35
1977	311.88
1978	312.42
1979	302.90
1980	285.32
1981	280.75
1982	276.95
1983	281.83
1984	281.67
1985	277.96
1986	278.14
1987	275.09
1988	272.49
1989	270.32

[1]Current dollars deflated by CPI (1982–84 = 100).

Source: "Economic Report of the President," 1990, pp 344, 359.

TABLE 2.—*Median family income in constant dollars:*[1] *1947–88*

Year:	Income
1947	16,079
1948	15,644
1949	15,444
1950	16,292
1951	16,876
1952	17,366
1953	18,795
1954	18,326
1955	19,502
1956	20,789
1957	20,907
1958	20,823
1959	27,022
1960	22,461
1961	22,691
1962	23,331
1963	24,159
1964	25,068
1965	26,127
1966	27,501
1967	28,098
1968	29,344
1969	30,407
1970	30,084
1971	30,042
1972	31,460
1973	32,109
1974	30,960
1975	30,167
1976	31,099
1977	31,252
1978	32,006
1979	31,917
1980	30,182
1981	29,136
1982	30,161
1983	30,688
1984	31,523
1985	32,051
1986	31,796
1987	32,251
1988	33,191
1989	

[1] In 1988 dollars.

Source: Bureau of the Census, Current Population Reports, P-60, No. 167, "Trends in Income by Selected Characteristics: 1947 to 1988," p. 17. (By Mary F. Henson).

TABLE 3.—*Annual average rate of change in productivity:*[1] *1948–89*

[In percent]

Year:	Rate of change
1948	3.8
1949	1.6
1950	6.5
1951	3.1
1952	2.2
1953	2.2
1954	1.4
1955	3.0
1956	.6
1957	1.9
1958	2.3
1959	3.2
1960	1.1
1961	3.1
1962	3.3
1963	3.6
1964	3.9
1965	2.6
1966	2.2
1967	2.6
1968	2.9
1969	−.3
1970	.5
1971	2.9
1972	3.0
1973	2.1
1974	−1.9
1975	1.9
1976	2.8
1977	1.7
1978	.9
1979	−1.5
1980	−.3
1981	1.1
1982	−.9
1983	2.9
1984	2.1
1985	1.3
1986	2.0
1987	1.0
1988	2.5
1989	−.7

[1] Output per hour per person in nonfarm business sector.

Source: "Economic Report of the President," 1990, p. 347.

TABLE 4.—OUTPUT AND EMPLOYMENT IN GOODS[1] PRODUCTION AND MANUFACTURING FOR SELECTED YEARS: 1950–89

[In percent]

	Output[2]		Employment[3]	
	Goods	Manufacturing	Goods	Manufacturing
1950	41.5	29.1	40.9	33.7
1955	37.7	29.9	40.5	33.3
1960	35.2	28.0	37.7	31.0
1965	35.0	28.1	36.0	29.7
1970	31.7	24.8	33.3	27.3
1975	29.7	22.4	29.4	23.8
1980	30.2	21.3	28.4	22.4
1985	27.2	19.7	22.9	19.8
1989				18.0

[1] Mining, Construction, and Manufacturing.
[2] As a Percent of the GNP.
[3] As a Percent of Nonagricultural Employment.

Source: "Economics Report of the President," 1990, pp. 306, 342.

TABLE 5.—DISTRIBUTION OF FAMILY INCOME BY QUINTALS FOR SELECTED YEARS: 1950–88

[In percent]

Year	Lowest fifth	Second fifth	Third fifth	Fourth fifth	Highest fifth	Top 5 percent
1950	4.5	12.0	17.4	23.4	42.7	17.3
1955	4.8	12.3	17.8	23.7	41.3	16.4
1960	4.8	12.2	17.8	24.0	41.3	15.9
1965	5.2	12.2	17.8	23.9	40.9	15.5
1970	5.4	12.2	17.6	23.8	40.9	15.6
1975	5.4	11.8	17.6	24.1	41.1	15.5
1980	5.1	11.6	17.5	24.3	41.6	15.3
1985	4.6	10.9	16.9	24.2	43.5	16.7
1988	4.6	10.7	16.7	24.0	44.0	17.2

Source: Bureau of the Census, Current Population Reports P-60, No. 167, "Trends in Income by Selected Characteristics:" 1947–1988, p. 16 (by Mary F. Henson).

TABLE 6.—AVERAGE FAMILY INCOME IN CONSTANT DOLLARS[1] BY DECILES: 1977 AND 1988

Decile	1977	1988	Change	
			In dollars	In percent
1st	4,113	3,504	−609	−14.8
2d	8,334	7,669	−665	−8.0
3d	13,104	12,327	−777	−5.9
4th	18,436	17,220	−1,216	−6.6
5th	23,896	22,389	−1,057	−4.4
6th	29,824	28,205	−1,619	−5.4
7th	36,405	34,828	−1,577	−4.3
8th	44,305	43,507	−798	−1.8
9th	55,487	56,064	577	1.0
10th	102,722	119,635	16,913	16.5
Top 5 percent	134,543	166,016	32,473	23.4
Top 1 percent	270,053	404,566	134,513	49.8

Source: Congress of the United States, Congressional Budget Office, "The Changing Distribution of Federal Taxes: 1975–1990," p. 39.

TABLE 7.—EFFECTIVE FEDERAL TAX RATE FOR ALL FEDERAL TAXES[1] BY DECILES: 1977 AND 1988

[In percent]

Decile	1977	1988	Percentage change
1st	8.0	9.6	20.0
2d	8.7	8.3	−4.6
3d	12.0	13.3	10.8
4th	16.2	16.8	3.7
5th	19.1	19.2	.5
6th	21.0	20.9	−.5
7th	23.0	22.3	−3.0
8th	23.6	23.6	
9th	24.5	24.7	.8
10th	26.7	25.0	−6.4
Top 5 percent	27.5	24.9	−9.5
Top 1 percent	30.9	24.9	−19.4
All deciles	22.8	22.7	−.4

[1] Federal Individual Income, Corporate Income, Social Security, and Excise Taxes.

Source: Congress of the United States, Congressional Budget Office, "The Changing Distribution of Federal Taxes:" 1975–90, p. 48.

EXHIBIT 2

[From the Atlanta Journal and Constitution, Nov. 18, 1990]

HELP FOR UNITED STATES LIES IN SOVIET OILFIELDS

(By Eliot Janeway)

After America rushed to the Soviet Union's defense in World War II, Soviet mechanics developed an impressive knack for repairing rudimentary U.S. aircraft. Teamwork between Soviet mechanics and American pilots relieved the United States of the need to move its own mechanics to the Soviet Union.

The threat of a Middle Eastern oil war should serve as an invitation for the superpowers to repeat that memorable chapter of aeronautical history in an underground setting: Working together, the two countries can reactivate the Soviet Union's huge oil fields.

For lack of U.S. equipment, the Soviet Union has been cutting back oil production when it could profit from an expansion. America, for its part, has missed a rare double opportunity to strengthen its security and its exports. Opportunities for the United States to combine good business with prudent foreign policy are all too rare, and the country's problems are too severe for it to dare ignore such a chance.

Right now the oil world is as inflammable as oil itself. As fast as oil surpluses push oil prices down, war scares reinflate them. The list of "supposes" is at least as lively a source of speculation in the oil market as any hard performance count. It includes sober talk about the possible destruction of part or even all the oil reserves in Saudi Arabia. An order by Saddam Hussein would eliminate all of Kuwait's reserves in a matter of minutes.

Admittedly, loading all the Soviet Union's present oil wells with American oil equipment would not provide instant insurance against the shock of such a disaster. In fact, no one can begin to calculate how much insurance it would provide until lost time is made up in getting American oil equipment into the neglected Soviet oil fields and updating estimates of Soviet reserves.

So far neither superpower has acted to free the price of oil from the manipulation to which the Persian Gulf powers habitually subject it. The United States in particular has always invited the oil world to treat it as weak and gullible. But the simple and profitable ploy of financing and equipping the Soviet Union will quickly repair that long-standing strategic error.

The Arab world would read such joint Soviet-American action as formalizing the two superpowers' recognition of their common interest on the oil front. A long overdue decision by Moscow to stop the small oil allot-

ment it gives to Cuba for re-export would remove any doubt that the Soviet Union means to get serious about using oil to help America balance its oil economy, collecting a price paid in oil equipment.

Habitual mismanagement of resources has transformed the national strength of each superpower into a market weakness. The Soviet Union is the world's largest oil producer; its output has continued to top Saudi Arabia's, despite the recent expansion undertaken by the Saudis. But the obsolescence of the fields the Soviet Union is tapping, and the richness of the fields it is ignoring, defy description. Meanwhile, America remains unchallenged as the world's leading manufacturer of oil-producing equipment—but it is the most conspicuous absentee from the world's export boom.

In fact, the lag in U.S. oil equipment sales to the Soviets goes far to explain the lead that our industrial competitors enjoy in other markets. U.S. manufacturers wait for sales to come to them with hard cash on the table, with no recognition of the key role that government-financed export credits play in securing export sales. When the Soviet Union launched its latest program to expand oil production, Soviet authorities failed to place orders for American equipment, and the United States in turn failed to remind them.

So the Soviet Union has wound up with lots of shut oil wells, while the United States has wound up short of cash and oil but volunteering to protect creditors who are both cash- and oil-rich.

Instead, the United States could anticipate freeing its troops from the hazards of desert life and desert war by the simple and profitable expedient of equipping the Soviet Union with the products that we make best.

Secretary of Commerce Robert A. Mosbacher Sr., like President Bush an alumnus of the American oil industry, has taken steps toward this productive collaboration. He has taken a team from the U.S. oil equipment industry to the Soviet oil fields to identify their needs, as well as the opportunity for America.

The hang-up remains the need of U.S. manufacturers to get paid in dollars. The Soviet oil industry, potentially a huge dollar-earner, is choking because it is out of them. Moreover, thanks to the failure of the takeoff projected for gold prices, the Russian central bank is shorter than ever of dollars.

The Commerce Department could end this frustration without any administrative pioneering. All it need do is invite the oil companies and oil equipment producers to form industry committees, as was done in time of war. If idealogical objections from free marketeers on the right and trust-busters on the left are not allowed to hog-tie them in this emergency, these industry committees could be authorized to buy oil for future delivery from the Soviet Union as fast as the equipment producers supplied and installed equipment there.

As a practical matter, the dollars advanced or guaranteed by the U.S. goverment would never leave the United States. They would go directly to the U.S. equipment producers, and the Soviets would wind up with the equipment and the sales needed to pay for it.

The United States is overdue the satisfaction of solving one of its foreign money problems to its advantage. Substantial political and strategic benefits would follow. When they do, perhaps Washington will be emboldened to offer its perennial food surplus in further payment for cheap, good-quality Soviet oil.

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

The PRESIDING OFFICER. The Senator from Nebraska has suggested the absence of a quorum. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Kansas is recognized.

EXTENSION OF MORNING BUSINESS

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that the period for morning business be extended for an indefinite period of time.

The PRESIDING OFFICER. Without objection, it is so ordered. The Chair is pleased to recognize the Senator from Kansas for a period of time as outlined in the previous morning business order.

Mrs. KASSEBAUM. I thank the Chair.

(The remarks of Mrs. KASSEBAUM pertaining to the introduction of Senate Joint Resolution 92 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

HUGH MORTON: A UNIQUE GUY WHO "GETS INTO EVERYTHING"

Mr. HELMS. Mr. President, well within the parameters of the familiar declaration—"braggin' ain't braggin' if you can prove it"—I intend to brag a little bit today about a fellow named Hugh Morton. Then I shall read into the RECORD some remarks by Hugh Morton, delivered February 24 on the occasion of the 215th anniversary of what is known in North Carolina as the Battle of Moore's Creek.

But first, a few inadequate words about Hugh Morton. I acknowledge up front that Hugh is a longtime friend. He is an extraordinary citizen of my State. Someone inquired of Hugh sometime back about his "line of work." Hugh replied that he is "just a photographer."

Well, Mr. President, Hugh Morton is a photographer—and, like Howard Baker, he is one of the finest in the country. But that's merely one of Hugh's constructive and appealing hobbies. He is a remarkably successful businessman. For example, he owns the beautiful Grandfather's Mountain at Linville, NC, which countless hundreds of thousands of tourists and North Carolinians have enjoyed. But, as Sam Ervin once remarked, "Hugh's into everything that's good for North Carolina."

Senator Ervin had it right: Throughout his life, Hugh Morton has indeed been "into everything"—more often than not the result of creative ideas that occurred to him. The guy loves North Carolina passionately; he loves America fervently—as will be obvious to anyone who reads the text of his remarks back in February to which I alluded at the outset.

Few would have dreamed, back when Hugh was working to get the old U.S.S. *North Carolina* moored permanently at Wilmington, NC, that this battleship would be a top-flight tourist attraction on North Carolina's coast. Today, some of the youngsters who first examined that old battlewagon when it was opened to the public decades ago are now escorting their own grandchildren around the ship.

Hugh Morton is a well-informed, dedicated, and hard-working environmentalist. He is never a pain in the neck about it, but he has worked arduously to persuade officials of State and Federal governments to take a look at the ravages of acid rain and other destructive environmental hazards.

When the historical lighthouse at Cape Hatteras was about to fall into the waters of the Atlantic, there was Hugh Morton, just like Sam Ervin said, "getting into it." He formed a committee consisting of the leaders of North Carolina—and headed by two somewhat adversarial political figures. Hugh figured that every effort should be made to save the lighthouse. Today it still stands, and the efforts to make it permanently secure are still going on.

A few years ago, Hugh Morton teamed up with Ed Rankin to produce an enormous and handsome book containing personality sketches and splendid photographs of dozens of unique North Carolinians. The book is on display today in thousands of homes.

Parenthetically, Mr. President, please allow me a few words about Ed Rankin. His full name is Edward L. Rankin, Jr., and he says he is retired—but like Hugh Morton he is "into everything" also. Ed made several forays into public life because of his many talents. He was a top assistant to U.S. Senator William B. Umstead, he was private secretary of North Carolina's Gov. Luther Hodges, he was director of administration for the State of North Carolina when Gov. Dan K. Moore was chief executive of our State. Each time, it was a case of the job seeking the man—and Ed Rankin was the man. He and Hugh Morton make a good team.

Mr. President, in conclusion let me comment on Hugh Morton's brief address on February 24 on the 215th anniversary of the Battle of Moore's Creek. Bear in mind that February 24 was the first day of the ground war in the Persian Gulf. The White House heard about Hugh's remarks and requested a copy.

Hugh sent the text of his speech, as requested. He also sent a picture he took when he went to the White House

to accept the Theodore Roosevelt Conservation Award. During the ceremony Hugh snapped a picture of President Bush at the podium. In a letter to the President, Hugh said he hoped the President would like what he said in his speech.

I can testify that George Bush did indeed like it. He liked the picture, too.

Mr. President, I think you understand why I admire and respect my friend Hugh Morton, and I ask unanimous consent that the text of his February 24 address be printed in the RECORD at the conclusion of my remarks.

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

REMARKS BY HUGH M. MORTON AT MOORE'S CREEK BATTLEGROUND ANNIVERSARY, FEBRUARY 24, 1991

I am not nearly the historian that many of you are, yet I have taken some pride in being reasonably familiar with the accomplishments of our leaders who have served as President of the United States during the 70 years of my lifetime. I have to admit, however, that I haven't really worked at knowing what President Calvin Coolidge accomplished. If I had not done a little homework to prepare for this occasion, I probably could not have named a thing.

Some of you will remember what may be President Coolidge's most memorable statement: "If you don't say something, you won't be called on to repeat it". Those choice words seem to sum up Calvin Coolidge, and the fact that my hero, Will Rogers, used Silent Cal as the butt of many of his jokes probably reinforced my impression of our most colorless President. Today I know that President Coolidge did accomplish something. He was the President who signed the bill to establish Moore's Creek National Military Park on June 2, 1926, and as long as I live I will think of him fondly for it.

You folks who are my hosts here have given me a great honor. You have invited me to be your speaker at the commemoration of a Revolutionary War conflict that was possibly the most efficiently and brilliantly conducted battle in the history of our great country. Furthermore, your invitation has come in the year when the program is dedicated to the patriotic Americans who are serving in the Persian Gulf in the most efficiently run war in which our nation has ever been a participant. I am extremely proud of the past event, and of the present, and I thank you for this opportunity to say so.

In the battle at Widow Moore's Creek, we know there were good people on both sides, because at least some soldiers on both sides were Scots. You expect a Scot to make a biased statement like that, so I have said it. But cases of some on both sides being Scot did not make them equal in their determination to fight. The Patriot Scots seemed to understand what they were fighting for better than did the Loyalist Scots who had been bribed with land and other benefits to fight in the service of the King. The Patriots were fighting for freedom.

Even taking into account the skillful planning by Patriot Colonels Alexander Lillington, Richard Caswell, and James Moore, the outcome of the battle of Moore's Creek is simply amazing. The Loyalists lost 30 killed and 40 wounded. The Patriots lost one—John Grady of Duplin County, the first North Carolinian to die in the American Revolution. The number of casualties was small, but the casualty percentage between Loyalists and Patriots was overwhelming, and it was a true turning point in America's battle for independence.

If the measure of successful conduct of war is achieving victory while suffering a minimum number of casualties, certainly Moore's Creek stands the test of time as being one of our greatest, both in minimum casualties, and what it accomplished. One Patriot killed, 70 Loyalist casualties, that is still hard to believe. For several days after the conflict the roundup of Loyalists continued until nearly 900 had been captured, including 30 officers. This remarkable battle ended British hope of organizing meaningful Loyalist resistance in North Carolina, even though many Loyalists resided in our state.

While our spotlight today is on Moore's Creek, and on the Persian Gulf, let's go downstream from here a few miles to the U.S.S. North Carolina Battleship Memorial which is a memorial to the 10,000 North Carolinians in all of the United States military services who died in World War II. Think about that 10,000 men and women from this one state killed, not just wounded, in that one terrible war. Does it not give us something to appreciate when we realize that prior to the ground war America has suffered only about 25 dead in the Persian Gulf? We do not know how it will end, but up to now our people in the Persian Gulf have done a masterful job. Each day that passes brings new hope that we may be on the verge of victory, and to have achieved this with only 25 American dead leading into the ground war is absolutely remarkable.

I would not want to start an argument with anyone on what are the most important subjects for students to learn in school. Everyone can benefit from a well rounded education covering many things, and the basic reading, writing, and arithmetic are of course essential. I would like to add history to that essential list, because a knowledge of history allows us to benefit from the mistakes and the successes of those who have gone before us. In the case of the War in the Persian Gulf, I am convinced we have made the right decisions and the right moves up to now, and that our ability to select the right course is strongly influenced by history.

All of us know that a nobody named Adolf Hitler was able to worm his way into power in Germany, and because the world was not willing to stand up to him immediately, he was able to overrun many of his small neighbors before this country and several others recognized it for its seriousness. This experience with having to fight a tremendous war that killed 10,000 service people from North Carolina taught us a lesson. Thankfully the majority of our leaders today have wanted no part of the appeasement that leads to a big war instead of a little one. We are nipping Saddam in the bud, rather than let him gain the strength of Hitler.

Whether we will come out of the Persian Gulf without an extended and expensive ground war remains to be seen. History tells us we want to handle it right the first time, however, because we do not, in a few years, want to fight this one again. There is a further reason for not grabbing the first inadequate peace feelers. The upstart two-bit dictators of the world need to not be tempted. They need to know that they should not pull Saddam-like stunts and expect to get away with it. President George Bush has made all of the right moves up to this point, and I thank him for it.

But the Persian Gulf War is not being run only by President Bush, Secretary Cheney, General Powell, General Schwarzkopf, and General Horner. We have over 500,000 of our people over there, and every one of them is a volunteer. There may be a few who do not understand why they are there, and of course all of them want to be home. The bulk of them know that they are fighting for the freedom of this nation and the world. Most of them are there at extreme personal and family inconvenience and sacrifice. We owe them a lot, all 500,000 of them, and none of us should ever forget it.

So today at Moore's Creek National Military Park we express our thanks to brave men for two events in our nation's history 215 years apart. Both events appear to be among the most efficiently conducted military operations our country has ever seen. Both events called upon our people to make agonizing decisions, and in both instances skillful planning and correct priorities led to the right conclusions. The Patriots in February 1776 knew they were fighting for freedom, and the Patriot missile crews and our other 500,000 patriots in February 1991 are protecting our freedom, too. Let's all of us use every opportunity to say thanks that 215 years apart, level heads have prevailed.

Thank you again for inviting me to speak at this program.

THE FEDERAL TRIANGLE BUILDING

Mr. MOYNIHAN. Mr. President, I would like to call the Senators' attention to an article that appeared in the Washington Post on Saturday, March 9. The article is a review by that most able reporter, Benjamin Forgey, of the new Federal Triangle project design by James Freed of the renowned architecture firm of Pei Cobb Freed & Partners.

As you know, Mr. President, we are dealing with some unfinished business here. With the authority granted by Congress in the Public Buildings Act of 1926, Mr. Andrew Mellon, then-Secretary of the Treasury, commenced a great project of Federal buildings called the Federal Triangle. Some grand buildings resulted from this effort, but with the onset of the Depression, the project just plain stopped. We were left with a parking lot of unsurpassed ugliness. And that parking lot has remained with us for over 60 years.

On August 21, 1987, President Reagan signed the Federal Triangle bill into law. We authorized a grand building nearly two-thirds the space of the Pentagon. But this is not simply a large office building. It assumes a prominent place on Pennsylvania Avenue—America's Main Street.

Too often we have permitted our public buildings to fall far short of excellence. Yet architecture is the one inescapable public art. Our public buildings speak volumes about us, about who we are, and about the dignity or disdain with which we go about this governmental enterprise of ours.

I am pleased that when the construction is done, as Mr. Forgey explains, we will be proud of what this new Federal Triangle Building will say about us. Mr. President, I ask that a copy of the

Washington Post article be reprinted in the RECORD.

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

[From the Washington Post, Mar. 9, 1991]

THE SHAPE OF THE TRIANGLE'S FUTURE

(By Benjamin Forgey)

The Federal Triangle has shamefacedly remained incomplete for more than half a century, its last piece a surface parking lot—undignified, unsightly and unpleasant. A bold plan to complete the great compound has been stalled for a couple of years in controversy about its cost, its efficacy, its ethics and even its design, by the renowned architecture firm of Pei Cobb Freed & Partners.

Questions persist about some issues, but worries about the architecture worries can cease. Though not without fault, the International Cultural and Trade Center, as the behemoth building is to be called, promises enormous visual enrichment, spatial excitement and design finesse. An immensely complicated enterprise, it'll be a building unlike any other in the Federal Triangle, but it will contribute greatly to the complex and, strangely enough, it will fit in.

In terms of sheer size and number of uses, not to mention the price tag of more than $650 million, the ICTC project is an amazement. More than half a Pentagon big, it encompasses 3.1 million gross square feet, including four levels of underground parking for 2,500 cars. Its facilities include sizable conference rooms, exhibition halls, training centers, information exchanges, a large-screen theater and three small cinemas, a large auditorium for 800 (reduced from 1,500 for cost reasons), a small one for 300, a multimedia "World Globe," a "World Link Atrium," a presidential memorial as part of the Woodrow Wilson Center, stores, bars, restaurants, cafes and a whopping amount of federal office space.

One of the major questions concerning the design after it was first unveiled by the Pennsylvania Avenue Development Corp. as the victor in a developer-architect competition two years ago was, indeed, its compatibility with the classic revival architecture of the buildings that surround the huge, irregular site. (It's bounded by Pennsylvania Avenue NW to the north, the District Building and 14th Street to the west, and elaborate federal buildings to the south and east.)

Such concern was understandable—the Pei firm has never been identified with soft architectural insertions in the cityscape. To the contrary, its stamp ever since its founding by I.M. Pei three decades ago has been strong contrasts, succinct geometries, superb technologies and extraordinary finishes. Witness, for one good instance, Pei's own East Building of the National Gallery of Art.

From the beginning the firm's conception of the ICTC possessed powerful, daring qualities. It proposed a dramatic new public park opening off Pennsylvania Avenue and a stupendous new interior court. But its "dressing"—the elevations presented for the competition—had a parched, asbstemious look. Although the competition rules established certain fundamentals of the context—heights, roof and facade materials, percentages of window openings—one could not handily imagine the new facades cozying up to the neoclassical ambience established by the Beaux-Arts architects of the original buildings.

James Freed, the partner in charge of this design, admitted as much in an interview last winter. "It's hard for me to believe the old rules still apply," he said. "The dilemma is to maintain the dignity of the government and to celebrate the liveliness of the ICTC. One cannot just stand on dignity alone. But to design decorative moldings is something I never thought I would do."

So spoke the lifelong modernist. It's something no observer of the Pei firm ever thought it would do or could do, either. But Freed and company have perhaps surprised even themselves with the work they've done in the ensuing year. The new elevations are thoroughly satisfactory. With rusticated bases, pilastered midsections, a variety of emphatically formed pavilions and entrances, deeply framed windows and forcefully corniced tops, they demonstrate a sound understanding of the neoclassical modus operandi. As intended, they'll stand in contrast to but correspond kindly with their Federal Triangle companions.

To architects more comfortable with revivalist styles—to Washington's Hartman-Cox, for example—this issue of the proper dressing for the new building would not have caused great stress. But to architects such as Freed, insistent upon making "something we can relate to as a part of modern life" even in this unusually circumspect environment, it was a struggle.

Hesitant to take the Federal Triangle itself as a precedent, Freed and his colleagues (there were five younger architects on the original design team) fastened on the nearby northern elevation of Robert Mills's 19th-century Treasury Building, taking lessons from its sober rhythms. From this, they developed an archetypal elevation they called their "Rosetta stone." There's none of Mills's ornamentation (in itself quite minimal) in their facades—Freed didn't actually design any decorative moldings—but there's more variety of form, more depth and more glass.

"This is not a clone," Freed said recently, and it isn't. It is a sophisticated, highly abstracted late-20th-century version of neoclassical architecture. As appropriate for so large and prominent a structure, this one is "designed out" on all sides. Indeed, one of the delights of these facades is their variety within the overriding uniformity of stylistic vocabulary.

On 14th Street there is a graceful, subtly curved facade with end pavilions and a recessed entryway. Pennsylvania Avenue is marked by a tremendous ceremonial cylinder with raised paired columns. Even the less visible elevations (facing the District Building, for instance) are treated with systematic respect. And the eastern facade is a supple piece of work. Designed to frame the new public space, it's a contrapuntal combination of angles and curves, positive and negative spaces, and emphatic, discrete forms. It is with these calculated asymmetries that Freed best attains his risky aim of honoring the classical tradition while defying it, politely but decisively. One can rest assured that the building will respond wonderfully to Washington light.

The long arm of this facade, extending southwest at a 90-degree angle to the diagonal of Pennsylvania Avenue where it meets 13th Street, was one of Freed's bold moves at the very beginning of the design process. Alone among the competitors did he decide to complete the courtyard, framed by the existing federal hemicyle, in a truly celebratory fashion. (Intended as a noble armature for a major public park, the Grand Plaza, the hemicyle became just a forgotten focus for the parking lot.)

This was, in a way, an in-your-face gesture—the conventional approach would have been to shape the space with a mirror-image half-circle—but it is exceedingly promising. Freed's theory clearly was that taut opposites attract—in this case the long, straight diagonal vs. the semicircle. His belief is that the dramatic diagonal will lure people toward the space. His aim is to make this vast open space a densely populated, active zone in the heart of the Federal Triangle.

Whether this dream comes true remains a question, and not strictly an architectural one. But definitely it is possible—this is a place with amazing asthetic and entrepreneurial potential. A lot depends on the success of this institution itself, and so far the specific components of the International Cultural and Trade Center have remained somewhat pie-in-the-sky. But the density is there—close to 10,000 federal workers in the building itself, and nntold numbers of tourists and more purposeful visitors. And the infrastructure: The building will connect directly to the Federal Triangle Metro station. The ICTC could become the long-desired break in the "China Wall" of the Federal Triangle, pulling visitors toward downtown from the Mall.

A lot depends as well on continuing refinements to the architecture, particularly to the sketchy furnishings of the plaza. (Like many a modernist diagram, this one does not welcome works of art as integral to the design.) But there is no mistaking that Freed and his talented colleagues have established the groundwork with that great eastern wall. Likewise, landscape architect Peter Walker has done good homework—his plan to a bifurcated space, half paved, half green, complements Freed's concept extremely well.

Another major strength of this design, as of so many products of the Pei firm, is its command of pedestrian circulation, its artfulness and sophistication at getting people to move from here to there. In this respect, of course, the ICTC building is as complex as they come, and the architectural work in both plan and three dimensions is nothing short of dazzling. Access to the principal public areas is clear, and frequently dramatic; corridors are properly placed for maximum efficiency and best views; links between the nnderground, gronnd level and mezzanine concourses are many and delightful. And so on. Visiting this building will be a many-faceted treat.

In a way I've saved the best for last, for as good as the exterior architecture is, the principal interior public spaces promise to be even better. Or, one should say, they're of a different kind, and they're superb. "One of the big problems with a building as big as this," Freed has said, "is to know where you are. And you can only do that with architecture. You can't do it with signs and such."

Three cheers for Freed and friends. They've gone the extra mile to shape great spaces inside. The two auditoriums, for instance, stand very nearly free in the Pennsylvania Avenue lobby—they're beautifully designed events in themselves. The World Globe, described as a "scaffold for technologies that haven't been invented yet," will be in its naked state a looming spherical structure of metal trusses—quite a sight.

The World Link Atrium tops them all. Enclosed by a conical, steel-frame glass roof, screened in part by a delicate suspended scrim, supported by an independent system of steel columns, it looks in model to be breathtaking and, even, spellbindingly beautiful. It could become one of the great interior attractions in the world.

TRIBUTE TO LOUIS GREENE

Mr. SHELBY. Mr. President, I rise today to pay homage to a dear friend and influential leader in the State of Alabama. Louis Greene will retire April after 20 years of faithful service as director of the Alabama Legislative Reference Service.

Lou was appointed director of the LRS in 1970. He has also served as secretary to the Legislative Council. As director, he has direct control over a staff of 24, with explicit responsibility for all agency duties and functions. Lou, and the Alabama Legislative Reference Service, have been widely commended during his tenure. As a State senator and chairman of the Legislative Council in the 1970's, I had the privilege of working directly with Lou and watching first hand as he established a legacy of accomplishments that will be a challenge to sustain.

Lou's work at the LRS was the culmination of a long and successful professional career. A native of Birmingham and a Montgomery resident since 1950, Lou is one of Alabama's finest citizens. He is a veteran of World War II where he served in the U.S. Army Air Corps, including combat duty in the Pacific theater. He is a graduate of the University of Alabama and received his law degree in 1950. Lou was engaged in a successful law practice in Montgomery until his appointment to the LRS' top post in 1970.

Lou has been affiliated with many professional, social, and religious organizations including the Trinity Presbyterian Church, the Montgomery Lions Club, the Montgomery Toastmaster's Club, Phi Alpha Delta Law Fraternity, the Montgomery County, AL, and American Bar Associations, and the Jackson Hospital Foundation Board of Directors.

Lou's retirement is well deserved. Now he will be able to enjoy time spent with his wife Linda, their daughter Jane, son-in-law Scott, and grandchildren Mary and Patrick.

Mr. President, it is an honor to share some of Louis Greene's immense accomplishments with my colleagues in the U.S. Senate.

PRESIDENT BUSH SALUTES SISTER MARY FLORITA SPRINGER AS THE 394TH "DAILY POINT OF LIGHT"

Mr. PACKWOOD. Mr. President, it is a pleasure for me to rise today in honor of a remarkable, 81-year-old woman in Pendleton, OR. Her name is Sister Mary Florita Springer, and she has dedicated her life to improving the lives of others. The many contributions she has made to Oregon are best demonstrated by her work helping the elderly residents of the Umatilla Indian Reservation in my State.

Despite having suffered two heart attacks and two surgeries, Sister Florita regularly travels 8 miles to the Umatilla Reservation outside Pendleton to visit 30 homebound elderly individuals. She spends most of her day talking with them, assisting them with chores, and offering them reading materials. After completing her visits, she goes to the senior center on the reservation to pick up hot meals and deliver them to those who are unable to prepare meals for themselves. Sister Florita goes out of her way each day to ensure that all of her friends on the reservation receive a pleasurable meal.

Sister Florita became interested in working with the residents of the Umatilla Indian Reservation after a 45-year career in teaching. For the last 15 years of her teaching career she was the principal at the St. Andrews Catholic School on the reservation. After being forced to retire from teaching because of her health conditions, Sister Florita decided to come back to the reservation as a companion to the elderly who live there. Many of her friends are the grandmothers and grandfathers of the children she used to teach. Each day Sister Florita ensures that the elderly receive the friendship and care that they so deserve.

As recognition for her hard work and dedication to improving the lives of the elderly residents of the Umatilla Reservation in Oregon, President Bush has saluted Sister Florita as the 394th "Daily Point of Light." The Daily Point of Light recognition is intended to call every individual and group in America to claim society's problems as their own by taking direct and consequential action, like the efforts taken by Sister Florita.

On behalf of Oregon, and the many people on the Umatilla Reservation in whose lives you make a difference, many thanks, Sister Florita.

RECOGNITION OF THE CONTRIBUTION OF VERMONTERS IN THE PERSIAN GULF

Mr. JEFFORDS. Mr. President, I rise today to recognize all of the Vermonters who made a contribution to the quest to liberate Kuwait from the grasp of a tyrant. Vermonters serve in all four branches of the military and the reserves. Their tasks range from waging the battle against Iraq, to helping the Kuwaiti's start rebuilding their war-torn country. I wish to commend each and every one of them for a job well done.

Let us not forget to recognize those unsung heroes back home—the families of the soldiers—for they are the motivating factor for our troops. I remember from my days in the U.S. Navy the importance of letters and packages from home. the words of love and support mean more than anything. Husbands, wives, parents, and even children are running the show back at home while their loved ones so bravely serve our country. The families of our service personnel deserve our respect and admiration as well.

Mr. President, I wish to call special attention to several Vermonters who I have learned were injured while serving our country:

Sgt. Michael Devost, of Rutland. Michael suffered a back injury while part of the 131st Engineering Company of the National Guard Reserve unit from Camp Johnson. I know that I join the many folks at the Shelburne Post Office in wishing for his quick recovery. I hope to see him back at home with his wife, Pam, very soon.

Sgt. Daniel D. Foss, of Burlington. Daniel, also a part of the 131st, was injured in a bulldozer accident. I am very happy to have heard recently that he will make a full recovery.

Sgt. Edward L. Gilbert, of Woodford. Edward, who is part of the 3d Armored Division, was injured by shrapnel from a land mine when driving two doctors in a jeep. Edward got an extra boost of support when he was visited by a captain from the 131st National Guard unit who brought Edward a Vermont flag. His wife, Lisa, is patiently awaiting his return home.

Mark M. Jacques, of Barre. Mark injured his back while serving with the 131st. I am very pleased to report that Mark is now at Fort Devens and is feeling much better.

Pfc. John Knapp, Jr., of Pownal. John was injured while on a tank mission to clear mines with other members of the 1st Infantry Division. I wish him a swift and complete recovery so that he may return home soon to his wife, Lisa, who is expecting a child.

Sgt. Michael J. Nauceder, of Bellows Falls. Michael also became disabled while working as a part of the 131st. I am pleased to report that he is now recovering at home with his wife, Julie.

Jeffrey "Mike" Twardy, of Shelburne. Mike was injured when an Iraqi shell hit his Bradley fighting vehicle. He is a part of the 1st Infantry Division. I just learned yesterday that Mike will be coming back to the States on Friday to continue his recovery. I wish he and his wife, Christine, all the best.

Sgt. James Verchereau, of Grand Isle. James is also a member of the 131st who suffered from a back injury. James will be coming back to the States in the next few days, and I hope that soon he will be back in Vermont with his wife, Kathy.

I am very impressed with the actions and the caring spirit of all of those involved in the war effort both in the gulf and back at home in Vermont. We owe our service personnel a debt of gratitude. Thank you for a job well done.

U.S. FORCES: THE PRIDE OF AMERICA

Mr. THURMOND. Mr. President, I recently had the pleasure of reading an excellent editorial entitled, "U.S. Forces: The Pride of America," which appeared in the Charleston News and Courier on Friday, March 1, 1991.

The Charleston News and Courier is a fine newspaper with an outstanding reputation. It is a valuable source of information for people throughout our State and it is the oldest newspaper in South Carolina, having been founded in 1894.

I ask unanimous consent that this editorial be inserted into the CONGRESSIONAL RECORD at the conclusion of my remarks.

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

[From the Charleston News and Courier, Mar. 1, 1991]

U.S. FORCES: THE PRIDE OF AMERICA

In his televised address to the nation Wednesday night announcing the Persian Gulf cease-fire, President Bush spoke glowingly of the superb performance of America's armed forces. Never before has such a massive buildup of men and material been accomplished in so short a time, and never has victory come as quickly or with such little loss of life.

"This is not a time of euphoria; certainly not a time to gloat," the president said. "But it is a time of pride—pride in our troops, pride in our friends who stood with us during the crisis, pride in our nation and the people whose strength and resolve made victory quick, decisive and just. . . . Let us give thanks to those who have risked their lives. Let us never forget those who gave their lives. May God bless our valiant military forces and their families. . . ."

The American people have just cause for pride in their armed forces. The 100-hour ground war that crushed Saddam Hussein's army would have been the fodder of novelists had it not been for the exacting, thoroughly professional performance of the men and women in uniform. If ever there was a case to be made for the efficacy of the all-volunteer military, this was it. The goals of the campaign were achieved rapidly, expertly and with an absolute minimum of casualties.

Credit for this belongs to Gen. H. Norman Schwarzkopf, the tall and affable bulldog who guided coalition forces as supreme allied commander. Not since Gen. Douglas MacArthur has America had a field commander who could manage combined operations—air, sea and land—with such economy and grace. The seriousness with which he undertook his mission was leavened by compassion and humor, and the dividends his leadership paid were summed up by the nickname his troops bestowed on him: Storm-in' Norman.

About the troops themselves, words are imperfect instruments in acknowledging their courage and professionalism. The damage they inflicted on the Iraqis is only now coming to light, but it was by every measure awesome. Forty of the enemy's 42 divisions in the theater were either eviscerated or knocked out, and the landscape was littered with the wreckage of Iraqi armor. In the final analysis, it was not so much that the Iraqis were poor soldiers who were badly led. They were up against the very best troops in the world. It was no contest from the start.

President Bush is reaping political bouquets for the way in which the White House and the administration handled the war, and the praise is richly deserved—from Defense Secretary Richard Cheney to Joint Chiefs of Staff Chairman Gen. Colin L. Powell and on down the line. It has been said before, but it merits saying again: The campaign would not, could not, have been as successful if the president had not had the self-confidence to leave the fighting to the professionals. The commander-in-chief's hands-off policy was so significant a factor in the allied victory that Gen. Schwarzkopf himself paid tribute to the president's discipline.

Even now, in the exuberance of victory, a grateful nation remembers that 79 of its sons and daughters will not return with their comrades, that 79 American homes and countless hearts are filled with agony. The wings of man's life are plummed with the feathers of death, as Milton wrote, but the loss of even one American life in battle is a terrible price to pay.

The soldiers have done their heroic duty. It is now up to the statesmen to ensure that their sacrifice was not in vain.

SOCIAL SECURITY NOTCH

Mr. REID. Mr. President, I join to correct a problem which plagues a special group of older Americans—those affected by the Social Security notch.

For my colleagues who may not be aware, the Social Security notch causes 10 million Americans born between the years 1917–26 to receive less in Social Security benefits than Americans born outside the notch years due to changes made in the 1977 Social Security benefit formula.

Under the current formula, benefits for retirees born in the years 1917–26 are as much as 20 percent lower than benefits received by those born before 1917.

I have felt compelled over the years to speak out about this issue and the injustice it imposes on millions of Americans. The notch issue has been debated and debated and debated over the last several years, yet no solution to it has been found. Because of this, older Americans must scrimp to afford the most basic of necessities. These are hard-working Americans we are talking about here—people who paid into Social Security year after year, until their retirement, expecting, at age 65, to reap the benefit of years of hard work.

There is no doubt in my mind that Congress and the President had good intentions when it changed Social Security benefits in 1972. Members of Congress had attempted to institutionalize Social Security cost-of-living adjustments which had previously been legislated inconsistently. Unfortunately, it soon became evident that these 1972 amendments were calculated incorrectly. In an attempt to right these formula mistakes, the Social Security notch was born. Benefits were reduced by 10 to 20 percent for all Americans born between 1917 and 1926. These Americans, now known as notch babies, are not deserving of this treatment. They receive hundreds of dollars less in Social Security benefits than their friends and relatives who were just lucky enough to be born a few days outside the Social Security notch.

While my brief synopsis of the notch history reveals well-meaning actions on the part of the Congress to protect America's seniors, we must take responsibility without delay for the fact that to date, the actions have been disastrous. And time is running out. I do not need to tell you that our notch babies are not getting any younger.

The legislation being offered today by Senator SANFORD and me incorporates the best features of many proposals offered during past Congresses to address the notch injustice. Other legislative proposals have been incorporated into what we see before us today—a simple, uncomplicated act which will restore the fair and democratic treatment of millions of our older Americans.

What this legislation does is simple: It creates a 10-year transition formula for persons born in the years 1917 through 1926. That is it. This proposal is affordable as well—another attractive feature—it makes but a small dent in the huge Social Security trust fund surplus. Surely we can see fit to spend Social Security funds on the very people whose money was collected year after year to create them.

My mail tells woeful tales. Jack Gibson of Carson City, NV, writes:

I am a former Marine attached to the Second Marine Division during the Second World War, seeing action in the Pacific Theater of war.

I am also a second class citizen of the United States.

That is because I was born in 1920, became a working registrant of the Social Security system when it was first started, and have paid into it all my life except when I was in the Marine Corps.

Yes, I am a "Notch" baby, one of the forgotten citizens of this country. Downgraded because I, and thousands before me were born at the wrong time. Unfortunately, those born later or earlier have not had their Social Security payments "docked" due to legislation. * * *

Edward Lilian of Thunder, NV, writes:

By procrastinating about the repeal of this Act, you and your peers are in fact making the decision to ignore and discriminate against us.

The legislation offered today is a responsible solution to the notch inequity. This bill will not bankrupt the Social Security System. The transition formula extends over 10 years. It increases notch babies' Social Security checks by an estimated $37 to $114 per month. This may not sound like much money to my colleagues who have good steady incomes, but to a senior who lives on a fixed income it is a fortune. This small amount, a fortune to some, can mean the ability to put food on the

table. It can mean the ability to purchase a vital prescription drug.

It is time for Congress to return dollars to the hands of those who earned them—Social Security beneficiaries. It is time for my fellow Members of Congress to listen to the Jack Gibsons and Edward Lilians of their respective States. It is time to destroy the Social Security notch. For millions of America's senior citizens, this will be no less than miraculous. For the 102d Congress, this will be no less than miraculous.

TRIBUTE TO NORTH DAKOTA'S WAYNE LUBENOW

Mr. BURDICK. Mr. President, I was saddened to learn last week of the death of Wayne Lubenow, one of my favorite writers and a personal friend. The columns he wrote are like Norman Rockwell paintings which can be enjoyed for generations to come, they so well illustrate the best of American life.

Wayne Lubenow was an eloquent salesman for North Dakota. As a tribute to him, I ask unanimous consent that a column he wrote about the State in 1962 be printed in the RECORD at this point.

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

NORTH DAKOTA: A BLIND DATE

What it's like, see, is getting stuck with a blind date. You hate to go because you've heard she's a dog.

But you go anyway—you find all the Miss Americas rolled into one beautiful package and you wonder how she ever got that bad image.

That's North Dakota.

She's a beauty beyond your imagination—but you have to see her to believe it.

I know, because I was invited to take a 10-day tour of my State the last week in June, compliments of the North Dakota Travel Association.

I didn't exactly do cartwheels when I was told I could tour North Dakota for 10 days. But it's 10 days off the old grind so why not?

So I went on the blind date, but only because it seemed like a duty. And there, so help me, was the queen that had been right in my backyard all these years and that I never really saw.

Ron Campbell, a member of the tour from the Regina, Sask., *Leader-Post*, had been to North Dakota before. And he told me, "Wayne, this is a new North Dakota."

I agree, but what struck me is that my blind date was twins—two North Dakotas.

First, there is the old gal—the one who has been around a long, long time. She's the breath-taking Badlands and the buttes and the forts and the history and the pioneers and the scenery that puts butterflies where your last meal should be.

She is miles and miles of sheer, untamed beauty and if you look hard into a sunset and let your imagination go, you can see the red men and the cowboys and the flag-waving cavalry.

She is mostly a western North Dakota gal, this old one, for that is where the rough country is. But you can see her, too, in the rivers of Eastern North Dakota—but you'll be looking for sternwheelers hauling people and provisions to Dakota Territory.

Her mirror, of course, is the Theodore Roosevelt National Park with cowtown Medora as her boudoir. From there her territory stretches through the South Unit of the park, up north through the even more fabulous North Unit.

But her charm doesn't end there. It runs to places like Grassy Butte with its sod-built old post office, to the State's three Indian reservations where much of what is old and historic remains as it was.

That's old gal, the old North Dakota—and a queen she is.

But she is being challenged by a princess, a young starlet who can't possibly harm her—but who only adds to North Dakota's luster.

The debutante is the revitalization of her cities, of her commerce, and even of her lands.

Minot and her Air Base bustle; Bismark booms; Dickinson swings; Grand Forks and Fargo grow and grow.

New people, new industry, new growth.

That's what Campbell meant by a "new" North Dakota.

You see it in her new-spawned recreational areas—the Garrison Reservoir where power boats and lunker fish are the order of the day.

You see it in old Medora where private capital is making it possible to sleep in air-conditioned comfort before going out to woo that Old Gal Badlands.

You see it at Rolla in the north where the Bulova firm has established the only industrial jewel plant in all of North America and where they really do business in a small way—like some of the jewels they make are so small it takes a magnifying glass to see them.

You see it in North Dakota's highways where it's tough to find a bad road even if you were looking.

That's this new, young girl of a North Dakota—the one who builds sprawling, powerful new electric plants capable of churning out hundreds of thousands of kilowatts.

But she does it on the old gal's ancient lignite.

The cattle ranches and farms are still here, a legacy from the old days. But the roundups are apt to be with jeeps and the grain fields are filled with machines, not men.

The old people, those who still are in love with the old gal, are still here, too. But so are the new young bloods who go courting the maiden.

And that's North Dakota—two striking women, one with white hair and one with gold, and you'll love them both.

But like I say, you have to try that blind date to really believe it.

IN MEMORY OF SGT. DAVID Q. DOUTHIT OF ALASKA

Mr. MURKOWSKI. Mr. President, today in my home State of Alaska a funeral and burial service is being held for an American hero named David Douthit. This brave young man proudly served our country in the Persian Gulf war and lost his life just hours before the President's cease-fire order went into effect. David's death reminds us all that the price of freedom is not without human cost. It cost us the precious life of one Alaskan.

Our quick and decisive victory over Iraqi forces in Kuwait is a tribute to the men and women of our Armed Forces. Now our Nation rightfully honors these outstanding Americans for their dedication and sacrifice.

David was a 1984 graduate of Soldotna High School and served in the U.S. Army for 6 years. He has been stationed at Fort Lewis, WA, and was sent to the gulf after Christmas. He served there as a crew chief on an M–2 Bradley, armored personnel carrier.

David leaves behind his parents, Harvey and Nita Douthit, and his young wife, Jessica, who is 8 months pregnant with their first child. As one life is taken away, another comes into the world.

Alaskans have rallied around the Douthit family and the unborn child. A scholarship fund has been established and donations have been received from caring Americans throughout the Nation.

I know that David holds a special place in the heart of all Alaskans. He gave the ultimate sacrifice for our Nation and we are proud of him. The prayers of all Americans are with the families of those who were killed during the Persian Gulf war. Today, the prayers of all Alaskans are with David Douthit and his family.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,187th day that Terry Anderson has been held captive in Lebanon.

Today, Associated Press special correspondent Walter Mears offers a tribute to Terry Anderson and the other hostages still held in Lebanon. I ask unanimous consent that it be printed in the RECORD at this time.

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

WALTER MEARS: REMEMBERING TERRY ANDERSON AND OTHERS HELD IN LEBANON

(By Walter R. Mears)

WASHINGTON.—In a season of celebration for the freed prisoners and returning veterans of the Persian Gulf War, it's time for another sort of ceremony, a bleak one at the sixth anniversary of Terry Anderson's captivity in Lebanon.

The contrasts are jarring.

So far, America's Middle East victory does not apply to Anderson or to the other five U.S. hostages, reportedly moved by their captors from Beirut to the Baalbeck area in eastern Lebanon.

The war against Iraq was won in 42 days, the ground war in 100 hours. Anderson has been held hostage for 2,187 days.

In the conflict over Kuwait, the one posted demand of his kidnappers was rendered moot. The Muslim extremists who seized Anderson on March 16, 1985, demanded the release of fellow Shiites imprisoned by Kuwait for terrorist bombings there. The last of them was freed when Iraq invaded on Aug. 2.

Syria, which joined the U.S.-led coalition against Iraq, is the dominant force in Lebanon, a position strengthened during the Persian Gulf crisis. The Syrian army controls the region where the hostages are believed held by pro-Iranian Muslim factions grouped together as Hezbollah, or the Party of God. Iran remained officially neutral in the war that drove Iraq from Kuwait.

Despite their power in the region, the Syrians have avoided confrontation with Iranian-backed factions. There are said to be about 3,000 Iranian Revolutionary Guard troops in or near Baalbeck.

Secretary of State James A. Baker III is to visit Damascus later this week, meeting with Syrian President Hafez Assad as part of the postwar quest for a comprehensive peace settlement in the Middle East.

President Bush said Baker would raise the plight of the hostages in Lebanon. "We have not forgotten them," Bush told Congress in his March 6 victory speech. "We will not forget them."

Next day at the White House, Bush's spokesman said there had to be some hope that with all the changes in the Middle East, the captors would see the futility of continuing to hold the hostages.

But on Monday, White House Press Secretary Marlin Fitzwater said the administration had no word on the whereabouts of the hostages, and nothing to indicate that they might soon be freed.

Fitzwater said there are continuing U.S. contacts abroad on the hostage situation. "I assume those are still happening, but I don't have any new breakthroughs to report or anything like that," he said.

And the last word from Hezbollah, on March 6, was that the organization would not force release of the hostages.

Such words of hope, uncertainty and intransigence have been heard again and again since the ordeal of American hostages in Lebanon began in 1983.

Anderson, 43, chief Middle East correspondent of the Associated Press, is now the longest held American hostage. The others are Thomas Sutherland, Joseph Cicippio, Jesse Turner and Alann Steen, all of whom are educators in Beirut, and Edward Austin Tracy, a writer.

There are seven other western hostages, four of them British, two German, one Italian, all believed held by the same Muslim groups.

On Friday, Anderson's family, colleagues and friends, and the families of other hostages will gather for still another anniversary observance, sponsored by an organization called No Greater Love.

This time, there will be words of thanksgiving for the release of other captives the 21 POWs who came home on Sunday, the CBS News crew held captive for six weeks by Iraq, the 40 journalists captured last week near Basra, freed on Saturday.

There also will be demands for the same kind of U.S. and international pressure to gain release of the hostages in Lebanon.

They are fewer in number, less visible, captives of shadow factions, with not even an enemy government to be held accountable for their plight.

But the new, peaceful world order President Bush envisions will be a hollow one unless Anderson and the other hostages are at long last freed to join in it.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

PROTESTS IN SERBIA

Mr. DOLE. Mr. President, for over a year now we have watched as the hardline Communist government of the Republic of Serbia has brutally repressed the Albanian population of Kosova. But, last weekend, the world witnessed the same brutality in Belgrade, as Serbian police—joined by Yugoslav federal troops—tried to disperse a large crowd using the same violent tactics I witnessed in the streets of Pristina last summer—clubs, tear gas, rubber bullets. Opposition leaders were arrested. Two people were killed and many more were injured.

On Saturday, tens of thousands of Serbs—mostly young Serbs—took to the streets of Belgrade to send a message to Serbian President Milosevic. These students, professors, opposition party members, and intellectuals, made their way to Belgrade's main square to say that they were fed up, fed up with communism and its control over the economy, which is in ruins; fed up with TV and radio censorship and one-sided media reporting; and finally, that they were fed up with hardliner Milosevic and his henchmen.

Today, a group of opposition party lawmakers left the Serbian Parliament to join anti-Communist protesters in yet another day of demonstrations against Milosevic's hardline government. And, according to press reports, these demonstrations are spreading to other cities.

Despite Milosevic's finger-pointing, these protesters recognize that the blame for the severe political and economic problems in Serbia does not rest with the oppressed Albanians in Kosova, or with the democratically elected non-Communist Republics of Croatia and Slovenia; they have not been persuaded by the allegations the Serbian President makes in his speeches and repeats through his puppets in the press. These thousands of Serbs realize that Milosevic himself is to blame. They know that Milosevic and his 1950's-style Communist policies are responsible for the lack of basic freedoms and the economic turmoil that has affected the lives of most Serbs.

The Milosevic myth of anti-Serbian forces and enemies of Serbia is melting away and reality is taking its place. The reality is that Milosevic and his supporters who advocate hardline communism are the real enemies of Serbia. Milosevic sent Serbian police to the streets with orders to use violence. Milosevic has strangled the press and wiped out freedom of speech. Milosevic has brought the economy of Serbia to near ruin—despite the fact that he stole $1.3 billion in dinars from the central government, there are still thousands of workers who have not been paid in a month, 2 months, or more.

As these demonstrations have shown to the world, the Serbian people want to get rid of communism. The Serbs want the same freedoms and opportunities that the people in Slovenia and Croatia are creating for themselves in their new democracies and free market economics.

Mr. President, the events of the past few days highlight once again who the enemies of democracy and human rights in Yugoslavia really are: the Communists in the Serbian Government and in the Yugoslav Government. These Communists may have changed their name to Socialists, but their methods and policies remain the same.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

The Senator from Nebraska is recognized.

Mr. EXON. I thank the Chair.

(The remarks of Mr. EXON pertaining to the introduction of S. 624 and S. 631 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

WELCOMING THE REESTABLISHMENT OF DIPLOMATIC RELATIONS WITH ALBANIA

Mr. PELL. Mr. President, I welcome today's announcement by the State Department that the United States and Albania will reestablish diplomatic relations. Later this week, Albania's Foreign Minister will travel to Washington to formalize the reestablishment of official ties, which were broken off more than 50 years ago.

I believe that now is a particularly opportune moment to reestablish diplomatic relations with Albania. Later this month, Albania will hold elections, and in my view, by reestablishing ties with Albania, the United

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States will demonstrate its support for the reform process and for increased attention to human rights issues.

For decades, Albania has lived outside the pale of European civilization. Aside from the Baltic States, Albania is the only European country that is not a member of the Commission on Security and Cooperation in Europe or CSCE. I believe that through the establishment of diplomatic relations, we in the United States have an opportunity to encourage Albania to join in that process and to play a constructive role in the new Europe.

On a personal note, I am particularly pleased by today's developments. My first assignment upon joining the United States Foreign Service shortly after World War II, was supposed to be to Tirana, Albania. Although our legation in Tirana had been closed in 1939, it was expected that with the end of the war, relations would be resumed. Regrettably, ties were not reestablished at that time.

Most would agree that Albania has been one of Europe's most closed societies, and accordingly, we have much to learn about that country, and they about ours. My hope is that our new diplomatic relationship will provide a framework for that process.

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

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

MESSAGES FROM THE PRESIDENT RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on March 11, 1991, during the recess of the Senate, received a message from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received on March 11, 1991, are printed in today's RECORD at the end of the Senate proceedings.)

TERMINATION OF SANCTIONS WITH RESPECT TO KUWAIT—MESSAGE FROM THE PRESIDENT RECEIVED DURING RECESS—PM 26

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

I hereby provide notice, consistent with section 586C(c)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101-513), of my intention to terminate, in whole or in part, no sooner than 15 days after the date of this notice, the sanctions imposed with respect to Kuwait pursuant to Executive Orders Nos. 12723 and 12725.

GEORGE BUSH.

THE WHITE HOUSE, *March 8, 1991.*

COMPREHENSIVE VIOLENT CRIME CONTROL ACT OF 1991—MESSAGE FROM THE PRESIDENT RECEIVED DURING RECESS—PM 27

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on the Judiciary:

To the Congress of the United States:

I am pleased to transmit this administration's primary legislative initiative addressing the continuing threat of violent crime in this country. This proposal, entitled the "Comprehensive Violent Crime Control Act of 1991," contains a broad spectrum of critically needed reforms to the criminal justice system, as well as new offenses and penalties for various acts of life-threatening criminal behavior. Also transmitted is a section-by-section analysis. I urge that congressional action on this initiative be completed within the next 100 days.

The enormous danger posed by violent criminals in our midst today is totally unacceptable. In 1990, more than 20,000 Americans were murdered. Our citizens are rightly demanding that elected officials act with resolve to reduce substantially the threat violent crime poses to their families and communities. The dramatic victory achieved by our military forces in the Persian Gulf serves as a model for what can be accomplished by leaders and citizens committed to achieving a common goal. It is time for all Americans to work together to take back the streets and liberate our neighborhoods from the tyranny of fear.

This legislative package is designed to address comprehensively the failures of the current criminal justice system. There must be a clear understanding on the streets of America that anyone who threatens the lives of others will be held accountable. To this end, it is essential that we have swift and certain apprehension, prosecution, and incarceration. Too many times, in too many cases, criminals go free because the scales of justice are unfairly loaded against dedicated law enforcement officials.

The core elements of my proposal are:

—*Restoration of the Federal Death Penalty* by establishing constitutionally sound procedures and adequate standards for imposing Federal death penalties that are already on the books (including mail bombing and murder of Federal officials); and authorizing the death penalty for drug kingpins and for certain heinous acts such as terrorist murders of American nationals abroad, killing of hostages, and murder for hire.

—*Habeas Corpus Reform* to stop the often frivolous and repetitive appeals that clog our criminal justice system, and in many cases effectively nullify State death penalties, by limiting the ability of Federal and State prisoners to file repetitive habeas corpus petitions.

—*Exclusionary Rule Reform* to limit the release of violent criminals due to legal technicalities by permitting the use of evidence that has been seized by Federal or State law enforcement officials acting in "good faith," or a firearm seized from dangerous criminals by a Federal law enforcement officer. This proposal also includes a system for punishing Federal officers who violate Fourth Amendment standards, as well as a means for compensating victims of unlawful searches.

—*Increased Firearms Offenses and Penalties* including a 10-year mandatory prison term for the use of a semiautomatic firearm in a drug trafficking offense or violent felony, a 5-year mandatory sentence for possession of a firearm by dangerous felons, new offenses involving theft of firearms and smuggling firearms in furtherance of drug trafficking or violent crimes, and a general ban on gun clips and magazines that enable a firearm to fire more than 15 rounds without reloading.

In addition to these proposals, my initiative contains elements designed to curb terrorism, racial injustice, sexual violence, and juvenile crime, and to support appropriate drug testing as a condition of post-conviction release for Federal prisoners.

I look forward to working with the Congress during the next 100 days on this necessary legislation.

GEORGE BUSH.

THE WHITE HOUSE, *March 11, 1991.*

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, 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 appropriate committees.

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

MESSAGES FROM THE HOUSE RECEIVED DURING RECESS

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on March 8, 1991, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled joint resolution:

H.J. Res. 98. Joint resolution designating March 4 through 10, 1991, as "National School Breakfast Week."

Under the authority of the order of the Senate of January 3, 1991, the enrolled joint resolution was signed on March 8, 1991, during the recess of the Senate, by the President pro tempore [Mr. BYRD].

MESSAGES FROM THE HOUSE

At 2:34 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. 1281. An act making dire emergency supplemental appropriations for the consequences of Operation Desert Shield/Desert Storm, food stamps, unemployment compensation administration, veterans compensation and pensions, and urgent needs for the fiscal year ending September 30, 1991, 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. 1281. An act making dire emergency supplemental appropriations for the consequences of Operation Desert Shield/Desert Storm, food stamps, unemployment compensation administration, veterans compensation and pensions, and other urgent needs for the fiscal year ending September 30, 1991, and for other purposes; to the Committee on Appropriations.

MEASURES PLACED ON THE CALENDAR

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 1284. An act to authorize emergency supplemental assistance for Israel for additional costs incurred as a result of the Persian Gulf conflict.

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-744. A communication from the Chairman of the Board of Directors of the Panama Canal Commission, transmitting a draft of proposed legislation to authorize expenditures for fiscal years 1992 and 1993, for the Panama Canal Commission to operate and maintain the Panama Canal, and for other purposes; to the Committee on Armed Services.

EC-745. A communication from the Secretary of Defense, transmitting, pursuant to law, the annual report of the Department of Defense dated January 1991; to the Committee on Armed Services.

EC-746. A communication from the Acting Under Secretary of Defense (Acquisition), transmitting, pursuant to law, a report on funds obligated in the chemical warfare-chemical/biological defense programs during fiscal year 1990; to the Committee on Armed Services.

EC-747. A communication from the President and Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report on a transaction involving United States exports to Israel; to the Committee on Banking, Housing, and Urban Affairs.

EC-748. A communication from the Secretary of Transportation, transmitting, pursuant to law, a biennial report entitled "Public Transportation in the United States: Performance and Condition"; to the Committee on Banking, Housing, and Urban Affairs.

EC-749. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, the third annual report for fiscal year 1990; to the Committee on Commerce, Science, and Transportation.

EC-750. A communication from the Secretary of Commerce, transmitting, pursuant to law, a draft of proposed legislation entitled "Spectrum Reallocation and Management Improvement Act of 1991; to the Committee on Commerce, Science, and Transportation.

EC-751. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report to Congress entitled "Alcohol Limits for Drivers: A Report on the Effects of Alcohol, and Expected Institutional Responses to New Limits"; to the Committee on Commerce, Science, and Transportation.

EC-752. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, a draft of proposed legislation "to authorize appropriations to the National Aeronautics and Space Administration for research and development; space flight, control and data communications; construction of facilities; research and program management; and Inspector General; and for other purposes," together with a sectional analysis; to the Committee on Commerce, Science, and Transportation.

EC-753. A communication from the Deputy Associate Director for Collection and Disbursement of the United States Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-754. A communication from the Assistant General Counsel of the Department of Energy, transmitting, pursuant to law, notice of a meeting related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-755. A communication from the Secretary of Energy, transmitting a draft of proposed legislation to implement the National Energy Strategy, and for other purposes; to the Committee on Energy and Natural Resources.

EC-756. A communication from the Deputy Assistant Secretary of the Interior, transmitting a draft of proposed legislation to provide authority to the Secretary of the Interior to undertake certain activities to reduce the impacts of drought conditions, and for other purposes; to the Committee on Energy and Natural Resources.

EC-757. A communication from the Assistant Secretary of Energy (Environment, Safety, and Health), transmitting, pursuant to law, notice that the annual report of the Department on progress in implementing the Superfund Amendments and Reauthorization Act will be submitted in April 1991; to the Committee on Environment and Public Works.

EC-758. A communication from the Inspector General of the Department of the Interior, transmitting, pursuant to law, an audit report entitled "Accounting for Reimburseable Expenditures of Environmental Protection Agency Superfund Money. Office of Environmental Affairs, Office of the Secretary"; to the Committee on Environment and Public Works.

EC-759. A communication from the Administrator of the Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, a report on demonstration projects authorized under the Surface Transportation and Uniform Relocation Assistance Act; to the Committee on Environment and Public Works.

EC-760. A communication from the Assistant Secretary of State (Legislative Affairs) and the Assistant Administrator of the Office of Policy, Planning, and Evaluation of the Environmental Protection Agency, transmitting jointly, pursuant to law, a report entitled "The U.S. Efforts to Address Global Climate Change" and a brochure entitled "America's Climate Change Strategy: An Action Agenda"; to the Committee on Foreign Relations.

EC-761. A communication from the Assistant Administrator of the Small Business Administration (Hearings and Appeals), transmitting, pursuant to law, a report on the Small Business Administration's revised Privacy Act system of records; to the Committee on Governmental Affairs.

EC-762. A communication from the Secretary of the Commission of Fine Arts, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during fiscal year 1990; to the Committee on Governmental Affairs.

EC-763. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, the semiannual report of the Office of Inspector General, Federal Election Commission for the period ending September 30, 1990; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, without amendment:

S. 483. A bill entitled the "Taconic Mountains Protection Act of 1991" (Rept. No. 102-21).

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry, with an amendment in the nature of a substitute:

S. 207. A bill to amend the Commodity Exchange Act to authorize appropriations for and enhance the effectiveness of the Commodity Futures Trading Commission, to curb abuses in the making of trades and the execution of orders at designated contract markets, to provide greater representation of the public interest in the governance of such contract markets, to enhance the integrity of the United States financial markets by providing for Federal oversight of margins on stock index futures, clarifying jurisdiction over innovative financial products and providing mechanisms for addressing intermarket issues, and for other purposes (Rept. No. 102-22).

S. 393. A bill to provide for fair treatment for farmers and ranchers who are participating in the Persian Gulf War as active reservists or in any other military capacity, 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. DOLE (for himself, Mr. HATCH, Mr. SIMPSON, Mr. MCCAIN, Mr. STEVENS, Mr. MURKOWSKI, Mr. GARN, Mr. MCCONNELL, and Mr. KASTEN):

S. 611. A bill to amend the Civil Rights Act of 1964 to strengthen protections against discrimination in employment, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. BENTSEN (for himself, Mr. ROTH, Mr. MITCHELL, Mr. FORD, Mr. PRYOR, Mr. DASCHLE, Mr. INOUYE, Mr. ROBB, Mr. COCHRAN, Mr. KASTEN, Mr. NICKLES, Mr. LOTT, Mr. BAUCUS, Mr. HEINZ, Mr. BOREN, Mr. SYMMS, Mr. RIEGLE, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. BREAUX, Mr. ADAMS, Mr. AKAKA, Mr. BINGAMAN, Mr. BOND, Mr. BROWN, Mr. BRYAN, Mr. BURDICK, Mr. BURNS, Mr. COHEN, Mr. CONRAD, Mr. CRAIG, Mr. CRANSTON, Mr. D'AMATO, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DOMENICI, Mr. EXON, Mr. FOWLER, Mr. GARN, Mr. GLENN, Mr. GORE, Mr. GRAHAM, Mr. HARKIN, Mr. HATCH, Mr. HATFIELD, Mr. HELMS, Mr. HOLLINGS, Mr. JOHNSTON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. MACK, Ms. MIKULSKI, Mr. MURKOWSKI, Mr. PELL, Mr. PRESSLER, Mr. REID, Mr. RUDMAN, Mr. SANFORD, Mr. SASSER, Mr. SEYMOUR, Mr. SHELBY, Mr. SIMON, Mr. SMITH, Mr. SPECTER, Mr. STEVENS, Mr. THURMOND, Mr. WARNER, Mr. WELLSTONE, and Mr. NUNN):

S. 612. A bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes; to the Committee on Finance.

By Mr. LEVIN:

S. 613. A bill for the relief of Miroslaw Adam Jasinski; to the Committee on the Judiciary.

By Mr. DASCHLE (for himself, Mr. BINGAMAN, Mr. BURDICK, Mr. CONRAD, Mr. HARKIN, Mr. JOHNSTON, and Mr. INOUYE):

S. 614. A bill to amend title XVIII of the Social Security Act to provide coverage under such title for certain chiropractic services authorized to be performed under State law, and for other purposes; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, and Mr. LIEBERMAN):

S. 615. A bill entitled the "Environmental Marketing Claims Act of 1991"; to the Committee on Environment and Public Works.

By Mr. PELL (by request):

S. 616. A bill to authorize appropriations for Fiscal Years 1992 and 1993 for the United States Information Agency, and for other purposes; to the Committee on Foreign Relations.

By Mr. HATCH (for himself, Mr. SPECTER, Mr. SIMPSON, Mr. DOMENICI, Mr. INOUYE, Mr. COCHRAN, Mr. D'AMATO, Mr. MCCAIN, Mr. BOND, and Mr. GORTON):

S. 617. A bill to reauthorize the Commission on Civil Rights; to the Committee on the Judiciary.

By Mr. BIDEN (for himself and Mr. DECONCINI):

S. 618. A bill to control and reduce violent crime; to the Committee on the Judiciary.

By Mr. BRADLEY (for himself and Mr. KENNEDY):

S. 619. A bill to establish a Link-up for Learning demonstration grant program to provide coordinated services to at-risk youth; to the Committee on Labor and Human Resources.

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

S. 620. A bill to reform habeas corpus procedures; to the Committee on the Judiciary.

By Mr. CRANSTON:

S. 621. A bill to establish the Manzanar National Historic Site in the State of California, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SIMON:

S. 622. A bill to amend title 18 of the United States Code to require drug testing for released Federal prisoners; to the Committee on the Judiciary.

By Mr. SIMON (for himself, Mr. DECONCINI, and Mr. HOLLINGS):

S. 623. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to maintain the current Federal-State funding ratio for the Justice Assistance Grant Program; to the Committee on the Judiciary.

By Mr. EXON (for himself and Mr. KERREY):

S. 624. A bill to provide that certain games of chance conducted by a nonprofit organization not be treated as an unrelated business of such organization; to the Committee on Finance.

By Mr. REID (for himself and Mr. BROWN):

S. 625. A bill to amend the Trade Act of 1974 in order to require reciprocal responses to foreign acts, policies, and practices that deny national treatment to United States investment; to the Committee on Finance.

By Mr. HEINZ:

S. 626. A bill to increase the literacy skills of commercial drivers; to the Committee on Labor and Human Resources.

By Mr. JOHNSTON (for himself and Mr. BREAUX):

S. 627. A bill to designate the lock and dam 1 on the Red River Waterway in Louisiana as the "Lindy Clairborne Boggs Lock"; to the Committee on Environment and Public Works.

By Mr. BINGAMAN:

S. 628. A bill to direct the Secretary of the Interior to conduct a study of certain historic military forts in the State of New Mexico; to the Committee on Energy and Natural Resources.

By Mr. D'AMATO:

S. 629. A bill to establish the grade of General of the Army and to authorize the President to appoint Generals Colin L. Powell and H. Norman Schwarzkopf, Jr., to that grade; to the Committee on Armed Services.

By Mr. D'AMATO (for himself, Mr. DECONCINI, Mr. THURMOND, and Mr. COATS):

S. 630. A bill entitled the "Money Laundering Enforcement Act"; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. EXON (for himself, Mr. DANFORTH, and Mr. KASTEN):

S. 631. A bill to authorize appropriations for the Motor Carrier Safety Assistance Program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. PRYOR:

S. 632. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of interest paid in connection with certain life insurance contracts; to the Committee on Finance.

By Mr. CRANSTON (for himself, Mr. DECONCINI, and Mr. AKAKA):

S. 633. A bill to improve basic educational assistance benefits for members of the Armed Forces of the United States under chapter 30 of title 38, United States Code, and under chapter 106 of title 10, United States Code, and for other purposes; to the Committee on Veterans Affairs.

By Mr. KENNEDY (for himself, Mrs. KASSEBAUM, Mr. SIMON, Mr. KERRY, Mr. CRANSTON, Mr. HARKIN, Mr. MOYNIHAN, Mr. GORE, and Mr. LEVIN):

S.J. Res. 91. Joint resolution expressing the sense of the Congress regarding the political and human rights situation in Kenya; to the Committee on Foreign Relations.

By Mrs. KASSEBAUM (for herself, Mr. BOND, Mr. BROWN, Mr. CHAFEE, Mr. D'AMATO, Mr. DOLE, Mr. DURENBERGER, Mr. HATCH, Mr. JEFFORDS, Mr. KASTEN, Mr. MURKOWSKI, Mr. PACKWOOD, Mr. SIMPSON, Mr. SPECTER, Mr. STEVENS, Mr. THURMOND, Mr. WARNER, Mr. COATS, Mr. ADAMS, Mr. BAUCUS, Mr. BRADLEY, Mr. BREAUX, Mr. BURDICK, Mr. CRANSTON, Mr. DECONCINI, Mr. DIXON, Mr. FORD, Mr. FOWLER, Mr. GORE, Mr. HEFLIN, Mr. HOLLINGS, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Ms. MIKULSKI, Mr. PELL, Mr. PRYOR, Mr. RIEGLE, Mr. BOREN, Mr. ROBB, and Mr. SARBANES):

S.J. Res. 92. Joint resolution to designate July 28, 1992, as "Buffalo Soldiers Day"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. D'AMATO (for himself, Mr. HEINZ, Mr. DIXON, Mr. CRANSTON, Mr. CHAFEE, Mr. HATFIELD, Mr. KERRY, Ms. MIKULSKI, Mr. GORTON, Mr. PACKWOOD, Mr. SPECTER, Mr. DODD, Mr. MOYNIHAN, Mr. LIEBERMAN, Mr. KENNEDY, Mr. LAUTENBERG, Mr. BOND, and Mr. SEYMOUR):

S. Res. 77. Resolution concerning mass transit programs; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HATCH:

S. Con. Res. 17. Concurrent resolution expressing the sense of Congress with respect to certain regulations of the Occupational Safety and Health Administration; to the Committee on Labor and Human Resources.

By Mr. CRANSTON (for himself, Mr. MITCHELL, Mr. PELL, Mr. MOYNIHAN, Mr. KERRY, Mr. AKAKA, Mr. GORE, Mr. KENNEDY, Mr. ROBB, and Mr. SIMON):

S. Con. Res. 18. Concurrent resolution expressing the concern of the Senate for the ongoing human rights abuses in Burma and for the status of displaced Burmese and Burmese refugees; to the Committee on Foreign Relations.

By Mr. CRANSTON (for himself, Mr. MITCHELL, Mr. PELL, Mr. KERRY, Mr. BIDEN, Mr. DECONCINI, Mr. AKAKA, Mr. GORE, Mr. KENNEDY, Mr. ROBB, Mr. DIXON, and Mr. SIMON):

S. Con. Res. 19. Concurrent resolution condemning the People's Republic of China's continuing violation of universal human rights principles; to the Committee on Foreign Relations.

By Mr. LAUTENBERG (for himself, Mr. METZENBAUM, Mr. PELL, Mr. MURKOWSKI, and Mr. KASTEN):

S. Con. Res. 20. Concurrent resolution to authorize the use of the rotunda of the Capitol for a ceremony to commemorate the days of remembrance of victims of the Holocaust; to the Committee on Rules and Administration.

By Mr. CRANSTON (for himself, Mr. MITCHELL, Mr. PELL, Mr. KERRY, Mr. AKAKA, Mr. GORE, Mr. KENNEDY, Mr. ROBB, Mr. SIMON, Mr. LUGAR, Mr. MOYNIHAN, Mr. PACKWOOD, and Mr. DOLE):

S. Con. Res. 21. Concurrent resolution commending the people of Mongolia on their first multiparty elections; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE, for himself, Mr. HATCH, Mr. SIMPSON, Mr. MCCAIN, Mr. MURKOWSKI, Mr. GARN, Mr. STEVENS, Mr. MCCONNELL, and Mr. KASTEN):

S. 611. A bill to amend the Civil Rights Act of 1964 to strengthen protections against discrimination in employment, and for other purposes; to the Committee on Labor and Human Resources.

CIVIL RIGHTS ACT OF 1991

Mr. DOLE. Mr. President, America today is proudly saluting its Desert Storm heroes. These troops—men and women, black and white, native American, Hispanic, and Asian—risked their lives to rescue a nation from tyranny. This stunning military success can teach us a valuable lesson about the kind of America we all want: An America based on equality of opportunity for all its citizens. Our military got the job done without quotas and without discrimination. If only the rest of our society can make the same claim.

Last year, President Bush stood foursquare on the side of equal opportunity by proposing his own civil rights bill, and then, in an effort to reach a negotiated compromise with the Democratic Congress, the President and his key advisers walked the extra mile, and then some, only to reject a bill that meant more to the American Trial Lawyers Association than to the cause of civil rights.

This year, the President's commitment to civil rights remains as firm as ever. In fact, he indicated this morning in a congressional leadership meeting that he wants to sign a civil rights bill.

During last Wednesday's joint session, the President denounced the scourge of discrimination, promising to draft a bill that confronts discrimination head on. Today, the President has delivered on this promise. I am joining with my distinguished colleague in the House, Republican leader BOB MICHEL, in introducing President Bush's Civil Rights Act of 1991. To his credit, the President has proposed a bill that restores the careful balance of title VII, not one that transforms title VII into a national tort law. The President has proposed a bill that stands for racial justice and equal opportunity, not quota justice and equal results.

Mr. President, the Civil Rights Act of 1991 has plenty of firepower, not only for our Nation's minorities, but for the women of America too.

It overturns the Supreme Court's Patterson decision by expanding the coverage of section 1981 to include racial harassment on the job. It overturns the Supreme Court's decision in Lorance versus AT&T Technologies by allowing an employee to challenge a discriminatory seniority plan at any time after the plan's adoption. It overturns the Supreme Court's Wards Cove decision by shifting the burden of proof to the employer once the plaintiff shows that an employment practice causes a disparate impact. It codifies the Griggs decision by adopting word for word the so-called Griggs definition of "business necessity." And, I would add, most importantly, the Civil Rights Act of 1991 establishes, for the first time in our Nation's history, a Federal monetary remedy of up to $150,000 for the victims of sexual harassment and harassment based on disability.

So we are going to debate these issues. I know it is good to have a nice-sounding labor bill with a "civil rights" label. But the real civil rights bill in this debate is the President's bill.

Several years ago, I stood on this floor and managed on the Republican side the Martin Luther King holiday bill. I provided the key vote in the 25-year extension of the Voting Rights Act. I was a key player in the passage of the Americans With Disabilities Act. So I am not going to be defensive about this issue or any other civil rights issue. I do not think anyone on our side should be defensive either. If the Democrats, or a small group of liberals on the other side of the aisle working with certain civil rights activists, are going to demand we have a quota bill, then they are going to have to provide votes for the quota bill and they are going to have to provide votes to override the President's veto of a quota bill. If they want a civil rights bill, we can pass that next week.

I call upon some of my friends on the other side of the aisle. It was a party-line vote last year. It was politics, not civil rights. Politics. Those who were engaged in the negotiations were playing politics.

The President, as I said as recently as 4 hours ago, indicated to me that he wanted to sign a civil rights bill, wanted to do it this year and would like to do it as quickly as possible.

So, Mr. President, I think we have an opportunity if we want a civil rights bill. Those of us who have spotless records in the civil rights area want to be participants. We do not want to be spectators; we do not want to be run over by those who are out for political gain. We have never had a partisan civil rights bill as long as I have been here, until last year. If we want to repeat that again this year, we are going to do our best to sustain a veto.

I hope that others will be involved in the debate, not just two or three Senators on the other side of the aisle, and that we can have a civil rights bill. There is no doubt in my mind that we all pretty much agree and have pretty much the same objectives. I do not believe many Members on the other side of the aisle really want a quota bill.

So I send the bill to the desk on behalf of myself, Senator HATCH, Senator SIMPSON, Senator MCCAIN, Senator MURKOWSKI, Senator STEVENS, Senator GARN, and Senator MCCONNELL and ask for its appropriate referral.

I also ask unanimous consent that a section-by-section analysis, along with the bill, be printed in the RECORD, as well as letters from the Attorney General and other assorted material.

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

S. 611

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that additional protections and remedies under Fed-

eral law are needed to deter unlawful discrimination.

(b) PURPOSE.—The purpose of this Act is to strengthen existing protections and remedies available under Federal civil rights laws.

SEC. 3. DEFINITIONS.

Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e) is amended by adding at the end the following new subsections:

"(*l*) The term 'complaining party' means the Commission, the Attorney General, or a person who may bring an action or proceeding under this Title.

"(m) The term 'demonstrates' means meets the burdens of production and persuasion.

"(n) The term 'justified by business necessity' means that the challenged practice has a manifest relationship to the employment in question or that the respondent's legitimate employment goals are significantly served by, even if they do not require, the challenged practice.

"(o) The term 'respondent' means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs, or those Federal entities subject to the provisions of section 717 (or the heads thereof).

"(p)(1) The term 'harass' means, in cases involving discrimination because of race, color, religion, sex, or national origin, the subjection of an individual to conduct that creates a working environment that would be found intimidating, hostile or offensive by a reasonable person.

"(2) The term 'harass' also means, in cases involving discrimination because of sex, (i) making the submission to unwelcome sexual advances by an employer a term or condition of employment of the individual; or (ii) using the rejection of such advances as a basis for employment decisions adversely affecting the individual; or (iii) making unwelcome sexual advances that create a working environment that would be found intimidating, hostile or offensive by a reasonable person.".

SEC. 4. DISPARATE IMPACT CLAIMS.

Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2) is amended by adding at the end the following new subsection:

"(k) PROOF OF UNLAWFUL EMPLOYMENT PRACTICES IN DISPARATE IMPACT CASES.—Under this Title, an unlawful employment practice based on disparate impact is established only when a complaining party demonstrates that a particular employment practice causes a disparate impact on the basis of race, color, religion, sex, or national origin, and the respondent fails to demonstrate that such practice is justified by business necessity: *Provided, however,* That an unlawful employment practice shall nonetheless be established if the complaining party demonstrates the availability of an alternative employment practice, comparable in cost and equally effective in predicting job performance or achieving the respondent's legitimate employment goals, that will reduce the disparate impact, and the respondent refuses to adopt such alternative."

SEC. 5. FINALITY OF JUDGMENTS OR ORDERS.

For purposes of determining whether a litigated or consent judgment or order resolving a claim of employment discrimination because of race, color, religion, sex, national origin, or disability shall bind only those individuals who were parties to the judgment or order, the Federal Rules of Civil Procedure shall apply in the same manner as they apply with respect to other civil causes of action.

SEC. 6. PROHIBITION AGAINST RACIAL DISCRIMINATION IN THE MAKING AND PERFORMANCE OF CONTRACTS.

Section 1977 of the Revised Statutes of the United States (42 U.S.C. 1981) is amended—

(1) by inserting "(a)" before "All persons within"; and

(2) by adding at the end the following new subsections:

"(b) For purposes of this section, the right to 'make and enforce contracts' shall include the making, performance, modification and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contract.

"(c) The rights protected by this section are protected against impairment by nongovernmental discrimination as well as against impairment under color of State law.".

SEC. 7. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS.

Subsection 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended by adding at the end the following sentence: "For purposes of this section, an alleged unlawful employment practice occurs when a seniority system is adopted, when an individual becomes subject to a seniority system, or when a person aggrieved is injured by the application of a seniority system, or provision thereof, that is alleged to have been adopted for an intentionally discriminatory purpose, in violation of this Title, whether or not that discriminatory purpose is apparent on the face of the seniority provision.".

SEC. 8. PROVIDING FOR ADDITIONAL REMEDIES FOR HARASSMENT IN THE WORKPLACE BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN.

(a) Subsection 703(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(a)) is amended by deleting the period at the end and inserting in lieu thereof "; or" and by adding at the end the following new paragraph:

"(3) to harass any employee or applicant for employment because of that individual's race, color, religion, sex, or national origin; provided, however, that no such unlawful employment practice shall be found to have occurred if the complaining party failed to avail himself or herself of a procedure, of which the complaining party was or should have been aware, established by the employer for resolving complaints of harassment in an effective fashion within a period not exceeding 90 days."

(b) Section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) is amended by adding at the end the following new subsections:

"(*l*) EMERGENCY RELIEF IN HARASSMENT CASES.—An employee or other complaining party alleging a violation of section 703(a)(3) of this Title may petition the court for temporary or preliminary relief. If the complaining party establishes a substantial probability of success on the merits of such harassment claim, the continued submission to the harassment shall be deemed injury sufficiently irreparable to warrant the entry of temporary or preliminary relief. A court having jurisdication over a request for temporary or preliminary relief pursuant to this paragraph shall assign the case for hearing at the earliest practicable date and cause such case to be expedited in every way practicable.

"(m) EQUITABLE MONETARY AWARDS IN HARASSMENT CASES.—

"(1) In ordering relief for a violation of section 703(a)(3) of this Title, the court may, in addition to ordering appropriate equitable relief under subsection (g) of this section, exercise its equitable discretion to require the employer to pay the complaining party an amount up to but not exceeding a total of $150,000.00, if the court finds that an additional equitable remedy beyond those available under subsection (g) of this section is justified by the equities, is consistent with the purposes of this Title, and is in the public interest. In weighing the equities and fixing the amount of any award under this paragraph, the court shall give due consideration, along with any other relevant equitable factors, to (i) the nature of compliance programs, if any, established by the employer to ensure that unlawful harassment does not occur in the workplace; (ii) the nature of procedures, if any, established by the employer for resolving complaints of harassment in an effective fashion; (iii) whether the employer took prompt and reasonable corrective action upon becoming aware of the conduct complained of; (iv) the employer's size and the effect of the award on its economic viability; (v) whether the harassment was willful or egregious; and (vi) the need, if any, to provide restitution for the complaining party.

"(2) all issues in cases arising under this Title, including cases arising under section 703(a)(3) of this Title, shall be heard and determined by a judge, as provided in subsection (f) of this section. If, however, the court holds that a monetary award pursuant to paragraph (1) of this subsection is sought by the complaining party and that such an award cannot constitutionally be granted unless a jury determines liability on one or more issues with respect to which such award is sought, a jury may be empaneled to hear and determine such liability issues and no others. In no case arising under this Title shall a jury consider, recommend, or determine the amount of any monetary award sought pursuant to paragraph (1) of this subsection."

(c) Subsection 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) (as amended by section 7 of this Act) is further amended by adding at the end the following sentence: "For purposes of actions involving harassment under section 703(a)(3) of this Title, the period of limitations established under this subsection shall be tolled during the time (not exceeding 90 days) that an employee avails himself or herself of a procedure established by the employer for resolving complaints of harassment."

SEC. 9. ALLOWING THE AWARD OF EXPERT FEES.

Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)) is amended by inserting "(including reasonable expert fees up to but not exceeding $300 per day)" after "attorney's fee".

SEC. 10. PROVIDING FOR INTEREST, AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended—

(1) in subsection 717(c), by striking out "thirty days" and inserting in lieu thereof "ninety days"; and

(2) in subsection 717(d), by inserting before the period ", and the same interest to compensate for delay in payment shall be available as in cases involving non-public parties".

SEC. 11. PROVIDING CIVIL RIGHTS PROTECTIONS TO CONGRESSIONAL EMPLOYEES.

Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) (as amended by section 10 of this Act) is further amended—

(1) in subsection 717(a), by striking "legislative and judicial branches" and inserting in lieu thereof "judicial branch".

(2) in subsection 717(a), by striking "in the Library of Congress" and inserting in lieu thereof: "in the Congress of the United States, or its Houses, committees, offices or instrumentalities, or the offices of any of its Members".

(3) in subsection 717(b), by striking the last sentence and inserting in lieu thereof: "With respect to the Congress of the United States, its Houses, committees, offices, and instrumentalities, and the offices of its Members, authorities granted in this subsection to the Commission shall be exercised in each House of Congress as determined by that House of Congress, and in offices and instrumentalities not within a House of Congress as determined by the Congress."

(4) in subsection 717(c), by inserting, after "Equal Employment Opportunity Commission" each time it appears, ", or a congressional entity exercising the authorities of the Commission pursuant to subsection (b) of this section,".

SEC. 12. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where knowingly and voluntarily agreed to by the parties, reasonable alternative means of dispute resolution, including binding arbitration, shall be encouraged in place of the judicial resolution of disputes arising under this Act and the Acts amended by this Act.

SEC. 13. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provisions of this Act to other persons and circumstances, shall not be affected thereby.

SEC. 14. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect upon enactment. The amendments made by this Act shall not apply to any claim arising before the effective date of this Act.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

The legislation may be cited as the "Civil Rights Act of 1991."

SECTION 2. FINDINGS AND PURPOSE

The Congress finds that this legislation is necessary to provide additional protections and remedies against unlawful discrimination in employment. The purpose of this Act is to strengthen existing protections and remedies in order to deter discrimination more effectively and provide meaningful relief for victims of discrimination.

SECTION 3. DEFINITIONS

Section 3 adds definitions to those already in Title VII.

The definition of "demonstrates" requires that a party bear the burden of production and persuasion when the statute requires that he or she "demonstrate" a fact.

The definition of the term "justified by business necessity" is meant to codify the meaning of business necessity as used in *Griggs* v. *Duke Power Co.*, 400 U.S. 424, 432 (1971), and subsequent cases including *New York City Transit Authority* v. *Beazer*, 440 U.S. 568, 587 n. 31 (1979). Such a definition was reaffirmed by the Court in *Wards Cove Packing Co., Inc.* v. *Atonio*, 109 S. Ct. 2115, 2125–2126 (1989). Even the dissent in Wards Cove acknowledged that "*Griggs* made it clear that a neutral practice that operates to exclude minorities is nevertheless lawful if it serves a *valid business purpose.*" See 109 S. Ct., at 2129 (Stevens, J., dissenting) (emphasis added).

The terms "complaining party" and "respondent" are defined to include those persons and entities listed in the Act. The definition of the term "harass" is explained in the analysis of Section 8 below.

SECTION 4. DISPARATE IMPACT CLAIMS

In *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), the Supreme Court ruled that Title VII of the Civil Rights Act of 1964 prohibits hiring and promotion practices that unintentionally but disproportionately exclude persons of a particular race, color, religion, sex, or national origin unless these practices are justified by "business necessity." Law suits challenging such practices are called "disparate impact" cases, in contrast to "disparate treatment" cases brought to challenge intentional discrimination.

In a series of cases decided in subsequent years, the Supreme Court refined and clarified the doctrine of disparate impact. In 1988, the Court greatly expanded the scope of the doctrine's coverage by applying it to subjective hiring and promotion practices (the Court had previously applied it only in cases involving objective criteria such as diploma requirements and height-and-weight requirements). Justice O'Connor took this occasion to explain with great care both the reasons for the expansion and the need to be clear about the evidentiary standards that would operate to prevent the expansion of disparate impact, doctrine from leading to quotas. In the course of her discussion, she pointed out:

"[T]he inevitable focus on statistics in disparate impact cases could put undue pressure on employers to adopt inappropriate prophylactic measures. . . . [E]xtending disparate impact analysis to subjective employment practices has the potential to create a Hobson's choice for employers and thus to lead in practice to perverse results. If quotas and preferential treatment become the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability, such measures will be widely adopted. The prudent employer will be careful to ensure that its programs are discussed in euphemistic terms, but will be equally careful to ensure that the quotas are met." *Watson* v. *Fort Worth Bank & Trust Co.*, 108 S. Ct. 2777, 2787–2788 (1988) (plurality opinion).

The following year, in *Wards Cove Packing Co.* v. *Atonio*, 109 S. Ct. 2115, 2126 (1989), the Court considered whether the plaintiff or the defendant had the burden of proof on the issue of business necessity. Resolving an ambiguity in the prior law, the Court placed the burden on the plaintiff.

Under this Act, a complaining party makes out a prima facie case of disparate impact when he or she identifies a particular employment practice and demonstrates that the practice has caused a disparate impact on the basis of race, color, religion, sex, or national origin. The burden of proof then shifts to the respondent to demonstrate that the practice is justified by business necessity. It is then open to the complaining party to rebut that defense by demonstrating the availability of an alternative employment practice, comparable in cost and equally effective in measuring job performance or achieving the respondent's legitimate employment goals, that will reduce the disparate impact, and that the respondent refuses to adopt such alternative.

The burden-of-proof issue that Wards Cove resolved in favor of defendants is resolved by this Act in favor of plaintiffs. Wards Cove is thereby overruled. On all other issues, this Act leaves existing law undisturbed.

As Justice O'Connor emphasized in her Watson opinion, the use of disparate impact analysis creates a very real risk that Title VII will lead to the use of quotas. Indeed, there is evidence that the adoption of disparate impact analysis by the courts has led to the use of quotas, although the extent of this phenomenon is for obvious reasons not measurable. See e.g., Hearings on H.R. 1, "Civil Rights Act of 1991," before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, U.S. House of Representatives, 102d Cong., 1st Sess., February 7, 1991 (testimony of Assistant Attorney General John R. Dunne); Hearings on S. 2104, "Civil Rights Act of 1990," before the Committee on Labor and Human Resources, U.S. Senate, 101st Cong., 2d Sess., February 23, 1990 (testimony of Professor Charles Fried); Joint Hearings on H.R. 4000, "Civil Rights Act of 1990," before the Committee on Education and Labor and the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, U.S. House of Representatives, 101st Cong., 2d Sess., March 20, 1990, vol. 2, pp. 516, 625, 633 (testimony of Glen D. Nager, Esq.); Fortune, March 13, 1989, at 87–88 (reporting a poll of 202 CEOs of Fortune 500 and Service 500 companies, in which 18% of the CEOs admitted that their companies have "specific quotas for hiring and promoting"). The use of quotas, however, represents a perversion of Title VII and of disparate impact law. As the Court noted in Griggs, 401 U.S., at 431: "Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed."

Because of the serious dangers inherent in the use of disparate impact analysis, any codification of a cause of action under the disparate impact theory must include evidentiary safeguards recognized in Justice O'Connor's Watson opinion and in Justice White's opinion for the Court in Wards Cove. The codification adopted in Sections 3 and 4 of this Act does so, and it is vital that courts and employers construe this Act in a manner that neither makes it possible to defend or justify the use of employment quotas nor encourages their use.

If an ability test, for example, has a disparate impact and the test is not justified by business necessity as defined in Section 3 of this Act, the test should not be used. If business necessity can be shown, then the disparate impact need not be reduced or eliminated unless the complaining party demonstrates the availability of an alternative employment practice as required by Section 4 of this Act and the respondent refuses to adopt such alternative. In neither event is an employer required or permitted to adjust test scores, or to use different cut-offs for members of different groups, or otherwise to use the test scores in a discriminatory manner. Manipulating test results in such a fashion is not an alternative employment practice of the kind that an employer must adopt to avoid liability at the surrebuttal phase of a disparate impact case. On the contrary, such discrimination violates Title VII, whether practiced by an employer, an employment agency, or any other "respondent" as defined in Section 3 of this Act. Similarly, a discriminatory practice could not be defended until Title VII on the ground that the practice was necessary or useful in avoiding the possibility of liability under the disparate impact theory. *CF.* Civil Rights Act of 1964, sec. 703(j), 42 U.S.C. 2000e–2(j).

It should be noted that in identifying the particular employment practice alleged to cause disparate impact, it is not the inten-

tion of this Act to require the plaintiff to do the impossible in breaking down an employer's practices to the greatest conceivable degree. Courts will be permitted to hold, for example, that vesting complete hiring discretion in an individual guided only by unknown subjective standards constitutes a single particular employment practice susceptible to challenge.

This approach is consistent with Wards Cove, see 109 S. Ct., at 2125, and has been employed since Wards Cove in *Sledge* v. *J.P. Stevens & Co.*, 52 EPD para. 39,537 (E.D.N.C. Nov. 30, 1989). The Sledge court alluded to the difficulty of "delving into the workings of an employment decisionmaker's mind" and noted that the defendant's peronnel officers reported having no idea of the basis on which they made their employment decisions. The court held that "the identification by the plaintiffs of the uncontrolled, subjective discretion of defendant's employing officials as the source of the discrimination shown by plaintiff's statistics sufficed to satisfy the causation requirements of Wards Cove." This Act contemplates that the use of such uncontrolled and unexplained discretion is properly treated, as it was in the *Sledge* case, as one employment practice that need not be divided by the plaintiff into discrete subparts.

SECTION 5. FINALITY OF JUDGMENTS OR ORDERS

In *Hansberry* v. *Lee*, 311 U.S. 32, 40-41 (1940) (citations omitted), the Supreme Court held:

It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in which he is not designated as a party or to which he has not been made a party by service of process. . . . A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statutes of the United States . . . prescribe, . . . and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require.

In Hansberry, Carl Hansberry and his family, who were black, were seeking to challenge a racial covenant prohibiting the sale of land to blacks. One of the owners who wanted the covenant enforced argued that the Hansberrys could not litigate the validity of the covenant because that question had previously been adjudicated, and the covenant sustained, in an earlier lawsuit, although the Hansberrys were not parties in that lawsuit. The Illinois court had ruled that the Hansberrys' challenge was barred, but the Supreme Court found that this ruling violated due process and allowed the challenge.

In *Martin* v. *Wilks*, 109 S. Ct. 2180 (1989), the Court confronted a similar argument. That case involved a claim by Robert Wilks and other white firefighters that the City of Birmingham had discriminated against them by refusing to promote them because of their race. The City argued that their challenge was barred because the City's promotion process had been sanctioned in a consent decree entered in an earlier case between the City and a class of black plaintiffs, of which Wilks and the white fire-fighters were aware, but in which they were not parties. The Court rejected this argument. Instead, it concluded that the Federal Rules of Civil Procedure required that persons seeking to bind outsiders to the results of litigation have a duty to join them as parties, see Fed. R. Civ. P. 19, unless the court certified a class of defendants adequately represented by a named defendant, see Fed. R. Civ. P. 23. The Court specifically rejected the defendants' argument that a different rule should obtain in civil rights litigation.

This Section codifies that holding. Had the rule advocated by the City of Birmingham in Wilks been adopted in Hansberry, one judicial decree in one case between one plaintiff and one defendant would have prevented an attack on the racial covenant by anyone who had ever heard of the original case. That is not how the Federal Rules of Civil Procedure operate. And there is no reason why a different rule should be devised to prevent civil rights plaintiffs, as opposed to persons bringing all other kinds of cases, from bringing suit.

SECTION 6. PROHIBITION AGAINST RACIAL DISCRIMINATION IN THE MAKING AND PERFORMANCE OF CONTRACTS

Under 42 U.S.C. 1981, persons of all races have the same right "to make and enforce contracts." In *Patterson* v. *McLean Credit Union*, 109 S. Ct. 2363 (1989), the Supreme Court held: "The most obvious feature of the provision is the restriction of its scope to forbidding discrimination in the 'mak[ing] and enforce[ment]' of contracts alone. Where an alleged act of discrimination does not involve the impairment of one of these specific rights, [sec.] 1981 provides no relief."

As written, therefore, section 1981 provides insufficient protection against racial discrimination in the context of contracts. In particular, it provides no relief for discrimination in the performance of contracts (as contrasted with the making and enforcement of contracts). Section 1981, as amended by this Act, will provide a remedy for individuals who are subjected to discriminatory performance of their employment contracts (through racial harassment, for example) or are dismissed or denied promotions because of race. In addition, the discriminatory infringement of contractual rights that do not involve employment will be made actionable under section 1981. This will, for example, create a remedy for a black child who is admitted to a private school as required pursuant to section 1981, but is then subjected to discriminatory treatment in the performance of the contract once he or she is attending the school.

In addition to overruling the Patterson decision, this Section of the Act codifies the holding of *Runyon* v. *McCrary*, 427 U.S. 160 (1976), under which section 1981 prohibits private, as well as governmental, discrimination.

SECTION 7. EXPANSION OF RIGHT TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS

Section 7 overrules the holding in *Lorance* v. *AT&T Technologies, Inc.*, 109 St. Ct. 2261 (1989), in which female employees challenged a seniority system pursuant to Title VII, claiming that it was adopted with an intent to discriminate against women. Although the system was facially nondiscriminatory and treated all similarly situated employees alike, it produced demotions for the plaintiffs, who claimed that the employer had adopted the seniority system with the intention of altering their contractual rights. The Supreme Court held that the claim was barred by Title VII's requirement that a charge must be filed within 180 days (or 300 days if the matter can be referred to a state agency) after the alleged discrimination occurred.

The Court held that the time for plaintiffs to file their complaint began to run when the employer adopted the allegedly discriminatory seniority system, since it was the adoption of the system with a discriminatory purpose that allegedly violated their rights. According to the Court, that was the point at which plaintiffs suffered the diminution in employment status about which they complained.

The rule adopted by the Court is contrary to the position that had been taken by the Department of Justice and the EEOC. It shields existing seniority systems from legitimate discrimination claims. The discriminatory reasons for adoption of a seniority system may become apparent only when the system is finally applied to affect the employment status of the employees that it covers. At that time, the controversy between an employer and an employee can be focused more sharply.

In addition, a rule that limits challenges to the period immediately following adoption of a seniority system will promote unnecessary, as well as unfocused, litigation. Employees will be forced either to challenge the system before they have suffered harm or to remain forever silent. Given such a choice, employees who are unlikely ever to suffer harm from the seniority system may nonetheless feel that they must file a charge as a precautionary measure—an especially difficult choice since they may be understandably reluctant to initiate a lawsuit against an employer if they do not have to.

Finally, the Lorance rule will prevent employees who are hired more than 180 (or 300) days after adoption of a seniority system from ever challenging the adverse consequences of that system, regardless of how severe they may be. Such a rule fails to protect sufficiently the important interest in eliminating employment discrimination that is embodied in Title VII.

Likewise, a rule that an employee may sue only within 180 (or 300) days after becoming subject to a seniority system would be unfair to both employers and employees. The rule fails to protect seniority systems from delayed challenge, since so long as employees are being hired someone will be able to sue. And, while this rule would give every employee a theoretical opportunity to challenge a discriminatory seniority system, it would do so, in most instances, before the challenge was sufficiently focused and before it was clear that a challenge was necessary. Finally, most employees would be reluctant to begin their jobs by suing their employers.

This change in the law, therefore, is warranted. Indeed, it is necessary to safeguard the same principles upheld by the Supreme Court in *Martin* v *Wilks*, 109 S. Ct. 2180 (1989), which guarantees civil rights complainants a fair opportunity to present their claims in court.

SECTION 8. PROVIDING FOR ADDITIONAL REMEDIES FOR HARASSMENT IN THE WORKPLACE BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

This provision is designed to redress an anomaly in current law. Title VII prohibits discrimination in employment, but provides inadequate remedies for harassment in the workplace, including sexual harassment, which the Supreme Court has recognized as actionable under Title VII. see, *e.g.*, *Meritor Savings Bank, FSB* v. *Vinson*, 477 U.S. 57 (1986). Such harassment frequently will not be so intolerable that an employee subjected to it immediately leaves. In such circumstances, the only remedy the victim of harassment can obtain under Title VII's remedial scheme as currently drafted is declaratory and injunctive relief against continuation of the harassment.

Such a rule is plainly inequitable. It effectively tells employers that the only consequences of creating an environment so hos-

tile to an employee that he or she is forced to sue to obtain relief is a directive to refrain in the future. This defect must be corrected.

At the same time, Title VII's existing framework, with its emphasis on conciliation and mediation, has served the country well for more than a quarter of a century as a tool for combatting discrimination. It would be most unwise to jettison or rewrite this basic statute in favor of a tort-style approach including compensatory and punitive damages at a time when our tort system is widely recognized to be in crisis. President Bush has made it clear that our civil rights laws "should not be turned into some lawyer's bonanza, encouraging litigation at the expense of conciliation, mediation, or settlement."

Section 8 is designed to meet both of these concerns. It creates a new remedy for on-the-job harassment, allowing courts to make a monetary award in addition to granting declaratory and injunctive relief. The new remedy is available on the same terms for all forms of on-the-job harassment, whether based on race, color, religion, sex, or national origin.

The new remedy created by this Section is capped at $150,000. Courts are directed to make a monetary award when an additional equitable remedy is justified by the equities, is consistent with the purposes of Title VII, and is in the public interest. In weighing the equities and determining the amount of any award, courts are instructed to consider the nature of compliance programs implemented by the employer; the nature of the employer's complaint procedures, if any, used to resolve claims of harassment; whether the employer took prompt and effective remedial action upon learning of the harassment; the employer's size and the effect of the award on its economic viability (so that the maximum award would be available only against very large and financially secure employers); whether the harassment was willful or egregious; and the need, if any, to provide restitution for the complaining party.

This Section allows a court to make a monetary award "up to but not exceeding a total of $150,000." This language is intended to make clear that where there are several related incidents that could arguably be subdivided into distinct unlawful employment practices, the award that can be obtained under this new provision for all of them combined is limited to $150,000. Otherwise, plaintiffs and their lawyers will have incentives to spend resources on hair-splitting litigation over how many unlawful employment practices have occurred. $150,000 is a large enough amount to be an adequate and effective remedy for the type of conduct sought to be prevented, and no good purpose would be served by encouraging lawyers to use their inventiveness to circumvent the limitation of $150,000.

The substantive definition of harassment set out in Section 3 of this Act makes it an offense for an employer or its agents to harass any employee because of race, color, religion, sex, or national origin. The term "harass" encompasses "the subjection of an individual to conduct that creates a working environment that would be found intimidating, hostile or offensive by a reasonable person." The definition also explicitly defines sexual harassment to include certain conduct involving unwelcome sexual advances. The definition is intended to codify current law as stated by the Supreme Court. See *Meritor Savings Bank, supra*, 477 U.S., at 66 ("Since the Guidelines were issued, courts have uniformly held, and we agree, that a plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment.").

The new provisions of Title VII established in this Section are designed to deter and provide restitution for harassment, and to encourage employers to adopt meaningful complaint procedures to redress harassment and to encourage employees to use them. The employer will not be found liable if the complaining party failed to avail himself or herself of an effective complaint procedure. In determining the appropriate remedy, moreover, courts will consider whether an employer took prompt and effective remedial action. The effect of these requirements will be to encourage preventive measures and prompt remedial action by employers and to minimize litigation, thus maximizing the speed and efficacy of relief.

This provision of the Act protects employers from liability only when they have established a procedure "for resolving complaints of harassment in an effective fashion within a period not exceeding 90 days." Procedures under which victims of harassment are required to seek relief from the same supervisor who has engaged in the harassing conduct, or under which victims would otherwise reasonably expect their complaints to result in retaliation against them rather than in a fair investigation and effective resolution of their complaint, will not insulate the employer from liability. The new provisions of Title VII allow an employee, moreover, to petition a court for emergency relief, and they provide that the continued suffering of harassment shall be assumed to be sufficient irreparable harm to warrant judicial relief, whether or not the employee has fully exhausted a complaint procedure, so long as the employee has initiated a complaint.

This Section includes a provision reaffirming that Congress intends all issues to be decided by judges, as has always been the case under Title VII. Such a provision is important in avoiding the creation of an inefficient tort-style litigation system that is foreign to the purposes of employment law. Because the courts have relatively limited experience with harassment cases, because particular cases will undoubtedly raise issues requiring clarification, and because employers therefore require the information contained in written judicial opinions to assist them in conforming their conduct with the law, it is particularly important to avoid a profusion of unexplained and inconsistent jury verdicts if possible.

Because the monetary relief authorized in these amendments to Title VII is characterized as equitable, the courts should find that bench trials are consistent with the Seventh Amendment. Because the question of constitutionality is not free from doubt, however, this Section also provides that should a court hold that a jury trial with respect to issues of liability is constitutionally required, it may empanel a jury to hear those issues and no others. This ensures that the additional relief this scheme makes available will not become a dead letter should the courts conclude that the Seventh Amendment requires a jury trial on liability. See *Tull* v. *United States*, 107 S. Ct. 1831 (1967).

SECTION 9. ALLOWING THE AWARD OF EXPERT FEES

Section 9 authorizes the recovery of expert witness fees (up to but not exceeding $300 per day) by prevailing parties according to the same standards that govern awards of attorney fees under Title VII. *Cf. Crawford Fitting Co.* v. *J.T. Gibbons, Inc.*, 482 U.S. 437 (1987). The provision is intended to allow recovery for work done in preparation for trial as well as after trial has begun, with the cap applying to each witness.

SECTION 10. PROVIDING FOR INTEREST AND EXTENDING THE STATUTE OF LIMITATIONS, IN ACTIONS AGAINST THE FEDERAL GOVERNMENT

Section 10 extends the period for filing a complaint against the Federal government pursuant to Title VII from 30 days to 90 days. It also authorizes the payment of interest to compensate for delay in the payment of a judgment according to the same rules that govern such payments in actions against private parties.

SECTION 11. PROVIDING CIVIL RIGHTS PROTECTIONS TO CONGRESSIONAL EMPLOYEES

Section 11 extends the protections of Title VII to congressional employees on the same basis that they extend to Executive branch employees. The Executive branch, like private employers and state and local governments, is forbidden by law to discriminate on the basis of race, color, religion, sex, or national origin. The Congress, however, has exempted itself from the law. President Bush has stated that Congress "should live by the same requirements it prescribes for others" and that Congress "should join the Executive branch in setting an example for these private employers."

In addition to setting a helpful example, and providing congressional employees with the same rights enjoyed by other Americans, coverage under Title VII will provide the Congress with the valuable experience of living under the same rules that it imposes on other employers. This experience should prove useful in encouraging the Congress to give prompt and serious consideration to proposals for improving the law and enabling the Congress to resist ill-considered proposals—like the bill that President Bush vetoed on October 22, 1990—that would undermine the cause of civil rights and impose completely unjustified burdens on the employers of this nation.

It should be emphasized that this Section allows the Congress to create its own internal mechanisms for enforcing Title VII in the legislative branch. Like Executive branch employees, congressional employees would retain the right to judicial relief, but the Executive branch would have absolutely no role in enforcing Title VII against the Congress. For that reason, any objection to this Section on separation-of-powers grounds would not be well-founded.

SECTION 12. ALTERNATIVE MEANS OF DISPUTE RESOLUTION

This provision encourages the use of alternative means of dispute resolution, including binding arbitration, where the parties knowingly and voluntarily elect to use these methods.

In light of the litigation crisis facing this country and the increasing sophistication and reliability of alternatives to litigation, there is no reason to disfavor the use of such forums.

SECTION 13. SEVERABILITY

Section 13 states that if a provision of this Act is found invalid, that finding will not affect the remainder of the Act.

SECTION 14. EFFECTIVE DATE

Section 14 specifies that the Act and the amendments made by the Act take effect upon enactment, and will not apply to cases arising before the effective date of the Act.

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, March 1, 1991.

Hon. J. DANFORTH QUAYLE,
President of the Senate,
U.S. Senate, Washington, DC.

DEAR MR. PRESIDENT: I am pleased to transmit a legislative proposal to make several significant improvements in our Nation's employment discrimination laws, along with a section-by-section analysis explaining the proposal. This bill reflects the President's longstanding commitment, recently reaffirmed in his State of the Union Address, to strengthening the legal tools designed to eliminate the intolerable blight of discrimination from our society. This package will accomplish the four major objectives the President set out in his address to civil rights leaders on May 17, 1990.

First, as the President has said, any civil rights bill must "operate to obliterate consideration of factors such as race, color, religion, sex, or national origin from employment decisions." Under this proposal, employers will be encouraged and required to provide equal opportunity for all workers without resorting to quotas or other unfair preferences. The bill codifies a cause of action for "disparate impact," as recognized in *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), which outlawed certain practices that unintentionally but disproportionately exclude individuals from certain jobs because of their race, color, religion, sex, or national origin. With respect to these "disparate impact" cases, the bill places the burden of proof on the employer to demonstrate "business necessity," thereby overruling a contrary ruling in *Wards Cove Packing Co.* v. *Antonio*, 109 S. Ct. 2115 (1989).

The bill greatly expands the prohibition against racial discrimination in the performance of contracts under 42 U.S.C. 1981, and overturns the decision in *Patterson* v. *McLean Credit Union*, 109 S. Ct. 2363 (1989). In addition, this proposal amends Title VII to eliminate a need less and unfair limitation on the time for filing challenges to discriminatory seniority systems, overruling *Lorance* v. *AT&T Technologies, Inc.*, 109 S. Ct. 2261 (1989). Similarly, in the interest of ensuring that legitimate claims can be pursued, the bill extends the time for filing a Title VII claim against the Federal government from 30 to 90 days.

The bill also permits the courts to make awards to prevailing parties for the fees of expert witnesses, and authorizes the award of interest in actions against the Federal government on the same terms on which such awards are available against other parties.

The second requirement established by the President is that a bill must "reflect fundamental principles of fairness that apply throughout our legal system." Accordingly, this bill expressly provides that the Federal Rules of Civil Procedure shall apply in determining who is bound by an employment discrimination decree, must as they apply in other civil causes of action. This provision ensures that the standard rules of joinder and intervention will operate to give all victims of illegal discrimination a fair opportunity to protect their constitutional and civil rights in court.

The third essential element of a civil rights bill is a provision to ensure that Federal law provides an adequate deterrent against sexual harassment in the workplace. Under current law, the only judicial remedy for many cases of such harassment is a directive to refrain from such conduct in the future. This cannot provide adequate deterrence. In order to rectify this shortcoming, the bill makes available new monetary remedies for the victims of illegal harassment under Title VII.

The President has also insisted, however, that our civil rights laws not be "turned into some lawyer's bonanza, encouraging litigation at the expense of conciliation, mediation, or settlement." Accordingly, this proposal for the creation of a new monetary remedy under Title VII provides for bench trials, and it caps the monetary award at $150,000. The bill also includes special incentives for employers to develop and implement meaningful internal complaint procedures for harassment claims, while allowing employees to obtain emergency relief from the courts when employers fail to respond quickly and effectively to complaints of illegal behavior. More generally, the bill encourages the use of alternatives to litigation in resolving disputes under our civil rights laws.

Fourth, the President has said that the Congress should live by the same requirements it prescribes for others. Accordingly, this bill eliminates the congressional exemption from Title VII of the Civil Rights Act of 1964, and gives congressional employees the same fundamental protections that employees of the Executive branch have enjoyed for many years. The bill gives the Executive no role in enforcing the law against the Congress, allowing the Congress to establish its own mechanisms for enforcement. Congressional employees, like employees of the Executive branch, will be able to maintain a private right of action upon exhaustion of their administrative remedies.

Finally, the President has observed that the Congress must also take action in other areas to enhance equal opportunity. The elimination of employment discrimination, which is the aim of this bill, will have little meaning unless jobs are available and individuals have the skills and education needed to fill them. Nor can we expect young people to achieve their full potential if they grow up in neighborhoods and schools permeated by violence, drugs, and hopelessness. The Administration is proposing several initiatives to enable individual Americans to claim control over their own lives and futures. Enactment of those initiatives, along with this bill, will achieve real advances for the cause of equal opportunity.

Very truly yours,

DICK THORNBURGH,
Attorney General.

Mr. HATCH. Mr. President, I am pleased to cosponsor the administration's civil rights bill. We can enact true equal opportunity legislation without creating incentives to hire and promote by quota, without stripping some innocent Americans of their right to a day in court to have their equal protection and statutory civil rights claims heard, and without providing a bonanza for lawyers.

I am pleased that the bill overturns the *Lorance* v. *AT&T Technologies, Inc.*, 109 S.Ct. 2261 (1989) decision and the *Patterson* v. *McLean Credit Union*, 109 S.Ct. 2363 (1989) decision. In Lorance, the Court ruled that an employee challenge to a seniority system pursuant to title VII must be filed within 180 days—or 300 days if the matter can be referred to a State agency—after the alleged discrimination occurred. The Court held that the discrimination occurred at the adoption of a facially neutral seniority system which was allegedly selected for the purpose of discriminating against women. As such, the Court ruled all challenges to that system had to be made within 180 days of its adoption or they would be barred. The administration's bill eliminates this shield against these legitimate discrimination claims. Section 7 of the bill preserved title VII claims in such cases until after the "person aggrieved is injured by the application of the seniority system."

In Patterson, the Court construed section 1981, which bans racial discrimination in contracts, to apply only to the formation and enforcement of contracts, not to racial discrimination in the terms and conditions of the contract, such as racial harassment on the job which does not lead to dismissal. Section 6 of the administration's bill allows section 1981 claims to be based on "the making, performance, modification and termination of contracts." This section protects the employee's "enjoyment of all benefits, privileges, terms and conditions of the contract," thus overturning Patterson and barring, inter alia, racial harassment.

The administration's bill also adds to title VII an effective remedy for sexual and other harassment on the job. Under title VII, in certain circumstances the only remedy available for illegal harassment in the workplace is declaratory and injunctive relief against continuation of the harassment. Section 8 of the administration's bill makes available new monetary remedies for victims of illegal harassment under title VII.

These are very important and worthy provisions which we should enact. I commend the President for pressing for these changes.

With respect to the bill's provisions on the *Wards Cove* v. *Antonio* 109 S.Ct. 2115 (1989) decision, which I believe was correctly decided and is consistent with *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971), I have one reservation. I do not believe it is appropriate to shift the burden of persuasion to the employer once the plaintiff establishes a prima facie case of disparate impact for the reasons I set forth at length during last year's debate this year.

I do believe, however, this bill contains many worthy features and I want to associate myself with those provisions.

Mr. MCCAIN. Mr. President, Congress has a duty, prescribed over 200 years ago by our Founding Fathers, to further the cause of equality in our Nation, and make the American dream equally available to all. I believe that Congress has done an admirable, albeit sometimes inexcusably slow, job in fulfilling this mandate. However, Mr. President, we must do more. We must be tolerated.

This task is not taken lightly, and it is not always popular. However, I believe that Congress must act to advance the concepts of social and economic justice, even when the majority of society may not like them. I have consistently fought hard to maintain that goal, as when I voted to override former President Reagan's veto of the Civil Rights Restoration Act, and when I authored one of the main titles of the Americans With Disabilities Act.

Mr. President, a good example of the difficulties we encounter in trying to resolve these problems legislatively are the employer sanctions provisions included in the last reform of our immigrations laws. I strongly favor repealing employer sanctions. Congress clearly made a mistake when it passed that law. Employer sanctions have resulted in a disparate impact on Hispanics. In my home State of Arizona there is a large population of Hispanic people who reside there legally. The case is clear, however, that employer sanctions have encouraged employers to reject Hispanic job applicants for fear they will be found to be illegal aliens. The unfortunate result is higher unemployment rates among Hispanics, and we in Congress have an obligation to rectify this situation which we created.

The example of employer sanctions serves yet another purpose Mr. President. It graphically demonstrates that our Nation must never give up our fight for equal rights. If we for but 1 minute allow our attention to wane, we will be plagued by new forms of discrimination and inequality. For this reason, I also support modifying some of the recent Supreme Court decisions.

Specifically, the decision of the Court in the Wards Cove case is incorrect. For that reason, I support returning to the standards established in Griggs versus Duke (1971) and reaffirmed in New York City Transit Authority versus Beazer (1979). Additionally, I believe that we must provide remedies for harassment in the workplace due to race, color, religion, sex, disability, or national origin. For this reason, I am proud to cosponsor Senator DOLE's Civil Rights Act of 1991.

I strongly support title VII of the Civil Rights Act of 1964, and this legislation will serve to strengthen that landmark measure. Society must be color blind in its application of law and in its offering of opportunities. Unfortunately, some legislation that has been introduced, specifically H.R. 1, does not further that goal. Nobody should be discriminated against because of race, sex, religion, or ethnic origin, and that is what title VII prohibits. However, H.R. 1, by its authors' own admission to the New York Times, went considerably beyond this, and would have effectively required employers to institute quotas in their hiring practices, and I cannot support that. Mr. President, quotas simply legally sanction certain types of discrimination, and that is wrong.

Justice William O. Douglas made good sense when in commenting on our laws and hiring programs, he said that a university's law school admission system, "cannot be to produce black lawyers for blacks, Polish lawyers for Poles, Jewish lawyers for Jews, Irish lawyers for Irish."

It is unjust to discriminate against a person who is innocent of discrimination to advance another racial or ethnic person who was not discriminated against. When our laws either tolerate or require discrimination of any kind against citizens innocent of discrimination themselves, we are not serving justice, and we invite disrespect of law and tension in our society.

Mr. President, we need new civil rights legislation. We must ensure, however, that we do not repeat the mistakes of the past. To be exact, we need good civil rights legislation—legislation that will truly address the needs of America's diverse population without creating a litany of new problems. Our Nation is only as great as her citizens make her, and Americans have made our country the torchbearer of freedom, a country for all others to hold in esteem. This legislation will further that goal, and I hope for its quick passage.

By Mr. BENTSEN (for himself, Mr. ROTH, Mr. MITCHELL, Mr. FORD, Mr. PRYOR, Mr. DASCHLE, Mr. INOUYE, Mr. ROBB, Mr. COCHRAN, Mr. KASTEN, Mr. NICKLES, Mr. LOTT, Mr. BAUCUS, Mr. HEINZ, Mr. BOREN, Mr. SYMMS, Mr. RIEGLE, Mr. GRASSLEY, Mr. ROCKEFELLER, Mr. BREAUX, Mr. ADAMS, Mr. AKAKA, Mr. BINGAMAN, Mr. BOND, Mr. BROWN, Mr. BRYAN, Mr. BURDICK, Mr. BURNS, Mr. COHEN, Mr. CONRAD, Mr. CRAIG, Mr. CRANSTON, Mr. D'AMATO, Mr. DECONCINI, Mr. DIXON, Mr. DODD, Mr. DOMENICI, Mr. EXON, Mr. FOWLER, Mr. GARN, Mr. GLENN, Mr. GORE, Mr. GRAHAM, Mr. HARKIN, Mr. HATCH, Mr. HATFIELD, Mr. HELMS, Mr. HOLLINGS, Mr. JOHNSTON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. MACK, Ms. MIKULSKI, Mr. MURKOWSKI, Mr. NUNN, Mr. PELL, Mr. PRESSLER, Mr. REID, Mr. RUDMAN, Mr. SANFORD, Mr. SASSER, Mr. SEYMOUR, Mr. SHELBY, Mr. SIMON, Mr. SMITH, Mr. SPECTER, Mr. STEVENS, Mr. THURMOND, Mr. WARNER, and Mr. WELLSTONE):

S. 612. A bill to amend the Internal Revenue Code of 1986 to encourage savings and investment through individual retirement accounts, and for other purposes; to the Committee on Finance.

SAVINGS AND INVESTMENT INCENTIVE ACT OF 1991

Mr. BENTSEN. Mr. President, I rise, along with my distinguished colleague, the Senator from Delaware, Mr. ROTH, and 73 other cosponsors to bring back the individual retirement account—the IRA. We want to bring it back for all Americans. In fact, the bill is going to improve on the traditional retirement IRA. It is going to improve the IRA in a number of ways to make it an even more powerful tool for savings in this country.

The bill will provide every American with the option to choose between tax deductible contributions to a traditional IRA or contributions to a new type of IRA. Contributions to the new type of IRA would not be tax deductible, but all interest that is earned would come back tax free.

The bill also expands on the usefulness of the IRA by letting people use their IRA's, to save for college education, first home purchases, and financially devastating medical expenses.

The new options will give individuals greater flexibility to choose the savings vehicle that best suits their particular needs.

Why do we have to bring back the IRA? First, history shows that the underlying strength of America is the kind of economic growth that creates prosperity and opportunity for all of our people. The key to maintaining that kind of economic growth is savings. And the IRA helps stimulate savings. Today personal savings in this country is at an all time low—the lowest of any of our major economic competitors. In 1990 American consumers saved less than 5 cents out of every dollar earned. Compare that to Japan, where it is 16 cents on the dollar.

Related problem we are facing in this country is a real capital crunch. As we enter the 1990's, you are seeing a difference from the situation which prevailed through most of the last decade. In the 1980's, we were able to finance our debts and our budget deficits by the Japanese and others buying our securities. Now they are seeing serious real estate valuation problems in Japanese banks and problems in the Japanese real estate market generally. There are also problems in the Japanese stock market. In turn, West German capital, is being diverted into East Germany. And then, of course, the devastation that has occurred in the Persian Gulf, and the cost of its repair will also draw capital away from the United States.

So once again we are looking at a situation where there is going to be less capital available to build those new plants, to increase productivity, to lower the trade deficit, and to keep America more competitive in the world economy.

One of the things that can help turn that around is a restoration of the IRA. People understand the IRA. They like it, they will save in it, and they will invest through it.

In 1981, when we put in the full deductibility of the IRA, and expanded its utilization, IRA savings went up 700 percent. In 1987, when the full deductibility of the IRA was cut back, we saw a steep drop in the personal savings rate in this country. Ever since that time we have seen savings rates in this country 25 percent below the levels that prevailed in the early 1980's.

You hear a few economists yet who still say that IRA contributions are a shift of existing savings, but they are looking at old data. New studies by Dr. David Wise of Harvard's Kennedy School, Dr. Steven Venti of Dartmouth, Dr. Jonathan Skinner of University of Virginia, and others show that the IRA worked at increasing savings. Since the IRA was cut back as a part of the 1986 Tax Reform Act, we saw enrollments drop by over 60 percent. We saw contributions drop by close to 70 percent.

In the last Congress at hearings in the Finance Committee, Dr. Lawrence Summers of Harvard testified that the cutbacks in IRA eligibility in 1986 caused many families that still remained eligible for IRA's to stop putting their money in. According to Dr. Summers, we saw a 40-percent decrease in participation by those persons who still remained eligible. I think one of the principal reasons was because you had a great barrage of publicity—advertising that came along around April 15—that had everyone thinking about savings, thinking about IRA's and the $2,000 deduction they would get.

When all of that advertising stopped, you saw people turn their minds to other things. They cut back on the amount they saved for the future.

There is another reason we have to bring back the IRA. Americans are living longer. With longer periods in retirement, they will have to save more money to ensure a financially secure retirement. The Federal Government ought to be encouraging people to save, and the IRA is a proven tool to do it.

In addition, the expanded Bentsen-Roth IRA will encourage savings not only for retirement but also for two of the biggest investments people have to make in their lifetimes: their first home and college education.

Why not let the people make penalty-free withdrawals from their IRA accounts and similar section 401(k) and 403(b) plans for these specific purposes? Encouraging these savings is critical to ensuring that our children can afford to go to college. For a child born today, average college costs are expected to go to $200,000 for 4 years at a private university and $60,000 for public schools. Yet most Americans who expect their children to attend college save little or nothing for that purpose. The Bentsen-Roth bill would help people use the IRA to help save for college and vocational school expenses.

People do try to save for that first home, but they find themselves in a cycle they just cannot break. Housing costs go up faster than their income and many younger Americans can never put aside enough money for the down payment.

The Bentsen-Roth bill would help young couples use the tax advantages of the IRA to open the door to that first home. The bill will also allow parents and grandparents to tap their IRA funds to help their children and grandchildren buy a first home. That makes sense, and I thank my colleague from Michigan, Senator LEVIN, for his consistent support of that proposal.

Finally, health care costs today are almost 2½ times as high as they were at the start of the 1980's. With medical costs rising faster than paychecks, typical Americans find it very difficult to hold onto their health insurance to take care of a catastrophic illness that might come along.

This bill would give people access to their IRA balance in an emergency. I think having that access will also make it more likely they will put that money aside in the first place, thus increasing savings.

There are no easy, painless answers to tough problems like high interest rates, high costs of education, housing and health care. But the newly expanded IRA can help in every instance. It will give Americans a flexible tool to save for a better tomorrow.

I know the key question that has become constant to every new idea in Government is, What will it cost? In the long run, it is going to make profit for America. It is going to build those new plants. It is going to increase income. It will result in more taxes finally being collected. But in the short term, yes, there will be a net cost, and we will pay for it.

As chairman of the Finance Committee, it is my policy to pursue only legislation that will not increase the deficit. So we are in the process of getting precise, credible cost estimates for this bill and we are developing the options to meet those costs without adding to the deficit. It will not be easy; it never is; but we will get it done.

I am pleased that so many of my colleagues on both sides of the aisle have already joined us in supporting the Bentsen-Roth IRA, now three-fourths of the Senate. I am going to call hearings in the Finance Committee very soon because I want to begin work as soon as possible on the job of enacting this important legislation. It is time that we took the IRA out of retirement and put it back to work helping Americans save for the future. The IRA allows people to invest in America's future at the same time they are investing in their own, and that is a gain for all Americans.

Mr. President, both the Senator from Delaware and I have been working on incentives for savings for many a year. I commend my colleague for the work that he has done in the past and am delighted to be working with him today on this important legislation.

I ask unanimous consent that the text of the bill and a brief summary thereof be printed in the RECORD.

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

S. 612

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Savings and Investment Incentive Act of 1991".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

TITLE I—RETIREMENT SAVINGS INCENTIVES

Subtitle A—Restoration of IRA Deduction

SEC. 101. RESTORATION OF IRA DEDUCTION.

(a) IN GENERAL.—Section 219 (relating to deduction for retirement savings) is amended by striking subsection (g) and by redesignating subsection (h) as subsection (g).

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (f) of section 219 is amended by striking paragraph (7).

(2) Paragraph (5) of section 408(d) is amended by striking the last sentence.

(3) Section 408(o) is amended by adding at the end thereof the following new paragraph:

"(5) TERMINATION.—This subsection shall not apply to any designated nondeductible contribution for any taxable year beginning after December 31, 1990."

(4) Subsection (b) of section 4973 is amended by striking the last sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

SEC. 102. INFLATION ADJUSTMENT FOR DEDUCTIBLE AMOUNT.

(a) IN GENERAL.—Section 219, as amended by section 101, is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) COST-OF-LIVING ADJUSTMENTS.—

"(1) IN GENERAL.—If this subsection applies to any calendar year, then each applicable dollar amount for any taxable year beginning in the adjustment period for such calendar year shall be equal to the sum of—

"(A) such applicable dollar amount for taxable years beginning in such calendar year, plus

"(B) $500.

"(2) YEARS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any calendar year if the excess (if any) of—

"(A) $2,000, increased by the cost-of-living adjustment for such calendar year, over

"(B) the applicable dollar amount in effect under subsection (b)(1)(A) for such calendar year,

is equal to or greater than $500.

"(3) COST-OF-LIVING ADJUSTMENT.—For purposes of this subsection—

"(A) IN GENERAL.—The cost-of-living adjustment for any calendar year is the percentage (if any) by which—

"(i) the CPI for such calendar year, exceeds

"(ii) the CPI for 1991.

"(B) CPI FOR ANY CALENDAR YEAR.—The CPI for any calendar year shall be determined in the same manner as under section 1(f)(4).

"(4) APPLICABLE DOLLAR AMOUNT.—For purposes of this subsection, the term 'applicable dollar amount' means the dollar amount in effect under any of the following provisions:

"(A) Subsection (b)(1)(A).

"(B) Subsection (c)(2)(A)(i).

"(C) The last sentence of subsection (c)(2).

"(5) ADJUSTMENT PERIOD.—For purposes of this subsection, the term 'adjustment period' means, with respect to any calendar year to which this subsection applies, the period—

"(A) beginning on the 1st day of the calendar year following such calendar year, and

"(B) ending on the last day of the next calendar year to which this subsection applies."

(b) CONFORMING AMENDMENTS.—

(1) Section 408(a)(1) is amended by striking "in excess of $2,000 on behalf of any individual" and inserting "on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)".

(2) Section 408(b)(2)(B) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(3) Section 408(j) is amended by striking "$2,000".

Subtitle B—Nondeductible Tax-Free IRAs

SEC. 111. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE INDIVIDUAL RETIREMENT ACCOUNTS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408 the following new section:

"SEC. 408A. SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.

"(a) GENERAL RULE.—Except as provided in this section, a special individual retirement account shall be treated for purposes of this title in the same manner as an individual retirement plan.

"(b) SPECIAL INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this title, the term 'special individual retirement account' means an individual retirement plan which is designated at the time of establishment of the plan as a special individual retirement account.

"(c) TREATMENT OF CONTRIBUTIONS.—

"(1) NO DEDUCTION ALLOWED.—No deduction shall be allowed under section 219 for a contribution to a special individual retirement account.

"(2) CONTRIBUTION LIMIT.—The aggregate amount of contributions for any taxable year to all special individual retirement accounts maintained for the benefit of an individual shall not exceed the excess (if any) of—

"(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year, over

"(B) the amount so allowed.

"(3) ROLLOVER CONTRIBUTIONS.—

"(A) IN GENERAL.—No rollover contribution may be made to a special individual retirement account unless such contribution consists of a payment or distribution out of another special individual retirement account.

"(B) COORDINATION WITH LIMIT.—A rollover contribution shall not be taken into account for purposes of paragraph (2).

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as provided in this subsection, any amount paid or distributed out of a special individual retirement account shall not be included in the gross income of the distributee.

"(2) EXCEPTION FOR EARNINGS ON CONTRIBUTIONS HELD LESS THAN 5 YEARS.—

"(A) IN GENERAL.—Any amount distributed out of a special individual retirement account which consists of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution shall be included in the gross income of the distributee for the taxable year in which the distribution occurs.

"(B) CROSS REFERENCE.—

"For additional tax for early withdrawal, see section 72(t).

"(C) ORDERING RULE.—

"(i) FIRST-IN, FIRST-OUT RULE.—Distributions from a special individual retirement account shall be treated as having been made—

"(I) first from the earliest contribution (and earnings allocable thereto) remaining in the account at the time of the distribution, and

"(II) then from other contributions (and earnings allocable thereto) in the order in which made.

"(ii) ALLOCATIONS BETWEEN CONTRIBUTIONS AND EARNINGS.—Any portion of a distribution allocated to a contribution (and earnings allocable thereto) shall be treated as allocated first to the earnings and then to the contribution.

"(iii) ALLOCATION OF EARNINGS.—Earnings shall be allocated to a contribution in such manner as the Secretary may by regulations prescribe.

"(iv) CONTRIBUTIONS IN SAME YEAR.—Under regulations, all contributions made during the same taxable year may be treated as 1 contribution for purposes of this subparagraph.

"(3) ROLLOVERS.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to any distribution which is transferred to another special individual retirement account.

"(B) CONTRIBUTION PERIOD.—For purposes of paragraph (2), the special individual retirement account to which any contributions are transferred from another special individual retirement account shall be treated as having held such contributions during any period such contributions were held (or are treated as held under this subparagraph) by the account from which transferred."

(b) EARLY WITHDRAWAL PENALTY.—Section 72(t), as amended by section 201(c), is amended by adding at the end thereof the following new paragraph:

"(8) RULES RELATING TO SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.—In the case of a special individual retirement account under section 408A—

"(A) this subsection shall only apply to distributions out of such account which consist of earnings allocable to contributions made to the account during the 5-year period ending on the day before such distribution, and

"(B) paragraph (2)(A)(i) shall not apply to any distribution described in subparagraph (A).

(c) EXCESS CONTRIBUTIONS.—Section 4973(b) is amended by adding at the end thereof the following new sentence: "For purposes of paragraphs (1)(B) and (2)(C), the amount allowable as a deduction under section 219 shall be computed without regard to section 408A.

(d) CONFORMING AMENDMENT.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 408 the following new item:

"Sec. 408A. Special individual retirement accounts."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1990.

TITLE II—PENALTY-FREE DISTRIBUTIONS

SEC. 201. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE USED WITHOUT PENALTY TO PURCHASE FIRST HOMES OR TO PAY HIGHER EDUCATION OR FINANCIALLY DEVASTATING MEDICAL EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 72(t) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end thereof the following new subparagraph:

"(D) DISTRIBUTIONS FROM CERTAIN PLANS FOR FIRST HOME PURCHASES OR EDUCATIONAL EXPENSES.—Distributions to an individual from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii)—

"(i) which are qualified first-time homebuyer distributions (as defined in paragraph (6)); or

"(ii) to the extent such distributions do not exceed the qualified higher education expenses (as defined in paragraph (7)) of the taxpayer for the taxable year."

(b) FINANCIALLY DEVASTATING MEDICAL EXPENSES.—Section 72(t)(3)(A) is amended by striking "(B),".

(c) DEFINITIONS.—Section 72(t) is amended by adding at the end thereof the following new paragraphs:

"(6) QUALIFIED FIRST-TIME HOMEBUYER DISTRIBUTIONS.—For purposes of paragraph (2)(D)(i)—

"(A) IN GENERAL.—The term 'qualified first-time homebuyer distribution' means any payment or distribution received by an individual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual or the child or grandchild of such individual.

"(B) QUALIFIED ACQUISITION COSTS.—For purposes of this paragraph, the term 'qualified acquisition costs' means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

"(C) FIRST-TIME HOMEBUYER; OTHER DEFINITIONS.—For purposes of this paragraph—

"(i) FIRST-TIME HOMEBUYER.—The term 'first-time homebuyer' means any individual if such individual (and if married, such individual's spouse) had no present ownership interest in a principal residence during the 2-year period ending on the date of acquisition of the principal residence to which this paragraph applies.

"(ii) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 1034.

"(iii) DATE OF ACQUISITION.—The term 'date of acquisition' means the date—

"(I) on which a binding contract to acquire the principal residence to which subparagraph (A) applies is entered into, or

"(II) on which construction or reconstruction of such a principal residence is commenced.

"(D) SPECIAL RULE WHERE DELAY IN ACQUISITION.—If—

"(i) any amount is paid or distributed from an individual retirement plan to an individual for purposes of being used as provided in subparagraph (A), and

"(ii) by reason of a delay in the acquisition of the residence, the requirements of subparagraph (A) cannot be met,

the amount so paid or distributed may be paid into an individual retirement plan as provided in section 408(d)(3)(A)(i) without regard to section 408(d)(3)(B), and, if so paid into such other plan, such amount shall not be taken into account in determining whether section 408(d)(3)(A)(i) applies to any other amount.

"(7) QUALIFIED HIGHER EDUCATION EXPENSES.—For purposes of paragraph (2)(D)(ii)—

"(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of—

"(i) the taxpayer,

"(ii) the taxpayer's spouse, or

"(iii) the taxpayer's child (as defined in section 151(c)(3)) or grandchild,

at an eligible educational institution (as defined in section 135(c)(3)).

"(B) COORDINATION WITH SAVINGS BOND PROVISIONS.—The amount of qualified higher education expenses for any taxable year shall be reduced by any amount excludable from gross income under section 135."

(d) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) is amended by striking "or" at the end of subclause (III), by striking "and" at the end of subclause (IV) and inserting "or", and by inserting after subclause (IV) the following new subclause:

"(V) the date on which qualified first-time homebuyer distributions (as defined in section 72(t)(6)) or distributions for qualified higher education expenses (as defined in section 72(t)(7)) are made, and".

(2) Section 403(b)(11) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by inserting after subparagraph (B) the following new subparagraph:

"(C) for qualified first-time homebuyer distributions (as defined in section 72(t)(6)) or for the payment of qualified higher education expenses (as defined in section 72(t)(7))."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after the date of the enactment of this Act.

BENTSEN-ROTH IRA

MAKE DEDUCTIBLE IRA'S AVAILABLE TO ALL AMERICANS

Under the Bentsen-Roth proposal, all Americans would once again be eligible for fully deductible IRAs.

Under current law, only those who are not covered by any other pension arrangement and those with incomes under $25,000 for individuals and $40,000 for married couples are allowed to fully deduct IRA contributions. Annual IRA contributions cannot exceed $2,000 per individual. The $25,000 and $40,000 income thresholds are not indexed for inflation with the result that fewer and fewer Americans are eligible for IRAs each year.

PROVIDE TAXPAYERS WITH ANOTHER IRA OPTION

Each individual would have the option of contributing $2,000 per year either to a traditional IRA or to a new type of IRA. The individual could contribute the full $2,000 to either type of account or could allocate any portion of the $2,000 limit to the different accounts (e.g., $1,000 to a traditional IRA and $1,000 to the new type of IRA). The $2,000 limit would also be indexed to reflect inflation.

Contributions to the new type of IRA would not be tax deductible, but if the assets remained in the account for at least 5 years all income would be tax-free when it is withdrawn. A 10% penalty would also apply to earnings withdrawn within the first 5 years.

PENALTY-FREE IRA WITHDRAWALS FOR FIRST-TIME HOMEBUYERS, EDUCATION EXPENSES AND FINANCIALLY DEVASTATING MEDICAL EXPENSES

The Bentsen-Roth IRA proposal would provide exemptions from the 10% penalty tax for withdrawals which are used to buy a first home, to pay educational expenses or to defray financially devastating medical expenses.

Under current law, withdrawals from IRAs are generally subject to a 10% penalty if made prior to age 59½. There are no exceptions to this 10% penalty for withdrawals used for first-time home purchases, higher education expenses, or medical expenses.

Young couples, their parents or their grandparents could draw down IRAs to pay for first-time home purchases without paying the 10% penalty tax for early withdrawals.

Parents or grandparents could draw down IRAs without penalty to pay for the education of their child or grandchild. High school students with part-time jobs could put their earnings into a tax-favored IRA and withdraw the money later for college tuition without penalty. An individual wanting to go back to school after a few years in the work force could use the IRA to save for anticipated education expenses.

Individuals with medical expenses (for themselves or their dependents) in excess of 7.5% of their income could make penalty-free withdrawals to help cover those expenses.

PENALTY-FREE WITHDRAWALS FROM 401(K) AND 403(B) PLANS FOR FIRST HOME PURCHASES AND EDUCATIONAL EXPENSES

Under the Bentsen-Roth bill, employees could make penalty-free withdrawals of their own contributions to 401(k) and 403(b) plans to assist with first-home purchase or educational expenses. These rules would be similar to the expanded rules provided for IRAs. Penalty-free withdrawals from 403(b) and 401(k) plans for high medical expenses are already permitted.

Section 401(k) and 403(b) plans are employer-provided retirement plans that allow employees to make tax-free contributions out of their paychecks. Under current law, once an employee makes a contribution to a 401(k) or 403(b) plan, withdrawals are generally subject to a 10% penalty tax similar to that applied to early withdrawals from IRAs.

SUPER IRA

Mr. ROTH. Mr. President, it is, indeed, an honor and a privilege for me to join our distinguished chairman, Senator BENTSEN, today, to announce the introduction of a granddaddy of an IRA plan, with wide bipartisan support, both on the Finance Committee and in the Senate. This is a matter that has been of great interest to both of us down through the years. I think by our bipartisan approach, we have an opportunity to move this country ahead.

Mr. President, as early as the late seventies, throughout the eighties, and now into the nineties, I have realized the tremendous need for the IRA. I promoted it in 1981, tried to save it in 1986 and, indeed, am heartened by the prospect of this legislation. Bentsen-Roth is a bill that we have worked long and hard to achieve, a bill that I believe is extremely well-conceived and one that promotes the two most important concerns facing us today: the family and the future of our economy.

Never have these two concerns been more important than they are right now—at a time when the family is being recognized, once again, as the most valuable unit of our society, and when the global community is redefining the nature of superpowers, not by the strength of their arms, but by the strength of their economies.

It is clear Congress not only understands these changes, and what they represent to the future of our country, but is willing to advance—in a strong bipartisan way—this proposal that addresses the needs of the changing environment.

You see, what sets this bill apart from other efforts in other years to restore the IRA is the fact that almost everyone seems to be working together this time. The fact that 71 Senators, including 13 on the Finance Committee, have joined together makes the passage of this legislation much more likely this year.

I believe this growing consensus demonstrates that Members are in agreement concerning the fact that if America is to compete in the emerging global community—if we are to have jobs and security for our families here at home—Americans must increase their rate of savings.

Congress understands that the issue of savings in this country has reached crisis proportions. The Chairman of the Federal Reserve, Alan Greenspan, recently told the Senate Banking Committee that the single most important long-term economic issue for America is that of national savings.

I believe it is the responsibility of Congress to make the job of saving as attractive as possible for the American family. And I strongly believe that the Tax Code is the best way to increase the national savings trade.

We all know the statistics: The Japanese save at a rate approximately four times that of our countrymen, largely—I believe—because of tax incentives they enjoy that encourage savings.

Japan has the highest personal saving rate among advanced nations. Consequently, that country enjoys ample funds needed to finance capital investment in the best and most productive equipment. That country's businesses and workers have the most advanced

tools available in the global marketplace.

Meanwhile, the U.S. Government levies a heavy tax burden on saving and capital. Though the American economy has many strengths, our tax policy hampers our ability to compete with the advantages offered by Japan. Our punitive antisavings and anti-investment Tax Code is crippling our competitiveness at a turning point in economic history.

We must remember that we cannot tax ourselves into prosperity. By suppressing saving and capital investment now, we are crippling our economy for the challenges of the future.

To reverse this process, one of the most important questions we must answer is how to encourage Americans to save more. And frankly, I believe the Bentsen-Roth bill provides a significant part of that answer.

This bill has been crafted not only to encourage those who traditionally save, but to bring new savers into the act.

This bill recognizes that there are other important reasons for Americans to save long term, besides the pressing economic needs of our country and the savers' respective needs for retirement.

For example, our young people today are finding an almost impossible time scraping together a downpayment for that first home. Our families are finding it more difficult to save for their children's college education. And, our older Americans are worrying about their security as retirement approaches, not to mention the escalating costs associated with health care.

Given these basic—but most important—necessities, the best answer to meet our savings needs is a bill that allows Americans to save for what they need most. And that is the approach that Senator BENTSEN and I have taken in drafting this legislation. This legislation allows savers the chance to use the IRA to help them pay for a college education, buy their first home or pay for financially strapping health costs.

Under these three conditions, the IRA savings can be withdrawn penalty free, and the best part is that is multigenerational in approach. In other words, grandparents, parents, and children can use their IRA savings to look after each other. The grandparents can help with the education of grandchildren.

Grandchildren can withdraw penalty free to provide health care for their dependent grandparents.

Parents can help with the first-time home purchases of their children, as well as use their IRA's to pay for college.

By allowing Americans the ability to withdraw IRA savings—savings once reserved for retirement only—for these additional purposes, without a penalty for early withdrawal, we have greatly enhanced the flexibility of the IRA and strongly encouraged Americans to put more savings away.

This is what real "Empowerment" is all about—empowerment for the family—empowerment because once again Americans can save for their own, and their family's own, self-reliance.

As I mentioned earlier, this new IRA offers a renewed opportunity to increase America's competitiveness in the emerging global economy. It is an opportunity borne by the fact that savings equal investment, investment equals jobs, and jobs equal a strong, vibrant economy. It has been estimated that after the first year this legislation is enacted, IRA deposits will increase to as much as $40 billion.

This represents long-awaited capital that the U.S. needs for investment, manufacturing, education, infrastructure, and other important goals.

With a Japanese savings rate of about four times the United States rate, and a cost of capital of about one-fourth that of the United States, it is no wonder that we are lagging behind in the international race to compete in the world.

Added savings of $40 billion and more from increasing annual IRA deposits is likely to be the best solution. And do not forget the benefit to the already weakened financial infrastructure in this country. The estimated deposits in U.S. banks in the first year alone from this legislation would be about $16 billion—money needed to provide productive loans and investment in this country for years to come.

Perhaps with the added savings from IRA's we can further our own investment in the United States rather than U.S. investments by foreign countries.

In fact, in recent years, over half of net domestic investment has been financed by capital from abroad. While this foreign saving has contributed to U.S. economic growth over the years, we are beginning to see why continued reliance on these inflows is not a viable policy.

Over long periods, for advanced countries, the rate of domestic investment tracks closely the supply of domestic saving. Ultimately, the United States must move from a position of current account deficit to surplus and capital outflow, as foreigners receive the returns on their investment in the United States. If that is to happen without a relative reduction in U.S. living standards, U.S. productive capacity must be increased and so must U.S. savings.

It is clear to see why Bentsen-Roth is a bill whose time has come. However—once again—the most important reason to pass it is to meet the needs of the most basic unit of our society. It is time we get back to the family. Only by allowing American families the opportunity—and even the right—to strengthen themselves can we expect society to be strengthened as a whole.

We have tried to work around this elementary truth for years now—some thinking that Government programs can replace the basic family unit.

Fortunately, we have come full circle—back to the understanding that it was family and community values that built a strong America, and it will be those same values that ensure a bright and prosperous future.

Mr. HEINZ. Mr. President, I am pleased to join a majority of my colleagues today in cosponsoring legislation designed not only to reinstate pre-1986 tax treatment of individual retirement accounts [IRA's], but to improve them as well. This bill addresses a problem that has concerned me for some time—the continually declining savings rate in this country.

According to the Department of Commerce Bureau of Economic Analysis—national income accounts—net private domestic saving in this country, which averaged 8 percent of the gross national product [GNP] between 1960 and 1981, steadily declined in the 1980's, and dropped from 5.3 to 4.2 percent between 1986—when the Congress repealed tax-deferred IRA contribution treatment for many Americans—and 1990.

A recent study conducted by professors Steven F. Venti of Dartmouth and David A. Wise of Harvard concludes that the reinstatement of tax-deductible IRA's would lead to higher personal savings. The study also presents evidence suggesting that the majority of IRA savings from 1982–85 represented "new" savings, not a shift from one form of savings to another, but a reduction in consumption and tax burden.

The low U.S. private savings rate contributes to high real costs of capital and higher trade deficits. Increased savings will lower interest rates, increase domestic investment, reduce Federal borrowing costs, and increase productivity and growth. It is because I believe that it would be irresponsible not to act to correct the pervasive problem of our declining net savings rate, that I have joined with Senators BENTSEN and ROTH in cosponsoring this bill today. However, I believe that this bill is just a first step to achieving the important goals of an increased net savings rate, a competitive net investment rate, and a lower cost of capital in this country. That is why I plan to introduce legislation in the near future that will expand upon this legislation and encompass a plan to achieve these goals.

The initiative which we are introducing today, will reinstate the tax-deductibility of IRA contributions for all Americans, or in the alternative allow tax-free earnings to investors, providing tremendous incentive for Americans to save rather than consume. In addition to providing many with a cushion for retirement, it will allow early penalty-free withdrawal for cer-

tain expenses: education; home ownership; and, catastrophic medical costs. All of which will help provide a better quality of life for Americans investing in IRA's.

In addition to providing for an expanded IRA with early withdrawal options for these certain justifiable reasons, the bill I plan to soon introduce will also provide an additional incentive to those who invest their IRA contributions in equities, which should improve the investment rate considerably. My bill will more directly address the "cost of capital" issue as well. It will allow for indexing of one's basis for inflation, so that upon the sale of capital assets individuals will no longer be taxed on illusory or phantom gain attributable solely to inflation.

As we discuss the merits of this IRA bill—and we most certainly will over the coming weeks—I ask that my colleagues keep an open mind and consider expanding the good idea embodied in the Bentsen-Roth bill to meet all the goals I have outlined today. It is only by achieving these goals that we can ensure America's future—both in terms of offering the best quality of life for its citizens and as an economic leader in the new global marketplace; something that is of vital importance to us all.

Mr. LEVIN. Mr. President, I am pleased to join with Senator BENTSEN in introducing this legislation to expand the eligibility for tax deductible contributions to individual retirement accounts. This legislation will help to address the need from both an individual and national perspective to increase savings. In doing so, I will correct a mistake which was made in the Tax Reform Act of 1986 and which, in fact, was one of the reasons why I voted against that bill.

I am particularly gratified to see that the legislation introduced today includes in it a provision which was embodied in legislation I introduced last year dealing with the use of IRA funds by first time home buyers. I believe that IRA funds are an important pool of savings which might make the purchase of a home more affordable. At the same time, I recognize that many first time home buyers have not worked long enough to make significant contributions to their own IRA's. Therefore, last year I introduced S. 2517, which provided that penalty free withdrawals from IRA's for the first time purchase of a home could be made not only by the first time home buyers themselves, but also by their parents and grandparents on their behalf. I believe this provision will provide first time home buyers with an additional option in their efforts to make the American dream of home ownership a reality for them.

Mr. SEYMOUR. Mr. President, I rise today as an original cosponsor of the Super IRA bill introduced by my distinguished colleagues, Senators BENTSEN and ROTH.

As many of my colleagues have explained, this bill allows individuals to withdraw money, penalty-free, from their IRA accounts for first-time home purchases, college education costs, and financially devastating medical expenses. These are three very important basic needs that ensure quality-of-life of all Americans.

Quite simply, housing and education costs have priced too many families out of the American dreams of college and home ownership. And the way the laws are written now, we are, in effect, penalizing young people and middle-income families who want to save money. This bill restores the incentives for Americans to save for some of the most important investments they will ever make.

For example, in California, the Housing Affordability Index for January 1991 indicated that only 21 percent of the households in my State could qualify for a median priced single family home. For first-time home buyers, the median cost of a home is currently $160,000, requiring a downpayment of $24,000.

This measure is designed to provide new mechanisms for the first time home buyer to save for a downpayment. Under this bill, families will be able to tap into their IRA accounts for a downpayment to purchase their first home. Furthermore, parents and grandparents will be able to assist their children without penalty for early withdrawal of their retirement savings.

All Americans, particularly those of us with children, are also concerned that access to higher education remains a reality. It is a proven fact that an educated population provides for a stronger, more powerful economy, creates more jobs, and costs the States far less in welfare rolls. The Federal Government must do all that it can to assist families as they work and save to ensure that our Nation's youth can get a college education.

This year, the Regents of the University of California voted to increase the tuition at their campuses by 40 percent. Over the past decade, the cost of attending a public university in California rose approximately 45 percent, and conservative estimates suggest that costs could increase by as much as 60 percent by the year 2000. At that time, the average total cost of attending a public university in California may reach $80,000 to $100,000.

Mr. President, ensuring that young Americans are not priced out of higher education must be a top priority, and this bill represents a vital step in the right direction.

Another potential burden for families that have worked hard and saved for a home and set aside money for their chidren's education, is the risk that unexpected medical costs can destroy those savings. This bill will give families peace of mind in the knowledge that their IRA funds are available for such emergencies.

This bill is not a panacea to the problems of affordable housing, college education expenses, and catastrophic illness costs, but it does give the working men and women of America an additional tool to provide for these expenses. This measure proactively encourages our young people and their families to save for their futures with the knowledge that the Government isn't going to penalize them for making a sound investment.

Mr. President, in the California Senate, I introduced similar proposals to assist first-time home buyers and parents of college-bound children, and am proud to be a part of this valuable and timely Federal legislation.

Mr. DOMENICI. Mr. President, I am pleased to join Senator BENTSEN, Senator ROTH, and many of my other colleagues in introducing the super IRA legislation.

The bill would give all Americans the right to invest in an individual retirement account. The bill is flexibly designed to meet the needs of every American family by giving them the choice between making a tax deductible contribution to a traditional IRA; a nondeductible contribution to a back-ended IRA; or splitting a contribution between the two types of accounts.

The legislation would restore the universal availability of the pre-1986, traditional IRA. The traditional IRA allows amounts up to $2,000 to be contributed each year. The contribution is tax deductible, but the interest income would be taxed upon withdrawal after age 59½.

Under the back-ended plan, initial contributions would not be tax deductible, but if the contribution remains in the account for at least 5 years, all income would be tax-free when it is withdrawn.

There is also a "Plus" component to either IRA plan. The legislation recognizes the hopes, dreams and expensive reality of buying a first home, paying for college or meeting unexpected medical bills. The legislation allows early, penalty free withdrawals for each of these three good purposes. This is why the proposal is called "IRA Plus."

College costs a lot.

For a child born today, the day this bill is introduced, the average undergraduate college education is expected to exceed $200,000 for private universities and $60,000 for state run universities.

Financing college must be nationally recognized as a partnership among parents, students, institutions of higher education and the Federal Government. Super IRA's are important to that partnership.

Buying a first home costs a lot too.

Individuals age 25 to 34 are the group statisticians call the "principal household-forming section of the population." This is the age group some of us think of as our sons and daughters. Research shows that for these 25 to 34 year-olds the primary impediment to homeownership is saving for the down payment. Super IRA's can remove that impediment. It provides an incentive for young families to save for a first-time home. It allows parents and grandparents to withdraw funds to help with that first-time home purchase too. The proposal recognizes that families like, and need, to help each other.

It doesn't take much of an illness to have a catastrophic impact on the family budget. For this reason Super IRA's would allow penalty free withdrawals to defray financially devastating medical expenses.

IRA's are a simple and effective savings plan. They are easily understood and can be set up with a minimum amount of paperwork and red tape. It is a flexible program enabling IRA participants to exercise their own freedom of investment choice through a variety of financial institutions that offer a broad selection of investment products.

Congress knows that IRA's were popular and widely used by American families prior to 1986.

Savings in the U.S. has been declining and the experts are puzzled as to the reasons why. We do know that as the baby boom generation has matured, we have experienced a national emphasis upon consumption.

One of the baby boomers that I saw recently wore a button, "Immediate gratification is not soon enough." We need to change that attitude. We need to provide better incentives for Americans to save. And since we know that Americans like, understand, and will contribute to IRA's, Super IRA's could be the mechanism to help change the "consume it now" culture.

Changing the attitude toward savings is vital to our economic well being. A country that saves more, prospers more.

Higher rates of savings leads to greater national wealth and a higher standard of living for the future. Higher rates of savings lead to a lower cost of capital that can make us more competitive. Lower costs of capital means that the boss can build that additional factory and provide more and better jobs.

During meetings of the National Economic Commission countless economists testified that increasing America's savings rate was as important as reducing the deficit and that both were the most pressing issues facing the long term economic prosperity of this Nation.

When Americans save, they are really investing in America and our Tax Code should reflect that national priority. Our major trading partners encourage saving in their tax code, and so should we.

When Congress legislates changes in the Tax Code which create initiatives for increasing saving and investment, it unfortunately reduces revenues and results in a higher deficit. We will not increase overall saving in our country if private saving is increased at the expense of government dissaving. Economists tell us the best way to improve saving in the United States is to reduce the Federal deficit—I am not about to abandon that goal.

It's a fact of life and the law of the land that enacting "IRA Plus" would require Congress to "pay as you go." We need to find a revenue offset, and my support of this bill is contingent on finding that offset.

We do not have an estimate for the revenue loss resulting from this proposal yet. But I suspect it will be significant. I commend the Chairman and Senator ROTH for their recognition that an offset must be found before this legislation can be enacted.

I look forward to working with the committee to increase America's saving rate.

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

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

SUPER IRA LEGISLATION PROVIDES

Each individual would have the option to contribute $2,000 per year to a traditional IRA or a new IRA Plus. The individual could contribute the full $2,000 to either type of account or could allocate any portion of the $2,000 limit to the different types of accounts.

Contributions to the new type of IRA would not be tax deductible, but if the assets remained in the account for at least 5 years all income would be tax-free when it is withdrawn.

A 10% penalty would apply to withdrawals within the first five years.

Provides Penalty-Free IRA Withdrawals for First-Time Homebuyers, Education Expenses and Devastating Medical Expenses.

Singles, young couples, their parents or their grandparents would be allowed to withdraw IRA funds, penalty free to pay for:

First-time home purchases for themselves, for children or grandchildren;

Education for children or grandchildren;

Taxpayers incurring medical expenses for themselves or their dependents in excess of 7.5% of their income could make penalty-free withdrawals to help cover those expenses.

Section 401(k) and 403(b) Plans are employer-provided retirement plans that allow an employee to make tax-free contributions out of their paychecks. Once an employee makes a contribution to a 401(k) or 403(b) plan, withdrawals are generally subject to a 10 percent penalty tax similar to that applied to early withdrawals from IRAs.

Employees would be allowed to make penalty-free withdrawals of their contributions to 401(k) and 403(b) plans for first-time home purchases or educational expenses. Rules would be similar to the expanded rules provided for IRSs. Penalty-free withdrawals from 403(b) and 401(k) plans for medical expenses are already permitted.

CURRENT LAW

All individuals are eligible to make IRA contributions, but only those who are not covered by any other pension plan and those with incomes under $25,000 for individuals or under $40,000 for married couples are allowed to fully deduct their IRA contributions.

Withdrawals are subject to ordinary income tax and a 10 percent penalty if the withdrawal is made prior to age 59½.

Mr. ADAMS. Mr. President, I rise today to support legislation that once again makes IRA's a vital component of our Nation's effort to increase its savings rate. I congratulate the distinguished chairman of the Senate Finance Committee for moving ahead on this issue and introducing his bill at this time.

We all recognize that in order to remain competitive in a rapidly evolving world community, we must improve our national savings rate. Savings provides the necessary capital for public and private investment, increases productivity, keeps interest rates low and enhances our competitive edge.

And yet, the United States has fallen far behind in this key economic indicator. Over the last decade, our national savings rate has been lower than anytime since World War II. In 1989, U.S. consumers saved less than 5 cents of every dollar compared to about 16 cents for the Japanese. This is simply unacceptable.

It is time for America to start saving now so we can reinvest in our future.

As a result of the 1986 Tax Reform Act, participation in an Individual Account was strictly limited. This legislation will bring back universal access to IRA's. Not only does this bill reestablish the incentives to save through an IRA, it also allows penalty free withdrawals for American families to buy their first home, pay for a child's education as well as the devastating effects of a catastrophic illness.

I am pleased that this bill addresses these key issues for middle income America.

Today, American families are being priced out of the real estate market. In Washington State alone, the average price of a home has doubled since 1980. The price has risen so fast that the average family is forced to accumulate a sizable down payment before purchasing their first home. This legislation gives young couples and their families the opportunity to use savings in IRA's to meet those needs.

Over the last 10 years, Federal assistance for students attending college has been significantly reduced. At the same time, the cost of attending a 4 year college or university has nearly doubled. By creating a savings program where a family can plan for the future, we can guarantee the dream of a college education remains a reality.

And finally, this bill enables families to use their IRA's as a security net in the event of a catastrophic illness in the family. No one can adequately pre-

pare emotionally or financially for a catastrophic illness. But by allowing penalty free withdrawal from an IRA, we can help families meet the financial burden placed upon them in times of a health crisis.

Mr. President, the bill before us today is long overdue. We must stop the consumption binge we've been on for the last 10 years. We must create incentives to save and reinvest in our future and our children's future. This bill is a step in the right direction.

By Mr. DASCHLE (for himself, Mr. BINGAMAN, Mr. BURDICK, Mr. CONRAD, Mr. HARKIN, Mr. JOHNSTON, and Mr. INOUYE):

S. 614. A bill to amend title XVIII of the Social Security Act to provide coverage under such title for certain chiropractic services authorized to be performed under State law, and for other purposes; to the Committee on Finance.

COVERAGE OF CERTAIN CHIROPRACTIC SERVICES

• Mr. DASCHLE. Mr. President, I rise today to reintroduce legislation to expand the range of services for which chiropractors can be reimbursed under the Medicare Program. This bill advances a couple of objectives that we all should have for the health care system in the United States. First, it addresses issues of consistency and equity by removing outdated vestiges of still-pronounced discrimination against chiropractic practitioners in the Medicare Program. Second, the bill recognizes the enormous emerging pluralism in the health care field and contributes to improving both access to care and the means for containing health care costs by affording patients greater freedom to choose less expensive forms of diagnosis and treatment.

Existing Medicare law strictly limits reimbursement for chiropractic services to manual manipulation of the spine and only to correct a subluxation. In a dramatic example of twisted logic, the law explicitly requires a diagnostic x ray before chiropractic treatments can be initiated, but denies the chiropractor reimbursement for the x ray itself. Medicare patients must either pay for the x ray out of their own pockets, a cost that many cannot afford, or pass through the "gateway" controlled by other medical providers, whose x rays, typically far more expensive, are reimbursable under the program.

My bill lends some common sense to the Medicare Program. By rectifying the inconsistency in existing law, it ensures that the program's beneficiaries enjoy equitable access to a health care service much in demand, and it permits reimbursement to chiropractors for services for which they are fully licensed throughout the country and that they routinely provide to patients: Diagnostic x rays, diagnostic, physical examinations, and manual manipulation of the spine for a subluxation and other conditions.

I grew up in a community where chiropractors perform a valuable service by providing an alternative to allopathic medicine. The nearly 200 chiropractors in South Dakota serve the State well. In rural States like mine, chiropractors are often an essential source of health care delivery. Sometimes they are the only health providers in a community. In rural States across the country the chiropractic profession plays an integral role in the health care system.

But the issue is even larger than one of correcting inequities in the law and recognizing the contributions of chiropractors alone. We are constantly searching for ways to give more Americans greater access to quality health care, and to facilitate that availability of care in the most cost effective manner. One proven way to make progress toward those goals is to exploit the talent and dedication represented in the diversity of practitioners increasingly involved in the delivery of health care services in the United States. Competition among different kinds of providers and access to less expensive forms of care have to be emphasized, if we are ever to control escalating health care costs. Yet this competition, with the beneficial choices it brings, is virtually impossible when Federal programs like Medicare deny reimbursements for services offered by whole groups of licensed professionals. This shortsighted policy limits freedom of choice for health care consumers, and may force them to settle on more expensive care than is actually required.

At a time when soaring health care costs are threatening both the quality and the economic stability of our national health care delivery system, the cost savings potential of conservative, nonhospital-based chiropractic care should be fully explored. The bill that I am introducing today will help to provide access to quality care at a reasonable cost. Beyond the particulars of Medicare reimbursement for chiropractic services, I hope that it will foster vigorous discussion of alternative health care delivery models. I urge my colleagues in the Senate to support this measure to ensure that Medicare patients have the access they desire to the benefits of chiropractic care.•

By Mr. LAUTENBERG (for himself and Mr. LIEBERMAN):

S. 615. A bill entitled the "Environment Marketing Claims Act of 1991"; to the Committee on Environment and Public Works.

ENVIRONMENTAL MARKETING CLAIMS ACT OF 1991

• Mr. LAUTENBERG. Mr. President, today I am reintroducing the Environmental Marketing Claims Act of 1991. This bill will require the EPA to establish uniform, accurate standards and definitions for environmental marketing claims. In so doing, this bill will give consumers reliable and consistent guidance to help them compare environmental marketing claims. It will prevent the use of fraudulent, deceptive, and misleading environmental marketing claims, and encourage the development of innovative technologies and practices that favor natural resource conservation and environmental protection.

Mr. President, the United States is facing growing environmental problems like global warming, lack of landfill space, and air and water pollution. Today, more than ever, people realize one of the easiest and most effective ways they can help address these problems is through their consumer choices. National surveys have shown that 90 percent of American consumers would look for environmentally preferable products and pay more for them. Surveys also show that over 50 percent of American consumers would switch supermarkets and shop at one that offered environmentally sensitive products and practices.

American businesses realize the growing consumer demand for products that don't harm or are less harmful to the environment. They have responded with a plethora of environmental claims on products and packages. Now, practically everywhere consumers look, they are bombarded with products claiming to be better for the environment. Unfortunately, not all these claims are reliable, and many of them are deceptive and misleading.

Mr. President, instead of environmental consumerism, we are getting environmental confusion. When a product claims it is "environmentally safe," what does that mean? Does that mean that it didn't use harmful materials or processes during manufacturing or that it was made from recycled materials, or that it is biodegradable? Does it mean all of these? Perhaps it means something else altogether.

There are other, more specific claims that have some meaning to consumers and have the potential to let the marketplace help in addressing environmental problems, but these claims are sometimes misused or misleading. A product labeled "biodegradable" for example, must ultimately end up in a place where there is air, water, and microorganisms to break down the material for it to biodegrade. But most of the stuff we throw away in our trash cans never gets a chance to biodegrade because it goes to landfills that lack microorganisms, circulating air, and water necessary for biodegradation to occur.

Mr. President, I commend those manufacturers that honestly want to respond to consumer demand for environmentally preferable products. They, as much as anyone, want to play by a common set of rules. The American

people want to see firms invest in equipment or processes that can back up environmental claims. But companies won't want to do it if their competitors can make the same claim without the same commitment.

Without any direction, the goodwilled consumer who wants to do something to protect our environment is being confused, misled, and sometimes deceived.

Mr. President, it is a basic role of Government to establish common standards, measures, and definitions by which competition can take place fairly in the free market. A free market depends on it.

A free market also depends on free and accurate information. Information is power. This legislation will empower consumers with the understanding about environmental claims they need to help protect the environment.

Mr. President, the Environmental Marketing Claims Act of 1990 will make sure that consumers are getting the truth about the environmental products they buy. This bill sets up an independent advisory board of environmentalists, consumer and industry representatives to advise the EPA on standards and definitions governing the use of environmental marketing claims.

The bill also sets forth criteria to be considered by the board and the EPA to ensure that environmental claims are based on the best scientific information available and that the same claims meet the same standards. When a manufacturer claims a product is made from recycled materials, consumers have the right to know whether it is made from 10- or 90-percent recycled materials and whether those materials are useful byproducts from manufacturing or whether they are postconsumer materials taken out of the waste stream.

By requiring the EPA to develop regulations based on the best available technology and the most recent scientific knowledge, this legislation will encourage the development of innovative technologies and practices to be adopted by industry in considering the environmental effects when producing products and packaging.

Mr. President, I have worked closely with State attorneys general, environmental groups, and industry representatives in developing this legislation. It builds on a recent resolution by the National Association of Attorneys General that calls on the Federal Government to establish uniform national guidelines for environmental marketing claims. A similar resolution was adopted earlier this year by the National Association of Consumer Agency Administrators. And it has the support of a variety of national environmental organizations.

Industry is ready for regulations governing environmental marketing claims that would allow industry to compete on a level playing field. Consumers are eager to get the information they need to make informed choices according to their environmental preferences. The time for Congress to act is now, before consumers get so disillusioned that they won't believe any environmental claim they see.

I urge my colleagues to support this legislation so that industry and consumers can act consistently and effectively to help protect our environment through the free and "green" marketplace.

I ask unanimous consent that a copy of the bill be printed in the RECORD as well as letters of support of the bill.

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

S. 615

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

SECTION 1. SHORT TITLE

This Act may be cited as the "Environmental Marketing Claims Act of 1991".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds and declares that—

(1) the United States is facing growing environmental problems such as global climate change, waste disposal, and air and water pollution;

(2) environmental marketing claims convey information about products and influence purchasing decisions;

(3) national surveys have shown that over 90 percent of American consumers would pay more for environmentally preferable products;

(4) conveying accurate and reliable environmental information in environmental marketing claims will be of great use to the consumers willing to change their purchasing patterns;

(5) environmental marketing claims are largely unregulated and can be deceptive; and

(6) deceptive environmental marketing claims exploit genuine consumer concern and may confuse consumers so as to impede the effectiveness of the use of legitimate environmental marketing claims addressing environmental problems.

(b) PURPOSES.—The purposes of this Act are to—

(1) prevent the use of fraudulent, deceptive, and misleading environmental marketing claims;

(2) empower consumers with reliable and consistent guidance to facilitate value comparisons with respect to environmental marketing claims;

(3) establish uniform, accurate standards and definitions that reflect the best available manufacturing practices, products, and packaging;

(4) encourage the development of innovative technologies and practices to be adapted by manufacturers in considering the environmental effects when producing products and packages; and

(5) encourage both consumers and industry to adopt habits and practices that favor natural resource conservation and environmental protection.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(1) the term "product" means any commodity, good, or item distributed for promotional use, rent, lease, or sale through retail or wholesale sales agencies or instrumentalities for consumption or use;

(2) the term "package" means the coating, covering, container, or wrapping used during a product life cycle (including any outer container, wrapping, or label used in the retail display of any product);

(3) the term "life cycle" includes the—

(A) extraction;

(B) processing and manufacturing;

(C) transportation and distribution;

(D) use; and

(E) management as waste,

of raw materials used in the manufacture of a product or package, and of the product or package, including the energy consumption associated with the activities described in subparagraphs (A) through (E);

(4) the term "environmental marketing claim" means any symbols or terms that are on a label, package, or product or that are used in promotion or advertising to inform consumers about the environmental impact or environmental attributes of a product or package during any part of its life cycle;

(5) the term "label" means any written, printed, or graphic material affixed to, appearing upon a product or package, or appearing upon a shelf or display area that refers to a product of package;

(6) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(7) the term "end product" means only those items that are designed to be used until disposal; items designed to be used in production of a subsequent item are excluded;

(8) the term "postconsumer material" means only those products or packages generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid waste except that such term shall not include wastes generated during the production of an end product;

(9) the term "preconsumer material" means waste generated during production which cannot be returned to the same production process, nor used by another company to make a product similar to the original product, nor used by the same parent company to manufacture a different product, and includes all wastes generated during the intermediate steps in producing an end product by succeeding companies;

(10) the term "secondary material" means any preconsumer material, postconsumer material, or any combination thereof.

SEC. 4. ENVIRONMENTAL LABELING REGULATORY PROGRAM.

The Administrator shall establish by regulation an environmental marketing claims regulatory program. The purpose of such a program shall be to carry out the provisions of this Act.

SEC. 5. INDEPENDENT ADVISORY BOARD.

(a) ESTABLISHMENT.—The Administrator shall establish by regulation not later than 180 days after the date of enactment of this Act, an Independent Advisory Board (hereafter in this Act referred to as the "Board") to advise and make recommendations to the Administrator, as provided in subsection (c), concerning the regulation of environmental marketing claims.

(b) MEMBERSHIP.—(1) The Board shall consist of 15 members, including 4 ex officio members, who shall be appointed by the Administrator as follows:

(A) Three members who are recognized as consumer advocates, one of which is a recognized expert in marketing or consumer perception.

(B) Five members representative of industry and manufacturing, including—

(i) One retailer;

(ii) One manufacturer;

(iii) One recognized waste management expert in the private sector; and

(iv) One end user of post-consumer materials.

(C) 3 members representative of environmental organizations, of which 1 member is a recognized expert in soil science or environmental toxicology.

(D) Two members who shall serve ex officio who are officers or employees of State government, and of which—

(i) One member is recognized expert in consumer protection; and

(ii) One member who is recognized as a waste management, pollution reduction, or pollution prevention expert.

(E) One member who is an officer or employee of a local government and is engaged in pollution prevention or waste management or a municipal recycling program or consumer protection who shall serve ex officio.

(F) One member who is an officer or employee of the National Institute of Standards and Technology, who shall serve ex officio.

(2) Members of the Board serving ex officio shall have no vote.

(3) The Chairman of the Board shall be designated by the Administrator. The Board shall meet at the call of the Administrator or the Chairman.

(c) ADMINISTRATIVE MATTERS.—(1) The Board shall conduct its business in open meetings (subject to any requirement for privacy in personal matters and review of confidential information under any provision of law), and may hold hearings to seek public comment and participation in formulating recommendations for the definitions and standards described in section 6(a).

(2) Members of the Board who are not otherwise employed by the Federal Government may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in Government service.

(d) ANNUAL REPORT.—Not more than 180 days after the initial meeting of the Board, and annually thereafter, the Chairman of the Board shall submit to the Administrator a report that outlines the activities and recommendations of the Board relating to the items described in section 6. The initial report shall include the recommendations described in section 6(a).

SEC. 6. REGULATION OF ENVIRONMENTAL MARKETING CLAIMS.

(a) RECOMMENDATIONS BY THE BOARD.—Recommendations by the Board to the Administrator, shall include definitions and standards to be used in regulating environmental marketing claims. In making such recommendations, the Board shall consider the requirements for final regulations described in subsections (b) and (c), and shall consider available studies, standards, and other information that the Chairman of the Board determines to be appropriate.

(b) FINAL REGULATIONS.—(1) The Administrator, after considering the recommendations of the Board described in subsection (a), shall, not later than 15 months after the date of enactment of this Act, issue proposed regulations and not later than 18 months after the date of the enactment of this Act, promulgate final regulations governing the use of environmental marketing claims, including statements to the effect that a product or package is—

(A) source reduced;

(B) refillable;

(C) reusable;

(D) recyclable;

(E) has a recycled content;

(F) compostable;

(G) ozone neutral;

(H) nontoxic; or

(I) otherwise related to an environmental impact or attribute.

(2) In promulgating the regulations described in paragraph (1), the Administrator shall ensure that an environmental marketing claim shall be related to a specific environmental impact or attribute in such a manner as to ensure that such environmental marketing claims is not false, misleading, or deceptive and meets the requirements of paragraph (c)(2); except that this shall not preclude the use of general environmental seals of approval if the administrator determines that such seals are awarded according to objective criteria that promote environmentally preferable products and packages.

(3) In promulgating the regulations described in paragraph (1), the Administrator shall ensure that an environmental marketing claim has been substantiated on the basis of the best available scientific information.

(4) In promulgating the regulations described in paragraph (1), the Administrator shall assign a product to a category or subcategory for the purpose of such regulations according to the following criteria:

(A) the composition of the product; and

(B) the packaging of the product.

(5) In establishing product categories for the purposes of the regulations, as described in paragraph (1), the Administrator may establish a category for a specific type of product, or may assign a product to a general category on the basis of the function of the product.

(6) In promulgating the regulations described in paragraph (1), the Administrator shall ensure that environmental marketing claims shall make a clear distinction between the product and any accompanying packaging unless the claim applies to both.

(7) The Administrator shall include the following requirements in the final regulations described in paragraph (1):

(A)(i) An environmental marketing claim relating to "recycled content" shall be used only in connection with a product or package containing postconsumer materials if the percentage of recycled material is specified in the claim and, except as provided in clause (ii), the post-consumer material shall be no less than 25 percent, by weight from the effective date of the regulations until the year 2000 and no less than 50 percent by weight on or after the year 2000.

(ii) Notwithstanding clause (i), an environmental marketing claim relating to "recycled content" may be used in connection with a product or package that contains a percentage of post-consumer materials that is less than the percentage specified in clause (i), if a manufacturer, retailer, or distributor, or other person responsible for the use of such environmental marketing claim includes in such claim a sentence (in which the terms described in the regulation promulgated under section 6 are displayed no more prominently than other words in the sentence) that states the percentage (by weight) of post-consumer and secondary materials used in such product or package and no symbols are used in such claim.

(B) An environmental marketing claim relating to the "recyclable" nature of a product or package shall be used only in connection with a product or package for which a manufacturer, retailer, distributor, or other person responsible for the use of such environmental marketing claim is able to demonstrate, to the satisfaction of the Administrator, that such product or package shall be recycled, at a minimum rate of 25 percent per annum from the effective date of the regulation until the year 2000, and at a minimum rate of 50 percent per annum on or after the year 2000.

(C) An environmental marketing claim relating to the "reusable" or "refillable" nature of a product or package shall be used only in connection with a product or package that is reused for the original purpose of the product or package, an average of 5 times or more.

(D) No environmental marketing claim relating to the "biodegradable", "compostable", "decomposable", "degradable", "photodegradable" nature of a product, package or material, or any like term or terms, shall be used in connection with a product, package or material unless a manufacturer, retailer, distributor or other person responsible for the use of such environmental marketing claim is able to demonstrate, to the satisfaction of the Administrator, that such product, package or material—

(i) will decompose completely and safely in such a waste management system or systems through natural chemical and biological processes into basic natural constituents, containing no synthetic or toxic residues, within an amount of time compatible with such system or systems;

(ii) will not release or produce at any time toxic or synthetic substances that may be harmful to humans, other organisms or natural ecological processes, including during the management process and any subsequent application or use of products or by-products of the process, such as use of the product or by-product of composting as a soil amendment or mulch; and

(iii) shall be managed, at a minimum rate of 25 percent per annum from the effective date of the regulation until the year 2000 and at a minimum rate of 50 percent per annum on or after the year 2000 of all such products, packages or material, in a waste management system or systems which are protective of human health and the environment, and for which the Administrator determines the claim is a relevant and environmentally desirable and significant characteristic.

Any such environmental claim shall clearly specify the applicable management system or systems and specify that such claim applies only to products, packages or material that are managed in such a system or systems.

(8) In promulgating the regulations described in paragraph (1), the Administrator may authorize the use of an environmental marketing claim to be used in a retail outlet through a point-of-purchase display for any package, product, or material for which it can be demonstrated that a recycling, reuse or composting program serves the community in which the retail outlet is located and meets the requirements of paragraph (7) for that claim. Such a claim shall not appear on the package, product or material itself and shall clearly indicate the specific program or programs which meet the requirements of paragraph (7). Such a claim shall not be used

in connection with any package, product or material distributed in commerce in any community not served by a program which meets the requirements of paragraph (7).

(c) ADDITIONAL REGULATIONS.—(1) The Administrator may, at any time after the date of the promulgation of the regulations required under subsection (b), promulgate such additional regulations or make changes in existing regulations as the Administrator determines, on the basis of the criteria described in subparagraphs (A) and (B) of paragraph (2), to be necessary to carry out the purposes of this Act.

(2) In establishing and reviewing the regulations described in subsection (b), or in any additional regulations promulgated under this subsection, the Administrator shall determine whether the regulations—

(A) reflect the best available use and the best available technology that will encourage higher performance levels in products and packaging in meeting the objectives of reducing negative environmental impacts and improving environmental attributes; and

(B) reflect the most recent scientific and practical knowledge of technological advances and improvements in manufacturing techniques and waste management.

(3) Not later than 3 years after the date of the promulgation of the final regulations described in subsection (b) or any additional regulations promulgated under this subsection, and every 3 years thereafter, the Administrator shall review such regulations.

(4)(A) An interested individual (including a representative of industry, an interested citizen, or a representative of an environmental organization), may petition the Administrator to initiate rulemaking procedures with respect to promulgating additional regulations under this section.

(B) Not later than 60 days after receiving a petition described in subparagraph (A), the Administrator shall determine whether to accept or deny the petition and shall publish the petition in the Federal Register, along with an explanation of the reasons for such determination. If the Administrator issues a decision accepting the petition, the Secretary shall issue a proposed regulation to take the action requested in the petition not later than 90 days after the date of such decision.

(d) LIMITATIONS.—An environmental marketing claim:

(1) may be made two years after the enactment of this Act only if the environmental characteristic made in the claim uses terms which are defined by regulations of the Administrator;

(2) may not state the absence of an environmental attribute unless—

(i) the attribute is a usual characteristic of the product or package, or

(ii) the Administrator by regulation permits such a statement on the basis of a finding that such a statement would assist consumers making value comparisons with respect to environmental claims among products and packages and the statement discloses that the environmental attribute is not a usual characteristic of the product or package;

(3) may not be made if the Administrator by regulation prohibits the claim because the claim is misleading in light of another environmental characteristic of the product or package.

SEC. 7. CERTIFICATION.

(a) FILING OF A CERTIFICATION.—Not later than 6 months after the date of the promulgation of any regulation under section 6, any manufacturer or any other person who intends to use an environmental marketing claim for which the Administrator has promulgated a regulation shall first submit a certification to the Administrator that the environmental marketing claim intended to be used meets the requirements of this Act. Such certification shall be in such form as the Administrator shall prescribe by regulation and shall contain such information as the Administrator determines to be appropriate.

(b) DISAPPROVAL OF CERTIFICATION.—The Administrator may, at any time, disapprove the certification provided under subsection (a) if the Administrator determines that the environmental marketing claim that the manufacturer or other person intends to use does not meet the requirements of the regulations promulgated under section 6 of this Act.

(c) RECERTIFICATION.—Any person using an environmental marketing claim shall resubmit a certification to the Administrator that the environmental marketing claim used meets the requirements of the Act if:

(1) changes have been made in the product or package that would affect its ability to meet the regulatory requirements of the environmental marketing claim previously used for such a product or package, or;

(2) new regulations have been promulgated under this Act relating to the environmental claim being used.

Such recertification shall be submitted to the Administrator within 6 months of the occurrence of either event described in paragraphs (1) and (2) of this subsection.

SEC. 8. PROHIBITION.

It shall be unlawful for any person to:

(a) fail or refuse to comply with—

(1) any regulation promulgated under section 6(b) of this Act; or

(2) any order issued by the Administrator to carry out any such regulation;

(b) use an environmental marketing claim for which the Administrator has issued a regulation under section 6 if—

(1) the person has failed to file a certification as required by section 7; or

(2) the Administrator has disapproved a certification under section 7; or

(c) use an environmental marketing claim that is inconsistent with the requirements of section 6(d).

SEC. 9. PENALTIES.

(a) CIVIL.— (1) Any person who violates a provision of section 8 of this Act shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day such a violation continues shall, for the purpose of this subsection, constitute a separate violation of section 8 of this Act.

(2)(A) A civil penalty for a violation of section 8 of this Act shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

(B) In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and the gravity of the violation, and with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior related violations, the degree of culpability, and such other matters as the Administrator determines to be appropriate.

(3) Any person who has requested a hearing with respect to the assessment of a civil penalty in accordance with paragraph (2)(A) and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) If a person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3); or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(b) CRIMINAL.—Any person who knowingly or willfully violates any provision of section 8 of this Act, shall, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) of this section for such violation, be subject, upon conviction, to a fine of not more than $25,000 for each day of violation, or to imprisonment for not more than 1 year, or both.

(c)(1) The authorized fines provided in subsections (a) and (b) shall be adjusted for inflation every 5 years a provided in this subsection.

(2) Not later than December 1, 1993, and December 1 of each fifth calendar year thereafter, the Secretary shall prescribe and publish in the Federal Register a schedule of maximum authorized fines that shall apply for violations that occur after January 1 of the year immediately following such publication.

(3) The schedule of maximum authorized fines shall be prescribed by increasing the amounts in each of the subsections referred to in paragraph (1) by the cost-of-living adjustment for the preceding 5 years. Any increase determined under the preceding sentence shall be rounded to—

(A) in the case of penalties greater than $1,000 but less than or equal to $10,000, the nearest multiple of $1,000;

(B) in the case of penalties greater than $10,000 but less than or equal to $100,000 the nearest multiple of $5,000;

(C) in the case of penalties greater than $100,000 but less than or equal to $200,000, the nearest multiple of $10,000; and

(D) in the case of penalties greater than $200,000 the nearest multiple of $25,000.

(4) For purposes of this subsection:

(A) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(B) The term "cost-of-living adjustment for the preceding 5 years" means the percentage by which—

(i) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(ii) the Consumer Price Index for the month of June preceding the date on which the maximum authorized fine was last adjusted.

SEC. 10. STATE ENFORCEMENT.

Proceedings for the enforcement, or to restrain violations of section 8 may also be brought in the name of a State in which the product or package that is the subject matter of the proceedings is located. If a State intends to bring such a proceeding, the State shall notify the Administrator at least 30 days before such proceeding is brought.

SEC. 11. CITIZENS SUITS.

(a) IN GENERAL.—(1) Except as provided in subsection (b), any person may commence a civil action against—

(A) any person who is alleged to be in violation of this Act (including the Government of the United States, to the extent allowable by law); or

(B) the Administrator to compel the Administrator to carry out ministerial duties assigned to the Administrator under this Act.

(2) Any civil action under this subsection shall be brought in the United States district court of the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. The district court shall have jurisdiction to order all necessary injunctive relief and to impose any civil penalty.

(b) LIMITATIONS.—(1) No civil action may be commenced to restrain any violation of section 8 of this Act—

(A) before the expiration of 60 days after the plaintiff has given notice of such violation to—

(i) the Administrator; and

(ii) to the person who is alleged to have committed such violation;

(B) if the Administrator has commenced a proceeding for the issuance of an order to require compliance with the regulation or requirement and is diligently pursuing such proceeding or has issued an order to carry out the regulation or requirement described in section 8 and is diligently pursuing the enforcement of such order.

(C) if the Attorney General has commenced a civil action in a court of the United States to require compliance with the regulation, requirement, or order described in subparagraph (B) and is diligently prosecuting such civil action.

(2) No civil action may be recommended against the Administrator under subsection (a)(1)(B) before the expiration of a 60-day period after the plaintiff has given notice to the Administrator of the alleged failure of the Administrator to perform an act or duty which is the basis for such action.

(c) INTERVENTION.—(1) If a proceeding or civil action described in subsection (b) is commenced by the Administrator or the Attorney General after the giving of notice by a person (other than the Administrator or Attorney General) described in subsection (a), such person may intervene as a matter of right in such proceeding or action.

(2) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) NOTICE.—Notice under this section shall be given in such a manner as the Administrator shall prescribe by regulation.

(e) ATTORNEYS FEES AND COURT COSTS.—(1) The court, in issuing any final order in any action brought pursuant to subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such award is appropriate.

(f) CONSOLIDATION.—When two or more civil actions brought under subsection (a) involving the same defendant and the same issues or violations are pending in two or more judicial districts, such pending actions may be consolidated and tried in accordance with section 1407 of title 28, United States Code, and the rules promulgated pursuant to such section 1407.

SEC. 12. PUBLIC INFORMATION CAMPAIGN.

The Administrator shall conduct a public information and education campaign, including public service advertising, in order to enable consumers to—

(1) recognize environmental marketing claims regulated under this Act and be able to distinguish them from other environmental marketing claims,

(2) have information about the criteria used by the Administrator in establishing standards and definitions for environmental marketing claims, and

(3) have a better understanding about the effects that products and packages can have on the environment.

SEC. 13. STATUTORY CONSTRUCTION.

(a) RIGHT TO SEEK ENFORCEMENT.—Nothing in section 10 shall restrict any right which any person (or class of persons) may have under any other statute or under common law to seek enforcement of any regulation promulgated under section 6 of this Act.

(b) ACTIONS AGAINST ADVERTISERS.—Nothing in this Act shall be construed so as to alter the right under any other provision of law or under common law of a person or government to commence an action against an advertiser related to the use of false or misleading environmental marketing claims.

(c) STANDARDS.—Nothing in this act shall be construed so as to prohibit a State from enacting and enforcing a standard or requirement with respect to the use of an environmental marketing claim that is more stringent than a standard or requirement relating to an environmental marketing claim established or promulgated under this Act.

SEC. 14. CONFORMING AMENDMENT.

Section 11 of the Fair Packaging and Labeling Act (15 U.S.C. 1460) is amended—

(1) by striking "or" at the end of subsection (b);

(2) by striking the period at the end of subsection (c) and inserting ", or"; and

(3) by adding at the end of the section the following new subsection:

"(d) the Environmental Marketing Claims Act of 1990".

SEC. 15. AUTHORIZATION OF APPROPRIATIONS.

For the purposes of carrying out the provisions of this Act, there are authorized to be appropriated $10,000,000 for fiscal years 1992, 1993, and 1994.

STATE OF MINNESOTA,
OFFICE OF THE ATTORNEY GENERAL,
October 17, 1990.

Re Environmental Marketing Claims Act of 1990.

Hon. FRANK R. LAUTENBERG,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: I am writing on behalf of the Attorneys General of California, Massachusetts, Minnesota, Missouri and Texas to express support for the Environmental Marketing Claims Act of 1990. In December of 1989, we joined with the Attorneys General of several other states to form a Task Force to investigate the most recent marketing trend: the promotion of products as "environmentally friendly." Although we are excited about the potential of the "green revolution" to encourage the manufacture and use of products that are less harmful to the environment, we are concerned about the alarming rise in the number of confusing and misleading environmental claims.

As members of the Task Force, we have strongly advocated uniform national standards for enviornmental marketing claims. In March of this year, we joined with the other members of the Task Force to urge the National Association of Attorneys General to endorse a resolution calling on the Federal Trade Commission and the Environmental Protection Agency to work jointly with the states to develop uniform national guidelines for environmental marketing claims with input from environmental groups, consumer groups and members of the business community. The resolution was adopted unanimously.

Your proposed legislation provides a framework for this national regulation and standardization of environmental claims. We commend you for developing and sponoring this important legislation. By providing for aggressive state and federal enforcement efforts, we believe that this legislation will greatly curtail the exploitation of consumers and the environmental that results from confusing and deceptive environmental marketing claims.

Best regards,

HUBERT H. HUMPHREY III,
Attorney General.

STATE OF NEW YORK,
DEPARTMENT OF LAW,
New York, NY, October 17, 1990.

Re Environmental Marketing Claims Act of 1990.

Hon. FRANK R. LAUTENBERG,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: I am writing to express my support for the Environmental Marketing Claims Act of 1990. Greenmarketing, the selling of the environment, is clearly becoming the marketing craze of the 1990's. As consumers become more conscious and concerned about the environmental impact of the products that they purchase, environmental issues drive their purchasing decisions. Unfortunately, many companies are capitalizing on this genuine consumer concern by marketing products in a deceptive manner.

My office has been actively investigating companies that are engaging in deceptive and misleading environmental advertising. In June I filed suit against Mobil Chemical Corp. for making false claims about the alleged environmental benefits of its Hefty trash bag. Just today I announced a settlement that New York, together with nine other States, reached with the manufacturer of "Bunnies Biodegradable Disposable Diapers". Our agreement will require the company to immediately cease all advertisements which misleadingly claim that the diapers benefit the environment.

It is estimated that disposable diapers comprise as much as 2 percent of all municipal waste disposed of in landfills. Bunnies, by marketing their diapers as biodegradable, tried to exploit the interests of people who want the convenience of disposable diapers but are concerned about the waste problem

they create. Although labeled "BIODEGRADABLE", Bunnies diapers, like any organic waste, will take decades to degrade in our nation's landfills. Deceptive environmental claims like this are proliferating.

Consequently, there is clearly a real need for national standards for environmental marketing claims. In March of this year I endorsed a resolution of the National Association of Attorneys General calling on the Federal Trade Commission and the Environmental Protection Agency to work jointly with the States to develop uniform national guidelines for environmental advertising with input from environmental groups, consumer groups and members of the business community. This resolution was adopted unanimously.

Your proposed legislation provides a framework for such national standards. Further, by providing for both State and Federal enforcement, I believe that this legislation can effectively put an end to deceptive environmental marketing.

Very truly yours,

ROBERT ABRAMS,
Attorney General.

ENVIRONMENTAL DEFENSE FUND,
Washington, DC, February 24, 1991.

Hon. FRANK R. LAUTENBERG,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: Consumers have a critical role to play in shifting our industrial production systems toward more environmentally benign processes and products. The resurgence of environmental awareness among American consumers is a trend that product manufacturers cannot afford to ignore.

Unfortunately, many such manufacturers appear all too willing to substitute false or misleading claims for actual environmental improvements in the products they sell. To make matters worse, in the current climate where consumers find it hard to distinguish marketing hype from genuine environmental improvements in products, many responsible manufacturers see little incentive to improve their products or advertise those improvements.

This situation threatens to transform the positive potential of green marketing into little more than another case of consumer confusion and cynicism. This is why the Environmental Defense Fund [EDF] heartily supports your efforts to provide a consistent and sound basis for environmental marketing claims that would provide a level playing field for all manufacturers and a means of accountability to consumers for such claims.

The "Environmental Marketing Claims Act of 1991" which you are introducing would require the Federal Government to develop and enforce measurable standards and definitions for the use of key terms in environmental marketing. These standards and definitions would be technology-forcing in nature, recognizing the need for manufacturers to continually seek improvements in their products and packaging. Equally important, the Act provides for both citizen enforcement and additional efforts on the part of State governments to assure responsible green marketing.

Based on a number of years of experience in this area, EDF has become convinced that only through the establishment and aggressive enforcement of clear regulatory definitions and standards will consumer interests be served and protected—interests that, in our consumer-oriented society, need to be marshalled to support environmental renovation and innovation of the products we all use.

EDF commends your efforts in this area, and hopes that the "Environmental Marketing Claims Act of 1991" will be enacted into law at the earliest possible date.

Sincerely,

RICHARD A. DENISON, Ph.D.,
Senior Scientist.

ENVIRONMENTAL ACTION, INC.,
October, 17, 1990.

Hon. FRANK LAUTENBERG,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR LAUTENBERG: Environmental Action, Inc. is pleased to express its strong support for the Environmental Marketing Claims Act of 1990. This bill represents an effective, timely, and no-nonsense approach to the important issue of environmental marketing and the misuse of misleading environmental claims in advertising.

American consumers are more aware today than ever that they can make a contribution to environmental protection by exercising "environmental choice" at the supermarket check-out stand. Polls consistently find the majority of consumers willing to choose products on the basis of their environmental attributes.

Product manufacturers are racing to tap the buying power of the new American green consumer. But some have been more interested in the "green" of the dollar than the green of the Earth. The past year has seen an explosion of false or misleading environmental claims designed to cash in on this new consumer awareness. Products with negligible levels of recycled material are labeled "recycled," plastic bags are labeled "degradable," and some aerosol products announce that they are "ozone-friendly."

Such terms are meaningless in the absence of standards governing their use. The Environmental Marketing Claims Act of 1990 directs the U.S. Environmental Protection Agency to set such standards at the national level. This bill builds on efforts already underway in States around the country to regulate the use of environmental claims on product labels or in advertising.

Environmental Action, Inc. again congratulates you for taking the lead on this important issue. We strongly support passage of this bill.

Sincerely,

RUTH CAPLAN,
Executive Director.

NATURAL RESOURCES DEFENSE COUNCIL,
New York, NY, October 16, 1990.

Senator FRANK LAUTENBERG,
Senate Hart Office Building, Constitution Avenue and 2nd Street NE, Washington, DC.

DEAR SENATOR LAUTENBERG: As you are well aware, consumer products carrying misleading environmental claims have proliferated as the public interest in a clean environment has mounted. Regrettably, the Federal Government has been slow to respond to this problem. As a consequence, the American consumer has been left in the dark, forced to sort out confusing or misleading statements for him/herself. For at least these reasons, your truth in labelling initiative, the Environmental Marketing Claims Act of 1990, provides an essential tool now missing from the arsenal of consumer protection. The Earth does not benefit from public relations or other symbolic measures. Moreover, upstanding American firms that show a true respect for our environment should not have to compete with unscrupulous marketeers who proffer misleading environmental claims. The passage of this initiative will truly benefit the environment and the economy. You should be applauded for your well thought-out initiative which we strongly endorse.

Best Regards,

ALLEN HERSHKOWITZ, PH.D.
Senior Scientist.

CONSUMERS UNION,
Washington, DC, October 12, 1990.

Hon. FRANK LAUTENBERG,
U.S. Senate,
Washington, DC.

DEAR SENATOR LAUTENBERG: Consumers Union would like to thank and congratulate you on the introduction of your bill to establish a national standard for environmental marketing claims.

Increased concern with the environment has brought with it a host of confusing and sometimes misleading claims in the marketplace that products are "green" or environmentally "friendly". It is difficult and often impossible for consumers to sort out and evaluate these claims. Further, there is no official standard by which to judge the honesty and accuracy of environmental marketing claims and no specific charge to any governmental authority to prosecute those that are false, misleading or deceptive.

Your bill sets forth a proposal to establish appropriate standards that can serve both to guide marketers who would make such claims and agencies who would be responsible for preventing deception. We are happy to endorse the principles in your bill and look forward to working with you to see that these principles become law.

Sincerely,

MARK SILBERGELD,
Director,
Washington Office.●

By Mr. PELL (by request):

S. 616. A bill to authorize appropriations for fiscal years 1992 and 1993 for the U.S. Information Agency, and for other purposes; to the Committee on Foreign Relations.

U.S. INFORMATION AGENCY AUTHORIZATION ACT, FISCAL YEARS 1992 AND 1993

● Mr. PELL. Mr. President, by request, I introduce for appropriate reference a bill to authorize appropriations for fiscal years 1992 and 1993 for the U.S. Information Agency, and for other purposes.

This proposed legislation has been requested by the U.S. Information Agency, and I am introducing it in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with the letter from the Director of the U.S. Information Agency, which was received on March 5, 1991.

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

S. 616

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

SHORT TITLE

SEC. 101. This title may be cited as the "United States Information Agency Authorization Act, Fiscal Years 1992 and 1993."

AUTHORIZATION OF APPROPRIATIONS

SEC. 102. In addition to amounts otherwise available for such purposes, there are authorized to be appropriated for the United States Information Agency to carry out international information, educational, cultural, and exchange programs under the United States Information and Educational Exchange Act of 1948, as amended, the Mutual Educational and Cultural Exchange Act of 1961, as amended, Reorganization Plan No. 2 of 1977, the Radio Broadcasting to Cuba Act, as amended, the Television Broadcasting to Cuba Act, the Inspector General Act of 1978, as amended, the Center for Cultural and Technical Interchange Between East and West Act of 1960, the National Endowment for Democracy Act, as amended, and for other purposes authorized by law:

(a) For operating and special program accounts including "Salaries and Expenses," "Educational and Cultural Exchange Programs," "Broadcasting to Cuba," "Office of the Inspector General," "East-West Center," and "National Endowment for Democracy," $960,969,000 for the fiscal year 1992 and such sums as may be necessary for the fiscal year 1993 consistent with the Budget Enforcement Act of 1990 (P.L. 101-508) (hereafter "BEA").

(b) For the capital "Radio Construction" account, $98,043,000 for the fiscal year 1992 and such sums as may be necessary for fiscal year 1993 consistent with the BEA.

CHANGES IN ADMINISTRATIVE AUTHORITIES

SEC. 103. Section 701 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1476) is amended—

(1) by deleting subsection (d); and

(2) by redesignating subsection (e) as subsection (d) and amending the latter subsection to read as follows (with new language underlined):

"(d) The provisions of this section shall not apply to or affect in any manner, permanent appropriations, trust funds, and other similar accounts administered by the United States Information Agency as authorized by law, or appropriations made available under continuing resolutions."

SEC. 104. Section 705 (a)(7) of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1477s(a)(7)) is amended by replacing "$250,000" with "$500,000."

SEC. 105. Section 801 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1471) is amended by inserting the words "and television" after the word "radio" in clause (3) of the section.

SEC. 106. Section 804(9) of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1474(9)) is amended to read as follows:

"(9) pay to or for individuals, not United States Government employees, participating in activities conducted under this Act, the costs of emergency medical expenses, preparing and transporting to their former homes the remains of such participants or their dependents who die while away from their homes during such participation, health and accident insurance premiums for participants, per diem in lieu of subsistence at rates prescribed by the Director of the Agency, and such other costs as are necessary for the successful accomplishment of the purposes of this Act;

Provided, That in lieu of purchasing or providing funds for the purchase of health and accident insurance for such participants, provide health and accident insurance benefits for the participants by means of a program of self-insurance."

SEC. 107. Section 247, Part D, Pub. L. 101-246, Television Broadcasting to Cuba Act (22 U.S.C. 1465ee.) is amended by adding the following new subsection (c):

"(c) Amounts appropriated to carry out the purposes of this part are authorized to remain available until expended."

SEC. 108. Section 810 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1475e) is amended to read in relevant part as follows (with new language underlined):

"SEC. 810. USE OF CERTAIN FEES AND PAYMENTS.

"Notwithstanding section 3302 of title 31, United States Code, or any other law or limitation of authority, fees and other payments received by or for the use of the United States Information Agency from or in connection with English-teaching and library services, selected advisory services rendered to foreign students regarding study in the United States, * * * are* authorized to be credited each fiscal year * * *."

SEC. 109. Section 204 of Pub. L. 100-204 is hereby repealed.

SEC. 110. It is requested that there be included in the Authorization Act a provision reading substantially as follows: "Notwithstanding the provisions of any other law or limitation of authority, the United States Infermation Agency and the Ministry of Foreign Affairs, Union of Soviet Socialist Republics, shall be permitted to establish, maintain and operate reciprocal cultural-information centers in Moscow and Washington, D.C., respectively, in accordance with the provisions of the document entitled 'Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the Establishment of Cultural-Information Centers of the United States of America and the Union of Soviet Socialist Republics,' which was signed in Washington, D.C. on May 31, 1990, by the Director of the United States Information Agency, and Aleksey A. Obukhov, Deputy Foreign Minister of the Union of Soviet Socialist Republics."

SEC. 111. Section 804 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1474) is amended—

(1) By deleting the word "and" at the end of clause (19);

(2) By replacing the period at the end of clause (20) with a semicolon; and

(3) By adding the following new clauses:

"(21) incur expenses authorized by the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.);

"(22) furnish living quarters as authorized by 5 U.S.C. 5912; and

"(23) provide allowances as authorized by 5 U.S.C. 5921-5928."

SEC. 112. Special Immigrant Status for Certain Employees of the United States Information Agency.

(1) The Immigration and Nationality Act is amended by adding the following new section after Section 216A (8 U.S.C. 1186b).

"Section 216B Conditional permanent resident status for certain USIA employees:

(a) Conditional Basis for Admission: Conditional immigrant visas may be issued to employees of the United States Information Agency beginning fiscal year 1992 in a number not to exceed one hundred per fiscal year. Upon enactment, one hundred fifty additional visas shall be available to present USIA employees. Such employees shall be identified by the Director of USIA, and, if otherwise admissible, shall be admitted conditionally for a period not to exceed four years. Spouses and dependent children of such employees accompanying or following to join the alien employee may also be admitted as conditional permanent residents but shall not be subject to numerical limitation.

(b) Removal of Conditional Basis: Persons admitted under this provision shall be eligible for removal of the conditional basis of their admission for permanent resident status after one year, upon certification by the Director of USIA to the Attorney General; the Attorney General shall remove the conditional basis of his or her admission, if the alien is otherwise admissible, effective as of the date of such certification.

(c) Termination of Status: At any time during such four year period, the Director of USIA may certify to the Attorney General that such conditional status with respect to any alien should be terminated. Upon receipt of such notice, the Attorney General shall terminate such status and the alien and any other family members admitted with such alien shall be subject to deportation proceedings. The conditional status of any alien, admitted under this provision who has not had the conditional basis of his or her admission removed by a date four years after such admission, shall be deemed to have been terminated.

Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by adding the following:

"(K) an immigrant who is employed by the United States Information Agency for service in the United States, and his or her accompanying spouse and children, under conditions set forth in Section 216B of this Act."

(2) Section 804(1) of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1474(1)) is amended by inserting the words "or as immigrants under section 101(a)(27)(K) of that Act (8 U.S.C. 1101(a)(27)(K)" immediately after the words "as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15))."

SECTION-BY-SECTION ANALYSIS

AUTHORIZATION OF APPROPRIATIONS

(*Note:* The title "Smith-Mundt Act", as used in this analysis, means the United States Information and Educational Exchange Act of 1948, as amended, and the title "Fulbright-Hays Act" means the Mutual Educational and Cultural Exchange Act of 1961, as amended.)

Section 101—Short Title

This section is self-explanatory.

Section 102—Authorization of Appropriations for the Fiscal Years 1992 and 1993

Section 102(a) of the United States Information Agency Authorization Act, Fiscal Years 1992 and 1993, authorizes the appropriation of $960,969,000 in Fiscal Year 1992 and such sums as may be necessary consistent with the Budget Enforcement Act of 1990 in Fiscal Year 1993 for operating and special program accounts. These amounts are requested to cover Agency operating costs, in-

*(Note: The word "are" is substituted for the present word "is" simply as a grammatical correction.)

cluding Salaries and Expenses, Educational and Cultural Exchange Programs, Broadcasting to Cuba, the Office of the Inspector General, the East-West Center and the National Endowment for Democracy.

The following table compares the Agency's 1992 request for authorization with the appropriations enacted for 1991.

Appropriations	1991 estimate	1992 estimate	Increase/decrease
Salaries and expenses	$652,757	$692,275	$39,518
Educational and cultural exchange programs	163,151	172,500	9,349
Broadcasting to Cuba	31,069	38,988	7,919
Office of the Inspector General	4,023	4,206	183
East-West Center	23,000	23,000	.....
National Endowment for Democracy	25,000	30,000	5,000
Total, operating and special accounts	899,00	960,969	61,969

For 1993, given the worldwide uncertainties and the need for maximum flexibility, the Agency requests such sums as may be necessary.

CHANGES IN ADMINISTRATIVE AUTHORITIES

Section 103—Continuing Resolutions without Prior Authorization

Congress frequently funds ongoing government operations at the beginning of the fiscal year through short-term Continuing Resolutions (CRs), pending final passage of appropriation acts. Traditionally, Section 701 of the Smith-Mundt Act has been construed to require the prior authorization of any USIA appropriation—including CRs.

Currently, this provision of law must be explicitly waived every time Congress funds USIA under a CR when, as is frequently the case, Congress has not yet enacted authorization legislation for the Agency. The purpose of this proposed amendment is only to eliminate the need for such a waiver. We will still need authorization for regular appropriations, so that no real authorizing committee jurisdiction will be bypassed. Since the amendment will simplify the appropriations process, the appropriations committees should support it. Incidentally, the deletion of present subsection (d) is recommended solely because it has long since been obsolete.

Section 104—Increase in Smith-Mundt Act Reprogramming Threshold

For years, the Agency has had to report any resource shift between elements (reprogramming) in excess of the lesser of $250,000 or 10 percent of an element's resources to the Authorizing and Appropriations Subcommittees. Last year, the Appropriations Subcommittees raised this limit to $500,000. We propose to make the authorization and appropriation requirements uniform by amending section 705(a)(7).

Section 105—Extending Administrative Authorities to the Television Operations at USIA

The purpose of this proposed amendment is to give the Agency the same express authority to purchase, rent, construct, improve, maintain, and operate facilities for television transmission and reception as the Agency now has with respect to radio transmission and reception facilitles.

Section 106—Health and Accident Insurance and Related Benefits for Participants in Activities under Smith-Mundt and Fulbright-Hays Acts

Agency American Participant Speakers (AMPARTS) travel under the authority of either the Smith-Mundt or the Fulbright-Hays Act, depending largely on whether the purpose of their trips is to explain government policies or to participate in exchanges of information or ideas. However, because of differing language in the two Acts—i.e., Section 804(9) of Smith-Mundt and Section 104(e)(1) of Fulbright-Hays—AMPARTS traveling under the authority of the Fulbright-Hays Act are entitled to health and accident insurance and related benefits not provided to AMPARTS traveling under Smith-Mundt. This amendment would correct this disparity.

In addition, the amendment would give the Agency flexibility to choose between (1) the purchase of commercial health and accident insurance, the premiums for which have been constantly and sharply increasing or (2) the provision of health and accident insurance as a self insurer. AID has had a similar self-insurance program in effect for over ten years, and the Agency is advised that it has been very satisfactory and cost-effective.

Incidentally, it should be noted that while the amendment expressly authorizes a self-insurance program only for Smith-Mundt AMPARTS, the Agency would also be authorized to establish such a program for Fulbright-Hays AMPARTS because of the derivative authority contained in Section 108(d) of the Fulbright-Hays Act.

Section 107—Television Broadcasting to Cuba Act: Availability of No-year Funds

This is essentially a technical amendment in that the Agency's current appropriations Act (Pub.L. 101-515) already provides that funds appropriated for TV Marti are authorized to remain available until expended—i.e., "no-year" funds. However, this is not specifically authorized by the TV Marti Act itself. The amendment would simply make the authority for TV Marti expressly parallel the authority for Radio Marti appropriations, as well as the no-year funding authority provided under both the Smith-Mundt Act and the Fulbright-Hays Act.

Section 108—Recycling of Fees Received from Selected Educational Advisory Services

Currently, Section 810 of the Smith-Mundt Act permits the Agency to receive and recycle payments received by or for the use of USIA from or in connection with publications, English teaching, library, motion pictures and television programs. This amendment would give the Agency authority to receive and recycle fees for certain selected services relating to advising foreign students about studying in the U.S. Such fees would be used in support of related advisory needs.

We also urge that the words "and other payments" be inserted immediately after the word "fees" in Section 810. The word "payments" had always appeared in the section prior to its amendment by the Authorization Act for FY 90-91 (Pub. L. 101-246), and even in both the House and Senate bills underlying that Act. Inclusion of only the word "fees" is much too restrictive and, for example, might cast doubt on the Agency's right to reuse money received from the sale of publications.

Section 109—Repeal of Section 204 of Pub. L. 100-204 (USIA Posts and Personnel Overseas)

This provision prohibits the closing of overseas posts, except in certain limited circumstances, and prohibits the elimination of American positions overseas until the ratio between USIA American positions in the U.S. and overseas is the same as that existing in 1981. Because of the staff increases in the U.S. that took place in the 1980's related to the modernization of the Voice of America, the expansion of television and exchanges, and the establishment of radio and TV broadcasting to Cuba, compliance with this provision is impossible.

As the world situation changes, we may well decide that certain branch posts may no longer serve a useful purpose. This may become a more pressing alternative as our resource base shrinks. Finally, and perhaps most important, closing or opening overseas posts is—and should remain—an Executive Branch authority.

Section 110—Reciprocal U.S. and Soviet Union Cultural-Information Centers

This provision is essentially self-explanatory. It would, in effect, create an exception to current U.S. legislation that bans the opening of any new Soviet office in this country pending resolution of the problem of the new U.S. Embassy in Moscow. We believe that the matter of allowing the Soviet Union to establish a cultural-information center in the United States should be treated separately from the U.S. Embassy controversy.

Section 111—Additional Basic Authorities under Smith-Mundt Act

These amendments are technical changes urged by Appropriations Committee staffs. At present, the authority to pay certain expenses and allowances covered by the amendments is repeated each year in our appropriation acts. The amendments would make such authority permanent, simplifying the annual appropriations process. The amendments would provide permanent authority for payment of certain allowances and expenses authorized by the Foreign Service Act of 1980 and other legislation.

Section 112—Special Immigrant Status for Certain Employees of United States Information Agency

This special immigrant status would: (1) allow affected employees to travel freely in and outside the United States; (2) allow spouses and children to work, because they are immigrants; (3) allow employees to fulfill residency requirements regarding in-state tuition; (4) allow dependent children to remain in the U.S. after age 21, without changing status; and (5) guarantee retirement coverage for the employees. Furthermore, the Agency would be relieved of the necessity of filing for Third Preference.

The Director of the Agency would be authorized to make certifications and would communicate these certifications to the Attorney General who would remove the conditional status of the visa. The Director would be completely free to make or withhold such certifications.

It should also be noted that if the Agency did not want or need to bring a person into the United States as a special immigrant, it could bring him or her in under the H-visa or, pursuant to a bona fide training program, the J-visa.

U.S. INFORMATION AGENCY,
Washington, DC, March 4, 1991.

Hon. DAN QUAYLE,
President of the Senate.

DEAR MR. PRESIDENT: Pursuant to the United States Information and Educational Exchange Act of 1948, as amended, the Mutual Educational and Cultural Exchange Act of 1961, as amended, Reorganization Plan No. 2 of 1977, the Radio Broadcasting to Cuba Act, the Inspector General Act of 1978, as amended, the Center for Cultural and Technical Interchange Between East and West Act of 1960, the National Endowment for Democracy Act, as amended, I am submitting the enclosed proposed legislation to authorize appropriations for the United States Information Agency for Fiscal Years 1992 and 1993 to enable the Agency to carry out international information and educational and

cultural exchange programs. A section-by-section analysis further explaining the proposed legislation is also enclosed.

The Office of Management and Budget advises that there is no objection to the submission of this proposed legislation to Congress and that its enactment would be in accord with the program of the President.

Sincerely,

BRUCE S. GELB,
Director.●

By Mr. HATCH (for himself, Mr. SPECTER, Mr. SIMPSON, Mr. DOMENICI, Mr. INOUYE, Mr. COCHRAN, Mr. D'AMATO, Mr. MCCAIN, Mr. BOND, and Mr. GORTON):

S. 617. A bill to reauthorize the Commission on Civil Rights; to the Committee on the Judiciary.

CIVIL RIGHTS COMMISSION REAUTHORIZATION ACT

Mr. HATCH. Mr. President, I, along with nine of my colleagues, am introducing the U.S. Commission on Civil Rights Reauthorization Act of 1991. This bill reauthorizes the U.S. Commission on Civil Rights for 10 years. Presently, the Commission's authorization expires on September 30, 1991.

The Commission was originally established in 1957 and reauthorized for short periods thereafter. In 1983, the Commission was reconstituted, with four members appointed by the President, and two each appointed by the President pro tempore of the Senate and by the Speaker of the House. Senate confirmation is not required (42 U.S.C. 1975 et seq.).

The Commission's general mission has remained the same: to investigate allegations of discriminatory denial of voting rights; to study and collect information concerning legal developments constituting discrimination; appraise Federal laws and policies regarding discrimination, and serve as a national clearinghouse of information on discrimination.

I have not always agreed with the Commission's position on issues over the years, but I believe it has the potential to play a role in the Nation's continuing commitment to eradicate discrimination in American life. In my view, Congress should reauthorize the commission for a lengthy time—10 years—and allow it to do its work unimpeded by periodic fear that it may not be reauthorized.

● Mr. MCCAIN. Mr. President, I am proud to be an original cosponsor of the U.S. Commission on Civil Rights Reauthorization Act of 1991. Quick passage of this measure will help our Nation eliminate all forms of discrimination.

The Commission on Civil Rights has performed a valuable service for our citizens, and the Commission must be allowed to continue its important work. Since its creation in 1957, the Commission on Civil Rights has been tasked to collect and study information on discrimination or denials of equal protection of the laws due to race, color, religion, sex, age, disability, and national origin. The Commission also studies and makes findings of fact on the administration of justice in such areas as voting rights, enforcement of Federal civil rights laws, and equality of opportunity in education, employment, and housing. The Commission then reports its findings to the President and Congress so that the lawmaking and executive branches may act on them.

The job that the Commission on Civil Rights performs is not an easy one, and one that is not always popular. I, myself, have not always agreed with the Commisson's findings on issues. I believe, however, that the Commission has proved extremely important in eradicating discrimination from the American landscape, and that it should be allowed to continue its mission without constant and continual congressional intervention.

Last year the Congress passed—with my strong support—and the President signed, the landmark Americans With Disabilities Act. This year, the Congress will likely debate additional civil rights legislation. The effectiveness of these measures and their successful implementation is not always easy to discern, and the Commission can play a vital role in monitoring the effects of laws enacted by the Congress to promote equal opportunity.

Mr. President, equality of opportunity is one of the cornerstones our Nation was built upon. However, this principle that makes our country so great is also very tenuous. We must be vigilant in our protection of equal opportunity, and the Commission on Civil Rights will help us do exactly that. Mr. President, the Commission should be reauthorized, and I urge my colleagues to support this measure.●

By Mr. BIDEN (for himself and Mr. DECONCINI):

S. 618. A bill to control and reduce violent crime; to the Committee on the Judiciary.

VIOLENT CRIME CONTROL ACT OF 1991

Mr. BIDEN. Mr. President, I rise today to introduce the Violent Crime Control Act of 1991, the most comprehensive anticrime initiative I have ever proposed. It is my belief that this legislation would make tremendous strides toward restoring safety and sanity to our Nation's dangerous streets.

America needs a crime bill and it can have one in 100 days. But it must be a crime bill that is tougher than the one the President proposed yesterday, in at least two important respects:

First, it must ban the killer assault weapons used by drug-dealers and terrorists.

Second, it must do more to add new police officers to the front lines of the war on crime.

If anyone doubts that such action is needed, I urge them to take a look at a report that the Judiciary Committee majority staff is releasing today.

This report, entitled "Fighting Crime in America: An Agenda for the 1990's," contains new data that illustrates how horrible the crime problem has become.

Among the report's findings:

The year 1990 set a national record for murders, a national record for rapes, a national record for assaults, and a national record for robberies. Last year's increase in murder and rape was the largest 1-year jump in more than a decade. And every American—every American—is four times more likely to be victimized by a violent crime today than he or she was in 1960. The fact is this: more Americans were killed on our streets over the past 8 weeks than were killed by enemy soldiers during Operation Desert Storm.

Yet if the report we are releasing today contains some depressing, stark facts, it also contains some rather simple—but important—solutions for meeting this crisis.

And these solutions form the core of the legislation I am proposing today: a bill, I am proud to say, that was endorsed last month by my colleagues in the Senate Democratic Conference.

Before I discuss our bill, I want to say a few things about the President's 100 days.

I have little doubt that Congress can pass a crime bill in 100 days. In fact, we could have passed a crime bill last year had the special interests in the gun lobby not worked to stall, delay, and ultimately kill the bill because of its ban on deadly assault weapons.

Simply put: If the President would join the Congress in banning the murderous weapons that are killing police officers, children and countless innocent bystanders, we could easily pass a crime bill within the next 100 days.

The report we are releasing today makes clear what America must do to end its rapidly rising crime rates:

First, we must get the people who commit crimes out of the community, and we must punish them severely for their actions;

Second, we must stop people from committing crimes before they happen; and

Third, we must get the deadly weapons off the streets.

On the first of these goals, our bill has little difference from the President. We disagree not in what the President proposes—but what he opposes—not in what he includes but in what he excludes.

Like the President's bill, our bill:

Imposes the death penalty for the largest number of offenses in U.S. history—indeed, our bill covers even more capital offenses than does the President's.

It extends the death penalty for drug killers, terrorists, and the murderers of law enforcement officers.

It shortens the appeals process for capital offenders.

And, it increases penalties for criminals who commit gun offenses.

We have no disagreement with the President over whether we must punish criminals severely. On this point, both proposals are in agreement. Our differences with the President start with the second goal, the question of whether more must be done to prevent crimes in the first place.

Here, we think that much more must be done—not just to punish criminals—but also to make our streets safer from mayhem in the first place.

On this point, the findings of our new staff report are worth noting. It shows:

In 1950, America had three police officers per violent crime. Yet today, the ratio is just the reverse—three violent crimes per officer.

After 18 months of the administration's war on drugs, the number of police officers on our streets today is only 1 percent higher than it was when the President's effort was launched.

And the administration's 1992 budget actually proposes a cut in Federal aid sent to local law enforcement agencies.

Our streets are unsafe because our police forces are undermanned and overwhelmed. They can never be safe again until we reverse this imbalance.

That's why our bill, unlike the President's, includes funding for thousands of new police officers, FBI agents, DEA agents, and other law enforcement officers. We don't want to just punish murderers, we want to prevent murders.

And it's why our bill includes three new initiatives that the President's plan ignores: a comprehensive new program to combat juvenile gangs; more help for rural areas that are suffering rising crime rates; and emergency aid to the places hardest hit by drugs.

And it is why we are pushing an important initiative called the Violence Against Women Act, which would tackle the escalating problems of rape, domestic violence, and sexual assault.

The Violence Against Women Act, along with Senator DECONCINI's motorcycle gang bill are further aspects of our anticrime agenda that are not adequately addressed by the President's plan.

Finally, and again, unlike the President's bill, our bill addresses a third goal of any substantial crime legislation; getting killer assault weapons off the streets.

Our bill includes the so-called DeConcini amendment, a measure adopted by the Senate last year to ban the manufacture and sale of 14 deadly assault weapons.

These guns are the weapons of choice for drug dealers and international terrorists. They have no legitimate purpose and they must be controlled before they kill any more of our law-abiding citizens.

Unfortunately, the President's bill is silent in this respect. Instead of controlling assault weapons, the President proposes to increase the penalties on those who use such guns to commit crimes.

Mr. President, I say this in response: We agree that gun criminals should face stiffer punishments, but we also think that we should get the most deadly weapons off the streets before they are used to kill or maim anyone else.

In sum: The President wants to punish crime—and so do we—but we also want to do more to prevent crime, and make our cities and towns safer for all Americans.

Can the Congress meet the challenge to pass a crime bill in 100 days? I am convinced that if the President works with us, this ambitious goal can be achieved.

But for this goal to be a meaningful one, the crime bill we pass must be a meaningful one. Our goal should not be to pass just any crime bill within 100 days, but rather, to enact a comprehensive, valuable piece of crime-fighting legislation in that period.

To achieve that end, the President must help us in two ways: First, he must prevent his allies in the gun lobby from blocking this bill, and indeed, he should join us in coming up with an agreeable proposal to limit these weapons; and second, he must work with us putting aside the rhetoric of partisanship on crime to reach an accord on a bill that we can all support.

None of us here in Congress or at the White House, Republican or Democrat—can afford to wait any longer to start to tackle this crisis.

Hopefully, if we all work together, we can make progress to combat death and violent aggression on this home front as swiftly and decisively as we achieved this same end in the gulf.

I urge my colleagues to review our new majority staff report and join me in supporting the Violent Crime Control Act.

I ask unanimous consent that the full text of my bill, along with a side-by-side comparison of it to the President's bill, and some summary materials, be printed in the RECORD.

Mr. President, I rise today to introduce a voluminous piece of legislation, but I think an important one—I hope my colleagues see it that way—the Violent Crime Control Act of 1991. This is the most comprehensive anticrime initiative I have ever introduced in the 18 years I have been here, and it is my belief that this legislation would make tremendous strides toward restoring safety and sanity to our Nation's streets and neighborhoods.

Mr. President, before I say my little piece here, let me point out that the President announced yesterday that violent crime is going to be his No. 1 domestic initiative. I hope that doesn't mean we are going to back off on the fight against drugs. The President laid out a crime bill, a crime bill all of which we passed last year here in the Senate. It ultimately failed because of a Presidential threat of a veto because we in the Senate included a provision eliminating 14 assault-style weapons—the so-called DeConcini bill.

Mr. President, I want to say at the outset about the death penalty that I do not think many of us in here—I know the Senator from Florida, because he knows so much about this area and has worked so hard in it so long when he was a Governor and since he has been here—disagree. Few of us disagree—at least I do not, nor does the Senator from Florida—on reinstating the death penalty.

Our bill last year provided for the death penalty. And the bill this year provides for a dealth penalty—total of 44 offenses for which you can recieve death as the penalty. That is more than what the President is proposing.

There is also a proposal the President has to change the habeas corpus law. The Senator, as an attorney and former attorney general, knows full well what that means. It means that there are people who have been put on death row, and who are filing frivolous and successive petitions that are taking up the courts' time and everyone's time.

But we can change habeas corpus tomorrow, and it will have no effect on the crime rate; zero. Those folks on death row are not shooting people. Yet, if you listen to some of my colleagues talk, they will tell you: "If we get the death penalty and we get a change in habeas corpus, well, we will change the world. Our streets will be safer."

Now, I support the death penalty. I am going to try to pass it again through this legislation. We passed it here in the Senate, and passed it in the House, and we are going to pass it again. That is not a big problem.

But with the Federal death penalty, Mr. President, if you add up all the potential people who will be put to death and convicted for all the crimes we include, you are not talking about more than a dozen folks a year. Heck, there are far more murders right here in the city of Washington. We are not talking about a lot of people.

The point I wanted to make is this: It is not what the President has proposed in his legislation that I oppose; it is what he does not propose. We will change the habeas corpus law to provide for only one appeal, one bite out of the apple. We have some disagreement among ourselves and with the President over the nuances. We will settle that. And we will pass a death penalty.

As I said, I spoke to a group of attorneys general this morning—and you

spoke to them just prior to my speaking to them, Mr. President—Republicans and Democrats alike. And the attorneys general all nodded like you did when I said the following: Assuming what the President proposed on the exclusionary rule is constitutional, which it is not; and assuming we allow people to go in and knock down people's doors without a search warrant, and say: "Golly, I made mistake;" and assuming they can prove they made a mistake, it is all right. Assume that is the case. Add up all the cases where a conviction has been overturned because the evidence was illegally seized, or where the prosecutor did not go forward because the evidence that he had at his disposal or her disposal was tainted because it was illegally seized. Add it all up. What does it add up to? 1 percent, 2 percent, 5 percent; an outrageous 15 percent of all the crimes committed? That would be bizarre, but let us say it is that.

The combination, Mr. President, of habeas corpus, restoration of the death penalty, and exclusionary rule, on the best day, would account for a very small percentage of the violent crime that is committed out there.

Mr. President, I am going to put in the RECORD "Fighting Crime in America; Agenda for the Nineties," a majority staff report. I am proud to say, Mr. President, that every staff report we have put out in the Judiciary Committee in recent years has been met with universal approval by conservatives, liberals, Democrats, Republicans, good guys, and bad guys. No one has disputed thus far, that I am aware of, the credibility of the reports we file.

Mr. President, we do not need, really, more studies and reports. We know the problem. The problem is that the streets are not safe.

There are three pieces to the problem. One, once you convict these folks, what do you do with them? The President and JOE BIDEN are in full agreement: You give death if it is a crime that warrants death. You radically limit the habeas corpus appeals. And you also allow the police some more flexibility relative to seized evidence. So far, so good.

Now, Mr. President, comes the hard part: Doing something about crime. The hard part, now. The hard part is, Mr. President, you have to deal with what this report and every other report shows. The murder rate is the highest it has ever been in the history of America—the highest ever. And although I have been wrong about many things—and if you stick around longer, I will be wrong again—there is one thing I was right about: last year I said that we were going to have the highest murder rate in history and we did. It did not take a genius to figure it out.

We have a higher rate merely because more people are shooting other people. As the head of the Trauma Division at Einstein Medical Center—one of the best trauma hospitals and emergency hospitals in the world—testified before my committee, she said, "Senator, 5, 7, 12, 15 years ago, when my trauma team had somebody, when that little blue light goes on, we had someone with a 22-caliber bullet in the skull somewhere, we had a chance to save them, or there may have been a 22-caliber slug in the shoulder or a Saturday night special in the leg. Senator, we do not get those anymore. When that little blue light goes on—I guess it varies from hospital to hospital what color light—when the light goes on, my trauma team heads down to meet the ambulance. Instead of a 22-caliber bullet lodged in the lung, the lung has been blown out of the body of the person because it is a 38-caliber gun that had done it." Or, "Senator, we don't get one-shot victims anymore. There are shots from their groin to their ears. So I have to worry about saving the leg, the intestines, the heart, and then the brain, all in one patient because they are the victims of semiautomatic weapons. When they fire those things, the bullets just scatter."

It does not take a genius to figure it out. Guns, guns, new guns, powerful guns, nonsporting guns are responsible for these murders. So I reintroduced the DeConcini assault weapon provision in this bill. Now, I tell you, Mr. President, that is not going to stop the murder rate. I am going to hear from my colleagues and the president of the NRA that people kill people, guns do not kill people. Well, let us assume that is true. I accept that. All I want to do, Mr. President, is to make it a little bit harder, a little bit harder for these guns to find their way into the hands of young people, drug lords, nondrug lords, local corner bosses.

I was asked, I say to my friend from Florida, to go to a small dinner with the President of Colombia. I do not often stay in Washington to go to those dinners, but there were six people or eight people invited. I sat with him. Do you know what he said to me? He said, "Can you do anything to help? The Medellin cartel boys fly into Florida, walk into a gun store, and they buy these things."

Now, those who have a second amendment argument, I just say to them, if you think people should not have Abrams tanks in their backyards, you have already crossed the constitutional line. If you can ban any weapon from anyone, you can ban any other weapon. So, Mr. President, we must deal with guns.

The second important thing in this legislation, Mr. President, is the only thing that is going to affect crime: More personnel, more police officers on the street for State and local governments, and the Federal Government. The President does not propose adding any new police officers. I want to fight crime. We need police officers to fight crime. Since the President has been President and his major new effort is under way, there has been a 1 percent increase in the number of police officers on the street. In the year 1960, if my recollection serves me correctly, we had as many police officers. It is a different world. The President proposes nothing for this.

The President also proposed nothing to deal with another obvious crime problem, violence against women. Mr. President, rape and violent assault are growing at record rates. I have introduced an entire crime bill just to address violence against women. The President has refused to support it as if it is not a problem. I know he is concerned. But violent assaults against young men, Mr. President, have decreased 12 percent in the last 15 years, while against women, they are up 50 percent.

Now what is this about? Mr. President, I heard my distinguished friend, the Republican leader, talk about the civil rights bill, asking whether it is politics or not. Well, Mr. President, we can have a crime bill in 15 minutes, 15 days, not 100 days, if the administration is willing to deal with what is not in this bill—assault weapons, more police officers, and violence against women.

Mr. President, when the first drug bill was introduced by the President of the United States, it banned the sale of assault weapons manufactured abroad. The President ultimately backed off his position. He is incredibly popular now. He has political capital that he is spending and he should spend to make his point relative to the Democrats, as he should. By the way, I am not complaining about that; he should use that capital. But I respectfully suggest that he consider using some of that political capital with the NRA. Over 85 percent of the people in this country, Mr. President, think we should do something about those 14 assault weapons—Uzis and Streetsweepers, and I will not go through all of them. Now is the time to expend a little bit of that capital.

So, Mr. President, I stand ready as chairman of the Judiciary Committee, and I am sure all my colleagues in the Senate and the House stand ready, to work with the President today, tomorrow, until it is done, to move on establishing the death penalty and reforming habeas corpus. But we must also provide more police, more protection, fewer assault weapons, and more help to women who are victims of crime.

I thank the Chair.

I ask unanimous consent that, along with the bill, a copy of "Fighting Crime in America, An American Agenda," and also a side-by-side comparison of this bill that I am sending to the desk be printed in the RECORD.

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

S. 618

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Violent Crime Control Act of 1991".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—SAFER STREETS AND NEIGHBORHOODS

SEC. 101. SHORT TITLE.

This title may be cited as the "Safer Streets and Neighborhoods Act of 1991".

SEC. 102. GRANTS TO STATE AND LOCAL AGENCIES.

Paragraph (5) of section 1001(a) of part J of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"(5) There are authorized to be appropriated $1,000,000,000 for fiscal year 1992 and such sums as may be necessary in fiscal years 1993 and 1994 to carry out the programs under parts D and E of this title.".

SEC. 103. CONTINUATION OF FEDERAL STATE FUNDING FORMULA.

Section 504(a)(1) of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by section 211 of the Department of Justice Appropriations Act, 1990 (Public Law 101-162) and section 601 of the Crime Control Act of 1990 (Public Law 101-647), is amended by striking "1991" and inserting in lieu thereof "1992".

TITLE II—DEATH PENALTY

SEC. 201. SHORT TITLE.

This title may be cited as the "Federal Death Penalty Act of 1991".

SEC. 202. CONSTITUTIONAL PROCEDURES FOR THE IMPOSITION OF THE SENTENCE OF DEATH.

(a) IN GENERAL.—Part II of title 18 of the United States Code is amended by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH SENTENCE

"§ 3591. Sentence of death authorized

"A defendant who has been found guilty of—

"(1) an offense described in section 794 or section 2381 of this title;

"(2) an offense described in section 1751(c) of this title, if the offense, as determined beyond a reasonable doubt at the hearing under section 3593, constitutes an attempt to kill the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President; or

"(3) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury that resulted in the death of the victim;

"(C) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act; or

"(D) intentionally and specifically engaged in an act, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense.

"§ 3592. Mitigating and aggravating factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is to be imposed on a defendant, the finder of fact shall consider any mitigating factor, including the following:

"(1) IMPAIRED CAPACITY.—The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) DURESS.—The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) MINOR PARTICIPATION.—The defendant is punishable as a principal (as defined in section 2 of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

"(4) FORESEEABILITY.—The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of murder, or other offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"(5) YOUTH.—The defendant was youthful, although not under the age of 18.

"(6) NO PRIOR CRIMINAL RECORD.—The defendant did not have a significant prior criminal record.

"(7) DISTURBANCE.—The defendant committed the offense under severe mental or emotional disturbance.

"(8) OTHER DEFENDANTS.—Another defendant or defendants, equally culpable in the crime, will not be punished by death.

"(9) VICTIM'S CONSENT.—The victim consented to the criminal conduct that resulted in the victim's death.

"(10) OTHER FACTORS.—Other factors in the defendant's background or character that mitigate against imposition of the death sentence.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(1), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) PRIOR ESPIONAGE OR TREASON OFFENSE.—The defendant has previously been convicted of another offense involving espionage or treason for which either a sentence of life imprisonment or death was authorized by law.

"(2) GRAVE RISK TO NATIONAL SECURITY.—In the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security.

"(3) GRAVE RISK OF DEATH.—In the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (2) or (3), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) DEATH DURING COMMISSION OF ANOTHER CRIME.—The death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property in interstate commerce by explosives), section 1118 (prisoners serving life term), section 1201 (kidnaping), or section 2381 (treason) of this title, or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n)) (aircraft piracy).

"(2) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(4) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(5) HEINOUS, CRUEL, OR DEPRAVED.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(6) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(7) PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(8) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism.

"(9) CONVICTION FOR TWO FELONY DRUG OFFENSES.—The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(10) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(11) CONVICTION FOR SERIOUS FEDERAL DRUG OFFENSES.—The defendant had previously been convicted of violating title II or title III of the Controlled Substances Act for which a sentence of 5 or more years may be imposed or had previously been convicted of engaging in a continuing criminal enterprise.

"(12) CONTINUING CRIMINAL ENTERPRISE INVOLVING DRUG SALES TO MINORS.—The defendant committed the offense in the course of engaging in a continuing criminal enterprise in violation of section 408(c) of the Controlled Substances Act and that violation involved the distribution of drugs to persons under the age of 21 in violation of section 405 of such Act.

"(13) HIGH PUBLIC OFFICIALS.—The defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice-President-elect, the Vice-President-designate, or, if there is no Vice President, the officer next in order of succession to the office of the President of the United States, or any person who is acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if he is in the United States on official business; or

"(D) a Federal public servant who is a judge, a law enforcement officer, or an employee of a United States penal or correctional institution—

"(i) while he is engaged in the performance of his official duties;

"(ii) because of the performance of his official duties; or

"(iii) because of his status as a public servant.

For purposes of this subparagraph, a 'law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution or adjudication of an offense, and includes those engaged in corrections, parole, or probation functions.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"§ 3593. Special hearing to determine whether a sentence of death is justified

"(a) NOTICE BY THE GOVERNMENT.—If, in a case involving an offense described in section 3591, the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice—

"(1) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter and that the government will seek the sentence of death; and

"(2) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty of or pleads guilty to an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty or pleads guilty to an offense under section 3591, no presentence report shall be prepared. At the sentencing hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under section 3592. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, subject to the Federal Rules of Evidence and Federal Rules of Criminal Procedure. The government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The government shall open the argument. The defendant shall be permitted to reply. The government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur with the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(1), an aggravating factor required to be considered under section 3592(b) is found to exist; or

"(2) an offense described in section 3591 (2) or (3), an aggravating factor required to be considered under section 3592(c) is found to exist;

the jury, or if there is no jury, the court, shall then consider whether all the aggravating factor or factors found to exist sufficiently outweigh all the mitigating factor or factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall recommend whether a sentence of death shall be imposed rather than some other lesser sentence. The jury or the court, if there is no jury, regardless of its findings with respect to aggravating and mitigating factors, is never required to impose a death sentence, and the jury shall be so instructed.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, religious beliefs, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or any victim may be.

"§ 3594. Imposition of a sentence of death

"Upon a finding under section 3593(e) that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise, the court shall impose any sentence other than death that is authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without parole.

"§ 3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) The court of appeals shall address all substantive and procedural issues raised on the appeal of a sentence of death, and shall consider whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor and whether the evidence supports the special finding of the existence of an aggravating factor required to be considered under section 3592.

"(2) Whenever the court of appeals finds that—

"(A) the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

"(B) the admissible evidence adduced does not support the special finding of the existence of the required aggravating factor; or

"(C) other legal error requires reversal of the sentence of death,

the court shall remand the case for reconsideration under section 3593 or impose a sentence other than death. In any other case, the court of appeals shall remand the case for reconsideration under section 3593.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"§ 3596. Implementation of a sentence of death

"(a) IN GENERAL.—A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does provide for the implementation of a sentence of death, and the sentence shall be implemented in the latter State in the manner prescribed by such law.

"(b) PREGNANT WOMAN.—A sentence of death shall not be carried out upon a woman while she is pregnant.

"(c) MENTAL CAPACITY.—A sentence of death shall not be carried out upon a person who is mentally retarded. A sentence of death shall not be carried out upon a person who, as a result of mental disability—

"(1) cannot understand the nature of the pending proceedings, what such person was tried for, the reason for the punishment, or the nature of the punishment; or

"(2) lacks the capacity to recognize or understand facts which would make the punishment unjust or unlawful, or lacks the ability to convey such information to counsel or to the court.

"§ 3597. Use of State facilities

"(a) IN GENERAL.—A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"(b) EXCUSE OF AN EMPLOYEE ON MORAL OR RELIGIOUS GROUNDS.—No employee of any State department of corrections or the Federal Bureau of Prisons and no employee providing services to that department or bureau under contract shall be required, as a condition of that employment, or contractual obligation to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participation in executions' includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.

"§ 3598. Special provisions for Indian country

"Notwithstanding sections 1152 and 1153 of this title, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country as defined in section 1151 of this title, and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that this chapter have effect over land and persons subject to its criminal jurisdiction.".

(b) AMENDMENTS TO CHAPTER ANALYSIS.—The chapter analysis of part II of title 18, United States Code, is amended by adding the following new item after the item relating to chapter 227:

"228. Death sentence ..... 3591".

SEC. 203. SPECIFIC OFFENSES FOR WHICH DEATH PENALTY IS AUTHORIZED.

(a) CONFORMING CHANGES IN TITLE 18.—Title 18, United States Code, is amended as provided in the following sections:

(1) AIRCRAFTS AND MOTOR VEHICLES.—Section 34 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the section.

(2) ESPIONAGE.—Section 794(a) of title 18, United States Code, is amended by striking the period at the end of the section and inserting ", except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.".

(3) EXPLOSIVE MATERIALS.—(A) Section 844(d) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(B) Section 844(f) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

(C) Section 844(i) of title 18, United States Code, is amended by striking the words "as provided in section 34 of this title".

(6) MURDER.—(A) The second undesignated paragraph of section 1111(b) of title 18, United States Code, is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;".

(B) Section 1116(a) of title 18, United States Code, is amended by striking "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and".

(7) KIDNAPPING.—Section 1201(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(8) NONMAILABLE INJURIOUS ARTICLES.—The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the paragraph.

(9) PRESIDENTIAL ASSASSINATIONS.—Subsection (c) of section 1751 of title 18, United States Code, is amended to read as follows:

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to kill the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President.".

(10) WRECKING TRAINS.—The second to the last undesignated paragraph of section 1992 of title 18, United States Code, is amended by striking the comma after "imprisonment for life" and inserting a period and striking the remainder of the section.

(11) BANK ROBBERY.—Section 2113(e) of title 18, United States Code, is amended by striking "or punished by death if the verdict of the jury shall so direct" and inserting "or if death results shall be punished by death or life imprisonment".

(12) HOSTAGE TAKING.—Section 1203(a) of title 18, United States Code, is amended by inserting after "or for life" the following: "and, if the death of any person results, shall be punished by death or life imprisonment".

(13) RACKETEERING.—(A) Section 1958 of title 18, United States Code, is amended by striking "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting "and if death results, shall be punished by death or life imprisonment, or shall be fined not more than $250,000, or both".

(B) Section 1959(a)(1) of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine of not more than $250,000, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine of not more than $250,000, or both;".

(14) GENOCIDE.—Section 1091(b)(1) of title 18, United States Code, is amended by striking "a fine of not more than $1,000,000 or imprisonment for life," and inserting ", where death results, a fine of not more than $1,000,000, or imprisonment for life or a sentence of death,".

(b) CONFORMING AMENDMENT TO FEDERAL AVIATION ACT OF 1954.—Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1473), is amended by striking subsection (c).

SEC. 204. APPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

The provisions of chapter 228 of title 18, United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801).

SEC. 205. DEATH PENALTY FOR MURDER BY A FEDERAL PRISONER.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 1118. Murder by a Federal prisoner

"(a) OFFENSE.—Whoever, while confined in a Federal correctional institution under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of parole.

"(b) DEFINITIONS.—For the purposes of this section—

"(1) the term 'Federal correctional institution' means any Federal prison, Federal correctional facility, Federal community program center, or Federal halfway house;

"(2) the term 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death; and

"(3) the term 'murders' means committing first degree or second degree murder as defined by section 1111 of this title.".

(b) AMENDMENT TO CHAPTER ANALYSIS.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end thereof the following:

"1118. Murder by a Federal prisoner.".

SEC. 206. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.

(a) CONSPIRACY AGAINST RIGHTS.—Section 241 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(b) DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.—Section 242 of title 18, United States Code, is amended by striking the period at the end of the last sentence and inserting ", or may be sentenced to death.".

(c) FEDERALLY PROTECTED ACTIVITIES.—Section 245(b) of title 18, United States Code, is amended in the matter following paragraph (5) by inserting ", or may be sentenced to death" after "or for life".

(d) DAMAGE TO RELIGIOUS PROPERTY; OBSTRUCTION OF THE FREE EXERCISE OF RELIGIOUS RIGHTS.—Section 247(c)(1) of title 18, United States Code, is amended by inserting ", or may be sentenced to death" after "or both".

SEC. 207. RACIAL JUSTICE ACT OF 1991.

(a) SHORT TITLE.—This section may be cited as the "Racial Justice Act of 1991".

(b) FINDINGS.—The Congress finds that—

(1) section 5 of the fourteenth amendment of the United States Constitution calls upon Congress to enforce the Constitution's promise of equality under law;

(2) equality under law is tested most profoundly by whether a legal system tolerates race playing a role in the determination of whether and when to administer the ultimate penalty of death;

(3) the death penalty is being administered in a pattern that evidences a significant risk that the race of the defendant, or the race of the victim against whom the crime was committed, influences the likelihood that the defendant will be sentenced to death;

(4) the Constitution's guarantee of equal justice for all is jeopardized when the death penalty is imposed in a pattern in which the likelihood of a death sentence is affected by the race of the perpetrator or of the victim;

(5) the United States Supreme Court has concluded that the Federal judiciary is institutionally unable to eliminate this jeopardy to equal justice in the absence of proof that a legislature, prosecutor, judge, or jury acted with racially invidious and discriminatory motives in the case of a particular defendant;

(6) the interest in ensuring equal justice under law may be harmed, not only by decisions motivated by explicit racial bias, but also by government rules, policies, and practices that operate to reinforce the subordinate status to which racial minorities were relegated in our society;

(7) the institutional need of courts to identify invidiously motivated perpetrators is not shared by Congress, which is empowered by section 5 of the fourteenth amendment to take system-wide, preventive measures not only to eliminate adjudicated instances of official race discrimination but also to eradicate wide-scale patterns and practices that entail an intolerable danger that persons of different races would be treated differently; and

(8) the persistent racial problems pervading the implementation of the death penalty in many parts of this Nation require the Government of the United States to counteract the lingering effects of racial prejudice in order to enforce the constitutional guarantee of equal justice for all Americans.

(c) AMENDMENT TO TITLE 28.—

(1) PROCEDURE.—Part VI of title 28, United States Code, is amended by adding at the end thereof the following new chapter:

"CHAPTER 177—RACIALLY DISCRIMINATORY CAPITAL SENTENCING

"Sec.
"2921. Definitions.
"2922. Prohibition on the imposition or execution of the death penalty in a racially discriminatory pattern.
"2923. Data on death penalty cases.
"2924. Enforcement of the chapter.
"2925. Construction of chapter.

"§ 2921. Definitions

"For purposes of the chapter—

"(1) the term 'a racially discriminatory pattern' means a situation in which sentences of death are imposed more frequently—

"(A) upon persons of one race than upon persons of another race; or

"(B) as punishment for crimes against persons of one race than as punishment for crimes against persons of another race,

and the greater frequency is not explained by pertinent nonracial circumstances;

"(2) the term 'death-eligible crime' means a crime for which death is a punishment that is authorized by law to be imposed under any circumstances upon a conviction of that crime;

"(3) the term 'case of death-eligible crime' means a case in which the complaint, indictment, information, or any other initial or subsequent charging paper charges any person with a death-eligible crime; and

"(4) the term 'State or Federal entity' means any State, the District of Columbia, the United States, any territory thereof, and any subdivision or authority of any of these entities that is empowered to provide by law that death be imposed as punishment for crime.

"§ 2922. Prohibition on the imposition or execution of the death penalty in a racially discriminatory pattern

"(a) PROHIBITION.—It is unlawful to impose or execute sentences of death under color of State or Federal law in a racially discriminatory pattern. No person shall be put to death in the execution of a sentence imposed pursuant to any law if that person's death sentence furthers a racially discriminatory pattern.

"(b) ESTABLISHMENT OF A PATTERN.—To establish that a racially discriminatory pattern exists for purposes of this chapter—

"(1) ordinary methods of statistical proof shall suffice; and

"(2) it shall not be necessary to show discriminatory motive, intent, or purpose on the part of any individual or institution.

"(c) PRIMA FACIE SHOWING.—(1) To establish a prima facie showing of a racially dis-

criminatory pattern for purposes of this chapter, it shall suffice that death sentences are being imposed or executed—

"(A) upon persons of one race with a frequency that is disproportionate to their representation among the numbers of persons arrested for, charged with, or convicted of, death-eligible crimes; or

"(B) as punishment for crimes against persons of one race with a frequency that is disproportionate to their representation among persons against whom death-eligible crimes have been committed.

"(2) To rebut a prima facie showing of a racially discriminatory pattern, a State or Federal entity must establish by clear and convincing evidence that identifiable and pertinent nonracial factors persuasively explain the observable racial disparities comprising the pattern.

"§ 2923. Data on death penalty cases

"(a) DESIGNATION OF AGENCY.—Any State or Federal entity that provides by law for death to be imposed as a punishment for any crime shall designate a central agency to collect and maintain pertinent data on the charging, disposition, and sentencing patterns for all cases of death-eligible crimes.

"(b) RESPONSIBILITIES OF CENTRAL AGENCY.—Each central agency designated pursuant to subsection (a) shall—

"(1) affirmatively monitor compliance with this chapter by local officials and agencies;

"(2) devise and distribute to every local official or agency responsible for the investigation or prosecution of death-eligible crimes a standard form to collect pertinent data;

"(3) maintain all standard forms, compile and index all information contained in the forms, and make both the forms and the compiled information publicly available;

"(4) maintain a centralized, alphabetically indexed file of all police and investigative reports transmitted to it by local officials or agencies in every case of death-eligible crime; and

"(5) allow access to its file of police and investigative reports to the counsel of record for any person charged with any death-eligible crime or sentenced to death who has made or intends to make a claim under section 2922 and it may also allow access to this file to other persons.

"(c) RESPONSIBILITY OF LOCAL OFFICIAL.—(1) Each local official responsible for the investigation or prosecution of death-eligible crimes shall—

"(A) complete the standard form developed pursuant to subsection (b)(2) on every case of death-eligible crime; and

"(B) transmit the standard form to the central agency no later than 3 months after the disposition of each such case whether that disposition is by dismissal of charges, reduction of charges, acceptance of a plea of guilty to the death-eligible crime or to another crime, acquittal, conviction, or any decision not to proceed with prosecution.

"(2) In addition to the standard form, the local official or agency shall transmit to the central agency one copy of all police and investigative reports made in connection with each case of death-eligible crime.

"(d) PERTINENT DATA.—The pertinent data required in the standard form shall be designated by the central agency but shall include, at a minimum, the following information:

"(1) pertinent demographic information on all persons charged with the crime and all victims (including race, sex, age, and national origin);

"(2) information on the principal features of the crime;

"(3) information on the aggravating and mitigating factors of the crime, including the background and character of every person charged with the crime; and

"(4) a narrative summary of the crime.

"§ 2924. Enforcement of the Chapter

"(a) ACTION UNDER SECTIONS 2241, 2254, OR 2255 OF THIS TITLE.—In any action brought in a court of the United States within the jurisdiction conferred by sections 2241, 2254, or 2255, in which any person raises a claim under section 2922—

"(1) the court shall appoint counsel for any such person who is financially unable to retain counsel; and

"(2) the court shall furnish investigative, expert or other services necessary for the adequate development of the claim to any such person who is financially unable to obtain such services.

"(b) DETERMINATION BY A STATE COURT.—Notwithstanding section 2254, no determination on the merits of a factual issue made by a State court pertinent to any claim under section 2922 shall be presumed to be correct unless—

"(1) the State is in compliance with section 2923;

"(2) the determination was made in a proceeding in a State court in which the person asserting the claim was afforded rights to the appointment of counsel and to the furnishing of investigative, expert and other services necessary for the adequate development of the claim which were substantially equivalent to those provided by subsection (a); and

"(3) the determination is one which is otherwise entitled to be presumed to be correct under the criteria specified in section 2254.

"§ 2925. Construction of chapter

"Nothing contained in this chapter shall be construed to affect in one way or the other the lawfulness of any sentence of death that does not violate section 2922.".

(2) AMENDMENT TO TABLE OF CHAPTERS.—The table of chapters of part VI of title 28, United States Code, is amended by adding at the end thereof the following new item:

"177. Racially Discriminatory Capital Sentencing ..... 2921.".

(d) ACTIONS PRIOR TO THE DATE OF ENACTMENT.—No person shall be barred from raising any claim under section 2922 of title 28, United States Code, as added by this section, on the ground of having failed to raise or to prosecute the same or a similar claim prior to enactment of the section nor by reason of any adjudication rendered prior to its enactment.

TITLE III—DEATH PENALTY FOR MURDER OF LAW ENFORCEMENT OFFICER ACT

SEC. 301. DEATH PENALTY FOR THE MURDER OF FEDERAL LAW ENFORCEMENT OFFICIALS.

Section 1114(a) of title 18, United States Code, is amended by striking "punished as provided under sections 1111 and 1112 of this title," and inserting "punished, in the case of first degree murder, by a sentence of death or life imprisonment as provided under section 1111 of this title, or, in the case of manslaughter, as provided under section 1112 of this title,".

SEC. 302. DEATH PENALTY FOR THE MURDER OF STATE OFFICIALS ASSISTING FEDERAL LAW ENFORCEMENT OFFICIALS.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following:

"§ 1119. Killing persons aiding Federal investigations

"Whoever intentionally kills—

"(1) a State or local official, law enforcement officer, or other officer or employee while working with Federal law enforcement officials in furtherance of a Federal criminal investigation—

"(A) while the victim is engaged in the performance of official duties;

"(B) because of the performance of the victim's official duties; or

"(C) because of the victim's status as a public servant; or

"(2) any civilian or witness assisting a Federal criminal investigation, while that assistance is being rendered and because of it; shall be subject to the death penalty under chapter 228 of this title.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following:

"1119. Killing persons aiding Federal investigations.".

TITLE IV—DEATH PENALTY FOR DRUG CRIMINALS ACT

SEC. 401. SHORT TITLE.

This title may be cited as the "Death Penalty for Drug Criminals Act of 1991".

SEC. 402. DEATH PENALTY FOR CERTAIN DRUG CRIMINALS.

The Controlled Substances Act (21 U.S.C. sec. 401 et seq.) is amended by adding after section 408 the following:

"SEC. 409. DEATH PENALTY AUTHORIZED FOR CERTAIN DRUG CRIMINALS."

SEC. 403. DRUG DISTRIBUTION CONSPIRACIES.

Section 409 of the Controlled Substances Act (21 U.S.C.) is amended by adding subsection (a) as follows:

"(a) DRUG DISTRIBUTION CONSPIRACIES.—Whoever, during the course of a conspiracy prohibited by section 406 of the Controlled Substances Act, (21 U.S.C. 846), commits a murder in the first degree, shall be punished according to the terms of section 1111 of title 18, including by sentence of death or by imprisonment for life.".

SEC. 404. DRUG IMPORT AND EXPORT CONSPIRACIES.

Section 409 of the Controlled Substances Act (21 U.S.C.) is amended by adding subsection (b) as follows:

"(b) DRUG IMPORT AND EXPORT CONSPIRACIES.—Whoever, during the course of a conspiracy prohibited by section 1013 of the Controlled Substances Import and Export Act, (21 U.S.C. 963), commits a murder in the first degree, shall be punished according to the terms of section 1111 of title 18, including by sentence of death or by imprisonment for life.".

SEC. 405. DRUG DISTRIBUTION TO MINORS, NEAR SCHOOLS, OR BY EMPLOYING MINORS.

Section 409 of the Controlled Substances Act (21 U.S.C.) is amended by adding subsection (c) as follows:

"(c) DRUG DISTRIBUTION TO MINORS, NEAR SCHOOLS, OR WHILE EMPLOYING PERSONS UNDER 18 YEARS OF AGE.—Whoever, during the course of an offense punishable under section 405 of the Controlled Substances Act (21 U.S.C. 845), section 405A of the Controlled Substances Act (21 U.S.C. 845A), or section 405B of the Controlled Substances Act (21 U.S.C. 845B), commits a murder in the first degree, shall be punished according to the terms of section 1111 of title 18, including by sentence of death or imprisonment for life.".

SEC. 406. EXPORT AND IMPORT OF MAJOR DRUG QUANTITIES.

Section 409 of the Controlled Substances Act (21 U.S.C.) is amended by adding subsection (d) as follows:

"(d) DRUG IMPORT AND EXPORT.—Whoever, during an offense prohibited by section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)), commits a murder in the first degree, shall be punished according to the terms of section 1111 of title 18, including by sentence of death or by imprisonment for life.".

SEC. 407. DISTRIBUTION OF MAJOR DRUG QUANTITIES.

Section 409 of the Controlled Substances Act (21 U.S.C.) is amended by adding subsection (e) as follows:

"(e) DRUG DISTRIBUTION.—Whoever, during the course of an offense punishable under section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)), commits a murder in the first degree, shall be punished according to the terms of section 1111 of title 18, including by sentence of death or by imprisonment for life.".

TITLE V—PREVENTION AND PUNISHMENT OF TERRORIST ACTS

SEC. 501. SHORT TITLE.

This Act may be cited as the "Comprehensive Counter-Terrorism Act of 1991".

Subtitle A—Punishing Domestic and International Terrorist Acts

PART I—TERRORIST DEATH PENALTY ACT OF 1991

SEC. 511. SHORT TITLE.

This part may be cited as the "Terrorist Death Penalty Act of 1991".

SEC. 512. TERRORIST DEATH PENALTY OFFENSE: TERRORIST ACTS ABROAD.

Paragraph (1) of subsection 2331(a) of title 18, United States Code, is amended to read as follows:

"(1) if the killing—

"(A) is a first degree murder as defined in section 1111(a) of this title, be punished by death or imprisonment for any term of years or for life, fined under this title, or both; or

"(B) is a murder other than a first degree murder as defined in section 1111(a) of this title, be fined under this title, imprisoned for any term of years or for life, or both;".

PART II—TERRORIST ACTS COMMITTED IN THE UNITED STATES

SEC. 521. CRIMINAL OFFENSE FOR DOMESTIC TERRORIST ACTS.

Part I of title 18, United States Code, is amended by inserting after chapter 113A the following new chapter 113B:

"CHAPTER 113B—TERRORIST ACTS COMMITTED IN THE UNITED STATES

"§ 2336. Terrorist acts committed in the United States

"(a) HOMICIDE.—Whoever, acting as an agent of a foreign power, kills another person, with the intent specified in subsection (d) of this section, shall

"(i) if the killing—

"(A) is a first degree murder as defined in section 1111(a) of this title, be fined under this title, punished by death or imprisonment for any term of years or life, or both; or

"(B) is a murder other than a first degree murder as defined in subsection 1111(a) of this title,

be fined under this title, imprisoned for any term of years or for life, or both;

"(2) if the killing is a voluntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned for not more than twenty years, or both; and

"(3) if the killing is an involuntary manslaughter as defined in section 1112(a) of this title, be fined under this title or imprisoned not more than ten years, or both.

"(b) ATTEMPT OR CONSPIRACY WITH RESPECT TO HOMICIDE.—Whoever, acting as an agent of a foreign power, with the intent specified in subsection (d) of this section, attempts to kill, or engages in a conspiracy to kill—

"(1) in the case of an attempt to commit a killing that is a murder as defined in section 1111(a) of this title, shall be fined under this title, imprisoned for any term of years or life, or both; and

"(2) in the case of a conspiracy by two or more persons to commit a killing that is a murder as defined in section 1111(a) of this title, if one or more of such persons do any overt act to effect the object of the conspiracy, shall be fined under this title or imprisoned for any term of years or for life, or both.

"(c) OTHER VIOLENT TERRORIST ACTS.—Whoever, acting as an agent of a foreign power, with the intent specified in subsection (d) of this section, engages in physical violence that results in serious bodily injury shall be fined under this title or imprisoned for not more than ten years, or both.

"(d) INTENT TO COMMIT TERRORIST ACTS.—For the purposes of this section, a person possesses an intent to commit a terrorist act, if such person intends—

"(1) to intimidate or coerce a civilian population;

"(2) to influence the policy of a government by intimidation or coercion; or

"(3) to affect the conduct of a government by assassination, kidnapping, or other violent act.

"(e) DEFINITION.—For purposes of this section and section 2337 of this title, the term 'agent of a foreign power' shall have the same meaning as in section 101(b) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)).".

PART III—INCREASING PENALTIES FOR INTERNATIONAL TERRORIST ACTS

SEC. 531. PENALTIES FOR INTERNATIONAL TERRORIST ACTS.

Section 2331 of title 18, United States Code, as amended by subtitle A of this title, is further amended—

(1) in subsection (a)—

(A) in paragraph (2) by striking "ten" and inserting "twenty"; and

(B) in paragraph (3) by striking "three" and inserting "ten".

(2) in subsection (c) by striking "five" and inserting "ten".

SEC. 532. CLERICAL AMENDMENTS.

The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 113A the following new item:

Subtitle B—Preventing Domestic and International Terrorist Acts

PART I—ATTACKING THE INFRASTRUCTURE OF TERRORIST ORGANIZATIONS

SEC. 541. PROVIDING MATERIAL SUPPORT TO TERRORISTS.

Part I of title 18, United States Code, as amended by title I of this Act, is further amended by adding a new section 2337 as follows:

"§ 2337. Providing material support to terrorists

"Whoever knowingly, acting as an agent of a foreign power, with the intent to further a violation of section 1203, 2331, or 2336 of this title—

"(1) provides material support or resources; or

"(2) conceals or disguises the nature, location, source or ownership of material support or resources,

that are used or intended to be used to violate section 1203, 2331, or 2336 of this title shall be fined under this title or imprisoned for not more than ten years, or both. For the purposes of this section, material support or resources shall include, but not be limited to, currency or other financial securities, communications equipment, facilities, weapons, personnel and other physical assets.".

SEC. 542. FORFEITURE OF ASSETS USED TO SUPPORT TERRORISTS.

Chapter 46 of title 18, United States Code, is amended—

(1) in section 981(a)(1) by inserting at the end thereof the following:

"(D) Any property, real or personal, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of section 1203, 2331, 2332, 2336, or 2337 of this title."; and

(2) in section 982(a) by inserting at the end thereof the following:

"(3) Any property, real or personal, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of section 1203, 2331, 2336, or 2337 of this title.".

PART II—ELECTRONIC COMMUNICATIONS

SEC. 545. COOPERATION OF TELECOMMUNICATIONS PROVIDERS WITH LAW ENFORCEMENT.

It is the sense of Congress that providers of electronic communications services and manufacturers of electronic communications service equipment shall ensure that communications systems permit the government to obtain the plain text contents of voice, data, and other communications when appropriately authorized by law.

PART III—COOPERATION OF WITNESSES IN TERRORIST INVESTIGATIONS

SEC. 551. SHORT TITLE.

This part may be cited as the "Alien Witness Cooperation Act of 1991".

SEC. 552. ALIEN WITNESS COOPERATION.

Chapter 224 of title 18, United States Code, is amended by—

(1) redesignating section 3528 as 3529;

(2) adding at the end of section 3529, as redesignated, the following new paragraph:

"As used in section 3528, the terms 'alien' and 'United States' shall have the same meanings given to them in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).";" and

(3) inserting after section 3527 the following new section 3528:

"§ 3528. Aliens; waiver of admission requirements

"(a) IN GENERAL.—Upon authorizing protection to any alien under this chapter, the United States shall provide such alien with appropriate immigration visas and allow such alien to remain in the United States so long as that alien abides by all laws of the United States and guidelines, rules and regulations for protection. The Attorney General may determine that the granting of perma-