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# House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, October 24, 1995, at 12:30 p.m.

# Senate

MONDAY, OCTOBER 23, 1995

The Senate met at 11 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

## PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

O God, give us the desire to do what we already know of Your will, so that we may know more of it, and make it ours. We want to be positive, open, receptive people who can receive Your guidance for each new challenge. You have shown us that discovery of Your will comes from consistent communion with You. We also know that You condition our thinking in preparation for the big decisions ahead of us in the future. Today's obedience results in tomorrow's guidance. Action is the nerve center of our spiritual life. Motivate us to do what You have shown us needs to be done in the mundane details of life so we will be prepared to discover and do Your will in momentous decisions in the future. Keep our souls fit with consistent practice of Your presence. May prayer throughout the day be as natural as breathing. We are filled with awe and wonder, gratitude and praise that You who are Creator of the universe and sovereign Lord of all nations would use us to carry out Your will in the United States. We press on with renewed commitment to serve You. In the name of our blessed Lord. Amen.

## RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from Mississippi is recognized.

## SCHEDULE

Mr. COCHRAN. Mr. President, today the leader time has been reserved, and there will be a period for morning business until the hour of 2 p.m., this afternoon. At 2 p.m., the Senate will begin consideration of S. 1322 regarding the relocation of the United States Embassy in Israel. The majority leader has previously announced that there will be no rollcall votes prior to 5 p.m., today.

## MEASURE PLACED ON CALENDAR—H.R. 1715

Mr. COCHRAN. Mr. President, I understand there is a bill at the desk due for its second reading.

The PRESIDING OFFICER (Mr. THOMAS). The clerk will read the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 1715) respecting the relationship between workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

Mr. COCHRAN. Mr. President, I object to the further consideration of the bill at this time.

The PRESIDING OFFICER. Objection is heard.

The bill will be placed on the calendar.

## MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 2 p.m., with Senators permitted to speak therein for up to 5 minutes each.

Under the previous order, the Senator from Mississippi [Mr. COCHRAN] is recognized to speak for up to 50 minutes.

## PROCESS FOR BALANCING THE BUDGET

Mr. COCHRAN. Mr. President, I understand that other Republican Senators would like to be heard this morning on the subject of the balanced budget process and our effort to get a reconciliation bill before the Senate this week for action and the general policy that we have embarked upon to try to do a better job of controlling the Federal deficit.

As part of this effort, of course, we have been trying to reduce the levels of funding in individual appropriations bills. We passed a budget resolution earlier this year. The conference report was agreed to by both Houses of Congress setting specific targets for spending, many of which are below last year's levels of funding for the operations of the Federal Government.

Let me give you one example of the success that we have achieved to date. And I am confident that more success will be achieved as we go through the balance of this legislative session.

The President signed a bill on Saturday appropriating funds for the Department of Agriculture and related agencies. This is the fiscal year 1996 appropriations bill that had previously been

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



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passed by the Congress. This bill represents, first of all, successful negotiation with the administration over what had been some very contentious issues. We were able to work with our colleagues in the House and here in the Senate, on both sides of the aisle, to work out an agreed-upon bill which was passed here in the Senate, Senators may recall, with only three dissenting votes.

This bill provides funding at a level over $5 billion less than the level of funding that was made available for this Department and these agencies for the fiscal year that ended on September 30. That shows remarkable restraint because many of the programs funded in that bill are mandatory programs, the programs that we will have to deal with when we take up the reconciliation bill later this week.

My recollection is that funding level for the bill was about $63 billion. And of that amount, some $50 billion was required to be funded by law: entitlement programs, reimbursements to the Commodity Credit Corporation for net realized losses, food stamp benefits that are made available to those who are entitled under the definition of the law of statutes to certain levels of food assistance. The qualifications for those benefits are set out in other laws, not the appropriations bill.

And so I am using this as an illustration to describe why it is so important if we are to continue to achieve reductions in spending in later years for us to take up and pass the budget reconciliation bill which does make changes in the eligibility for Government resources and funds under the definition of statutory law.

The amount of funds provided in the Agriculture appropriations bill for the discretionary funding programs amounted to only about $13 billion of the total $63 billion included in that bill. So even if we did not appropriate any money for the discretionary programs funded in that bill, next year or the next there would still be required to be spent by the Government way more than half, more than two-thirds of the total funds appropriated in that bill. That is true not only of that appropriations bill, but many others like it.

I am very glad the President signed the bill and that we were able to successfully negotiate our way through the process so that we could get a bill passed by this Congress that could be signed by the President and that does carry out the directive of the congressional budget resolution to cut spending, to try to do with less, to try to make do with less money than we have in the past for many of these programs. But we were restricted and restrained because of the provisions of law in most of the accounts that are funded in that bill.

So, to take care of that problem, to address that need, to deal with the realities facing this Congress on how we approach the challenge of reductions in spending to achieve a balanced budget, we have to make changes in the law which qualify individuals and other entities for Federal dollars every year.

The reconciliation bill carries out that important requirement by assembling a package of changes from every legislative committee in the Congress, which will, if passed and signed by the President, reduce the costs of Federal programs over the next 7 years to the extent that by the year 2002 we not only will have a balanced budget, but we will have a surplus in the annual operating budget of the Federal Government.

That is the plan. That is the purpose of the passage of the reconciliation bill, and also the adoption of the individual appropriations bills as we are taking them up now in a process, as a part of a plan, that will meet the challenge of developing a new policy of fiscal responsibility at the Federal level.

This is the change, I am convinced, Mr. President, that the American people voted for in the last election. It is the change that President Clinton ran on when he was elected President, but he did not do anything after he was elected President to force the changes that we are now requiring under the budget reconciliation and budget process that has been adopted by the Republican Congress.

So we are trying to deliver on the promise President Clinton made when he ran and also deliver on the promises that were made by those who were candidates for Congress in the House and the Senate in the last election, and we are making progress. That is the point.

This Agriculture appropriations conference report that we adopted and the bill that was signed on Saturday by President Clinton shows that we can deliver on the promise to cut spending, to be more responsible, to make tough choices. We would like to be able to appropriate more money for the funding of programs under the jurisdiction of that committee, but we were confronted with the reality of a $200 billion operating deficit in the last fiscal year and a budget that recommended the same thing for next year, and that was intolerable.

The Congress decided, when it adopted the resolution on the budget, that it was intolerable, and so we changed that policy and determined that we would bring the deficit down. We started doing it, and I am proud of the Congress for taking up the challenge and delivering on the promises. I hope we can continue to carry through with this kind of momentum until we achieve the success that the American people deserve and want and achieve a balanced budget by the year 2002.

Mr. President, I know there are a number of Senators on our side who indicated an interest in speaking on this and related subjects. I am happy to yield the floor so that Senators can be recognized under the previous order.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

## BUDGET RECONCILIATION ACT

Mr. CRAIG. Mr. President, let me, first of all, thank my colleague from Mississippi for the work he has done, as have many on this side of the aisle, to bring about this Budget Reconciliation Act that we will be debating later on this week that is so critical to the economic viability of our country.

For this Senator, it is absolutely exciting to stand on the floor and speak the words ''balanced budget,'' and, for the first time in all of the years that I have had the privilege of serving my State, for those words to actually mean something.

Starting in the early eighties, I and others, when I was serving in the House, began a movement that went nationwide to bring about a constitutional amendment requiring a balanced budget. We knew that the Congress could not control or curb its spending appetite, and, of course, history proves that we were somewhat right. It was not until the American people spoke so loudly last year on the issue of debt and deficit that finally this Congress got the message, and the message was: Stop spending, control the fiscal purse strings of our Government, and bring about a balanced budget.

Of course, as most of us know—and the public was watching—we missed by one vote in producing a balanced budget amendment for the citizens of this country to consider, which would really then put ourselves on a path toward a balanced budget.

Over the course of the last 6 months, all of the appropriate committees have worked hard to produce a responsible document that we could honestly turn to the American people and say, ''We are speaking to your wishes. More importantly, we are speaking to what you told us to do last November, and that was to bring about a balanced budget.''

We will begin debate later this week on the Balanced Budget Reconciliation Act of 1995, and it does some very, very profound and important things for this country. But more importantly, it does some important things for our Government. It puts goals in place, it puts parameters into a dynamic process that cause this Congress to be the fiscally responsible Congress that the American people have so demanded for way too long.

My colleague from Mississippi began to outline the kinds of efforts that are incorporated in this critical piece of legislation that bring together all of the efforts of this Congress over the last good many months into a final document that will submit to the President a process and a procedure that brings us to a balanced budget by the year 2002.

The thing that I find most important about it is that while we were debating the balanced budget amendment, those from the other side cried and pleaded with the American people that Republicans were only going to balance the budget on the backs of the elderly and

we would do so by using Social Security.

Well, I say to the folks from the other side, it just ''ain't'' so. It was not then and it is not now. The Social Security trust funds are not being used and will not be used and Social Security is every bit as strong today and next year and the year after through the year 2002 as we had promised during that historic debate of a good number of months ago.

In fact, if you look at the year 2002, and if you want to take it just one step forward to the year 2005, when you look at the projection of the surpluses that begin to grow, you can argumentatively say that Social Security is totally aside, totally apart from the budget calculations by the year 2005 based on that surplus growth if—if—the Congress of the United States will be true to its commitment, and that commitment will be spoken to this week in this most important and historic act.

I said during the balanced budget debate of a good number of months ago, if you are worried about Social Security and its stability, then you have to be worried about debt and deficit, because if you really want to protect Social Security and you want to show to the American seniors that you mean it, then you have to control debt.

The solvency of our Government means its ability to pay its obligations. If the Congress of the United States and greedy big Federal spenders want to destroy Social Security, then they want to keep mounting debt, because there could come a day when we could not pay our bills, and Social Security, like everything else, is a bill or an obligation of the Government to pay to the recipients of the program that which it was committed to. Control the debt, as we are doing now with the Budget Reconciliation Act, and you will do nothing but strengthen Social Security in the coming years.

Mr. President, there is one other item in this whole debate that is so critical for us here in Congress to understand but, more importantly, for the American people to have a clear and unfettered message of. It was spoken well this morning in an editorial in the Washington Times called ''The Great Medi-Scare.''

I ask unanimous consent to have this editorial printed in the RECORD.

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

THE GREAT MEDI-SCARE

Congressional Democrats, who have been flailing about in the desperate hope of bumping into an issue that will leverage them back into power, think they have finally got it. As Republicans in the House celebrated their party-line victory on legislation to reform Medicare, Democrats attempted to taunt them, childishly waving their hands and mouthing ''bye, bye.''

This undignified spectacle came after a day chock full of those impassioned, if not unhinged, speeches House Democrats have been cranking out denouncing the GOP—''It's another day of infamy for 40 million Americans who depend on Medicare,'' railed Florida Rep. Sam Gibbons; the bill is an affront to ''human decency'' cried House Minority Leader Richard Gephardt. But if the Republicans' vote was indecent and infamous, how do Democrats explain their expression of glee? The display suggests that one of several unpleasant conclusions must be drawn about the new minority party: Either the Democrats are happy to see seniors suffer just so long as that misery is their ticket back to power; or the Democrats know full well that their apocalyptic pronunciamentos are hollow, in which case they were doing nothing worse than celebrating what they think was a successful scare campaign.

Exactly how successful has the scare campaign been? There is a belief among Democrats and some political analysts that Republicans are making a fatal error by even attempting to reform Medicare. The specter of seniors mobbing Rep. Dan Rostenkowski is raised time and again, a mere prelude, we are to believe, of the elderly's wrath to come. The thought gives comfort to the Gibbonses and Gephardts and is supposed to put fear in the hearts of Republicans. But Medicare reform and Rosty's catastrophic-care legislation are by no means analogous. Medicare reform merely limits the rate of growth in the program, boosting seniors' costs marginally if they remain in traditional fee-for-service Medicare, and saving money for many of the elderly who choose one of the various insurance options to be offered for the first time—such as medical savings accounts. In any case, once all the hype has died down, seniors will realize that their benefits are in tact, and their out-of-pocket expenses have not exploded. That was not the case with Rosty's catastrophic legislation.

The new entitlement that Mr. Rostenkowski briefly imposed on the nation in 1989—before it was withdrawn in the face of vociferous protest—was financed in a way that fit liberal sensibilities very nicely, but enraged the segment of the elderly population that got stuck with the bill. Instead of spreading the costs out among all taxpayers, wealthy seniors were forced to pick up the tab almost exclusively. Paying for the whole program meant that there was a distinct population of senior citizens who were hit with new taxes of $800 a year. Is it any wonder they rioted? It is hard to imagine that senior citizens whose Medicare premiums go up $4 more than they would have otherwise will react with quite the same fervor and gusto as those who took an $800 hit. In other words, liberals who think the Republicans' Medicare reform will produce a catastrophic backlash are engaged in wishful thinking.

Once the Republican plan is up and running, the scaremongering will have no more resonance. Perhaps, however, House Democrats are counting on the reforms never becoming law; President Clinton has, after all, promised to veto the legislation. But Capitol Hill Democrats should know by now that they can't rely on Mr. Clinton—a fact that was in stark relief last week when the president blamed his long-suffering allies on the Hill for his whopping 1993 tax hikes. There is every reason to believe that when Mr. Clinton is confronted with the prospect of a government shutdown, the veto pen will stay in his pocket. Republican leaders no doubt will toss the president a few face-saving changes on Medicare and other budget items, and Mr. Clinton will acquiesce, much as he did on this year's rescission bill.

Then where will congressional Democrats be? They may yet be waving bye-bye—that is, from their seats on the Greyhound.

Mr. CRAIG. Mr. President, the great medi-scare. Oh, my goodness, I watched with great interest this past week when the House voted by a very large bipartisan vote to reform Medicare. The wringing of hands and the gnashing of teeth from the other side of the aisle, from liberals who wanted to argue that this would be the destruction of health care as we know it to the seniors of our society, how tragic that kind of debate is in an attempt to split people, to use scare tactics to anger and frustrate the American people when what we are doing is exactly what Congress has done ever since Medicare was created by this Congress: To manage it on a yearly or biyearly basis and, whenever necessary, to make adjustments and changes in the program to make sure it could continue to provide the kind of health care reimbursement that it has historically provided.

How many times has the Congress addressed changes in Medicare? Almost too many to count since it was created back in the seventies. Why? Because we are the board of directors of Medicare. It is our job to make sure it is solvent, to make sure it works, to make sure it honors its commitment to that portion and that share of the senior citizen dollar that goes in in the form of premiums, to pay that dollar that is matched with the Federal dollar. And, as a result, Medicare has always been there, and it will always be there.

I am sorry, I say to those who have no better answer and are trying to use the emotion of senior citizens in this country as the political tactics of 1996, folks, it is not going to work because already the seniors have seen through it. They have recognized that they have been used over the years in the arguments of Social Security reform, and now they are being used—I repeat the word ''used''—in the arguments of changing Medicare when, in fact, what we are doing is creating new dynamics in a program that will allow seniors greater choice, greater opportunity, and greater independence in their health care delivery systems.

Why should they not be allowed to choose between a provider fee system, between HMO's, between a variety of other options that are out there? The important words are ''allowed to choose,'' not being forced or not being shoved into a new program, but being allowed to choose a variety of options, including staying exactly where they are today.

Now, because we have never offered that choice in the past, the dynamics of the Medicare trust funds have not had the flexibility to create the efficiencies that we ought to have. As a result, the costs of those funds, based on demand, escalated at over 10.4 percent a year when private health care costs last year were 4 percent, and this year could be 4 percent. Why is it that a Federal health care program is not at least reflecting and mirroring the cost of private health care? Because it is

federally rigid; because the rules and regulations will not allow the dynamics in the marketplace of choice, independence, and of selection that every other citizen in our country has. That is exactly what we are providing. Yet, the opposition is saying it is going to destroy it. They are trying to use it as a political tactic.

Why do I talk about the Balanced Budget Reconciliation Act and Medicare all at the same time? Because it is all of a total budget that this Congress has to look at. It is part of the kind of reform that is critical when it relates to the dynamics of making the kinds of overall savings that produces a balanced budget by the year 2002 and honors the commitment we have had to the American people that we are going to start being fiscally responsible and we are not going to be continually running up debt that is now at $4.8 or $4.9 trillion and accumulating faster than the average citizen can absolutely comprehend.

If we will do anything this year, we will be able to turn to the American people and say, we heard you, we listened, and we responded, and we have set the Government on a course of action that will cause us to be fiscally responsible, that will allow us to look out into the future and say, we have indebted our children less, and we will allow them to have greater freedoms of opportunity in selecting their jobs and keeping more of their own made money for the purposes of providing for themselves and their children.

That is what this debate is all about. We are going to look at it program by program, detail by detail, going through Wednesday, Thursday, and into Friday of this week. I hope the American people are listening because what they will hear in the end will not be frightening. It will be a very loud, clear, analytical debate, program by program, on what this Congress is doing to control a runaway budget. And that is exactly what they expect us to do.

To the seniors of this country, please listen, do not be frightened by what is known as scare mongering. That is what this editorial was saying; that the Democrats are running to the only thing that will resonate at this moment—scare mongering—instead of working with us in a constructive way to maintain a dynamic and important program for this country.

I remember back in the early 1980's when Social Security was in trouble and I was a freshman legislator on the other side. Those who were in control of the Congress at that time—the Democrat Party—tried just that. Ronald Reagan said, ''Oh, no, you don't. I am going to bring you, the Congress, and the Presidency together, in a bipartisan way, and we are going to fix this problem. There is not going to be any fear, there is not going to be any fright. We are going to create the dynamics that assures the stability of Social Security on into the future.''

He pulled their scare mongering platform out from under them. As a result, we got a phenomenally dynamic, bipartisan process that stabilized Social Security as it is today and will into the future if we balance the budget and take the debt fear away. That is the same responsibility we have with Medicare. I challenge my colleagues on the other side—down with your bright line graphs, down with your rhetoric, and up with your willingness to work with us to create a bipartisan dynamics, both in the budget process and in the securing of a stable Medicare Program that we can turn to the American people and say, we heard you, we honored you, and we are committed to a stable Government in the future that lives within its means.

I yield the remainder of my time.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas [Mrs. HUTCHISON] is recognized.

## BALANCED BUDGET RECONCILIATION ACT OF 1995

Mrs. HUTCHISON. Mr. President, I thank the Senator from Idaho, who made a terrific statement, and the Senator from Mississippi, who asked many of us to talk about the big picture. So many times in this Congress we talk about the minutia, the crisis of the day—and it seems like there is a crisis every day. But I think it is time, because the rhetoric is flying and because tempers are getting short, that we step back and look at the big picture.

Almost 1 year ago, the people elected a new Congress. They rejected business as usual; they ended the reign of spendthrifts that mortgaged their grandchildrens' future for a handful of votes on the first Tuesday every other year.

Now, after a year of preparation, we are ready to put into effect the changes that will protect us from bankruptcy and preserve the strength of our Union. During this week, we will debate our future course as a people and as a government.

The question before us is simple: Will we follow the path of those who want us to tax and spend and borrow until we are so deep in debt and denial that we are fiscally and morally bankrupt? Or, will we set this country on the path toward freedom and prosperity for all, with charity for those who cannot help themselves?

One of our greatest leaders, Abraham Lincoln, said, ''A house divided against itself cannot stand.'' Just as our country could not live ''half slave half free,'' it cannot live in a perpetual class war with the poor incited to battle the rich, the old to fight the young, or the sick to fight the healthy. We cannot make the public better off by pitting them against one another for partisan advantage. We must work together for the benefit of all of us—for our children, for our handicapped, for our elderly—instead of using them as props in publicity stunts designed to turn people against progress without examining the facts.

President Clinton has led the charges that Republicans seek to gut Medicare to give a tax break to the rich. How many times have you heard that said in the last few weeks? The Speaker of the House said that the President has reduced himself to scaring old people to try to defeat our balanced budget. In his all-out effort to defend the status quo, the President, who campaigned for change, takes advantage of his most vulnerable citizens and threatens the solvency of their health care trust.

Last week, when President Clinton admitted that he and the Democrats in Congress had made a mistake in raising taxes, according to the Washington Post, reporters for the Washington Post, New York Times, Chicago Tribune, and Los Angeles Times skipped the speech and went out for Mexican food.

I will not argue with their choice of menus—after all, they were in Texas—but when they read the speech later, they still did not think it was news.

Apparently, they are so used to the flip-flops by the President that his repudiation of the largest tax increase in the history of America did not sink in.

I am not surprised that the President chose Texas as the place to admit that his tax hikes were a mistake, because in Texas most Democrats believe that Government should take less, not more. That is why so many of them have either been crossing the aisle or supporting Republicans.

Why are they doing that? Because we are protecting the elderly by saving Medicare from bankruptcy. We are lowering taxes on the middle class, and we are cutting spending to balance the budget.

In short, Mr. President, we are keeping our promises. We are not protecting the status quo. We are reordering priorities and ending fraud, waste, and subsidies.

We must act now. If no changes are made to the budget, entitlement spending, Social Security, Medicare, Medicaid, welfare, and Federal retirement plus interest on the debt will take over the entire Federal budget by the year 2012.

Now, Mr. President, think of that. In the year 2012, entitlement spending which is Social Security, Medicare, Medicaid, welfare, and retirement plus interest on the debt will be the entire Federal budget. There will be no defense spending, no spending to help crime, education, or anything else.

Medicare will be insolvent next year according to members of the President's own Cabinet. By the year 2002, it will be bankrupt.

Our Medicare reform proposal slows the rate of growth but it does not cut spending in Medicare. It slows the rate of growth, but increased spending will amount to 73 percent over the next 7 years. The total spending will be $1.6 trillion for Medicare alone. No one will

be without health care. Seniors will have more choices. They can keep the old plan or choose a new one that suits them better.

We do this by cutting fraud and waste and reining in the exploding costs. Our tax cut reduces the tax burden on people who actually pay taxes. It closes loopholes. More than three-quarters of the cuts in the first year go to the middle class—those making $75,000 or less.

Now, who are those people? They are mothers and fathers who will get help raising their children with a $500 per child tax credit; they are homemakers who will have the opportunity for the first time to contribute the maximum amount to an IRA for their retirement security; they are married couples who will have the Tax Code's marriage penalty reduced; and they are savers who are trying to buy a first home, pay for college for their kids, or retirement for themselves.

Our tax cut benefits all Americans. It will put more money in people's pockets, and it will increase jobs. Together with a balanced budget, it will lower interest rates and increase the standard of living for millions of Americans.

The time for publicity stunts, Mr. President, for walking out, for shouting, for interrupting meetings with demonstrators, and for labeling Republicans ''extremists'' is over.

The public spoke clearly last November. They saw through the antics and the publicity stunts and they asked for leadership. Leadership is not increasing taxes on the elderly and everybody who drives a car and then claim you only hit the rich, which the Democrats without one Republican vote did in 1993. It is not leadership to walk away from those tax increases 2 years later and to attack others who seek to lower the tax burden now.

It is not leadership to propose a budget to this Congress this year with a $200 million deficit. It is not leadership to propose only 4 months later, a 10-year budget which you say balances but which does not.

It is leadership to confront our fiscal problems head on, to show the people that we must preserve Medicare—and we will—to help families, to create jobs, and to balance the budget.

The American people asked for leadership, for the Congress to shoulder the responsibility of showing them the way. This budget ends the culture of dependence, the belief that the people cannot provide for themselves. It shows the way toward hope and prosperity for all, with charity for those who cannot help themselves.

The American people have created the greatest country on Earth with the intelligence, the creativity, and the energy God gave them. It is our responsibility as their leaders to maintain the opportunity they have created and that this great country offers. That is what we are trying to do, Mr. President. We are making the tough decisions to assure the future.

I yield the floor.

## RECONCILIATION

Mr. DEWINE. Mr. President, first let me congratulate my colleague from Texas for a very eloquent statement as well as congratulate my colleague from Idaho for his statement that preceded the Senator from Texas.

I rise today, Mr. President, to discuss the reconciliation bill that we will begin debating this Wednesday. It is very clear that there will be nothing more important that this Congress will do than the particular bill that we are going to take up on Wednesday.

In fact, there may not be anything more important in any of our careers here in Congress, however short or long they may be, than this particular bill.

The bill that we will begin debating on Wednesday results from a statement made by the American people last November. It was a statement that was very simple, very plain and very eloquent. What the American people said last November was that we must make some very fundamental changes in the course of the direction of this Government.

Mr. President, the American people had ample reason to speak so loudly last November. For example, if we look at the budgetary outlook contained in the report of the Bipartisan Commission on Entitlements, we will find a pretty grim picture.

Here is what this Bipartisan Commission said, in essence. If we do not change our present course, by the year 2012 every single penny in the Federal budget will be consumed by entitlements and by interest on the national debt.

My colleague from Texas just said that a moment ago. I again want to repeat it because it summarizes, I think, very well, the crisis that we are in. Think of it—every single penny of the entire Federal budget will be consumed by entitlements and by interest on the national debt.

If, Mr. President, in the year 2012 we want Government to do anything at all—provide for our national defense, provide money to run the Army, the Navy, Air Force, Marines, run a program such as the WIC Program or provide any funds for higher education or primary or secondary education—to do any of these things, unless we change the course of the direction of this Government of this country, we would have to raise taxes because there would not be any money anywhere else in the budget to pay for any of these things. This, I think, gives us a pretty good indication of what kind of problem we have in this country.

As we approach this problem, I think the American people demand from us honesty, demand from us that we use numbers that are real, because I believe the American people are sick and tired of phony numbers. They know we cannot go on trying to hide from the facts. Unless we take action and take action now, our children, our grandchildren, are going to face an even more severe reckoning; frankly, the quality of life our children have, and our grandchildren and their children have, will be different, will be lower than ours. So I believe the American people last November were also saying that the time for the blue smoke and mirrors is over.

The reconciliation bill that we will begin to consider this Wednesday is an honest, forthright attempt to solve this major problem threatening our children's future—the problem of America's imminent bankruptcy. If we listen to the debate occurring on TV, in our newspapers, on the radio, one might conclude that we, on this side, have been a little too honest, maybe a little too forthright. But I do not think so. I do not believe that the American people expect us to do any less than to be forthright and to be honest.

And one charge that has not been made—and I do not think will be made—is that we have taken a walk on this issue. We assuredly have not. This reconciliation bill that, in about 48 hours, we will begin to consider is a serious, detailed, fundamental attempt to change America's fiscal course. The patience of the American people, I believe, has run out—their patience with distorted figures, their patience with lack of candor. That is one of the reasons why we had such a revolutionary election, such an historic election in 1994. The American people want elected officials who are willing to break the syndrome, once and for all, of distortion. That is what I believe we are trying to do with this reconciliation bill. The President, on the other hand, has not responded to this national demand for fundamental change. Unfortunately, the administration's proposal does not even come close to meeting this challenge. It is not detailed. It is not serious. And it does not attempt to fundamentally change the course and the direction of this Government.

Thanks to the important work of my colleague, the senior Senator from New Mexico, the chairman of the Budget Committee, we have details spelling out exactly how far short the President's plan has fallen.

Let us look at how the President's plan claims to get to balance. Let us look at it.

According to the President's plan, there will be $55 billion less in Medicare spending. No changes in benefits, no changes in law, it will just, somehow, magically appear. There will be $68 billion less in Medicaid spending, according to the President. Again, no changes in benefits, no changes in law; it will just somehow magically happen. There will be $85 billion less in spending on agriculture, pensions, and other programs. No details, no specific cuts; again, it will just somehow magically happen.

The same goes for $22 billion in supposed savings in the discretionary account. No real changes—the cuts are just going to happen somehow.

Then—please stay with me, follow this—the administration predicts, based upon these assumptions, assumptions that really have no basis in fact, that as a result of these things certain other things will occur that will save another $70 billion from lower interest rates; yet another $175 billion thanks to economic growth—lower interest rates and economic growth, based upon assumptions that have no basis in fact, that have no support, that have no specifics.

A few years ago there was a popular song that asked, ''Do You Believe in Magic?'' The American people no longer believe in magic when it comes to the Federal budget. They believe it is time to sweep away the smoke and mirrors. It is time to start buckling down and making the tough choices.

Sadly, the administration proposal is not even smoke and mirrors. There are not any mirrors in that proposal. It is all smoke. When you say we are going to cut $475 billion out of the budget without actually changing anything, without actually paying any kind of price, that does not even qualify as a trick. The time for that kind of falsehood, I think, is over. It is time for truth. It is time for decisions. And that is what Congress is trying to do in this historic reconciliation bill.

A vote for the reconciliation package is a vote to balance the budget so we can start reducing the national debt and put America on a course toward a future we can be proud to leave our children. A vote against the reconciliation package, I believe, is a vote to stay the course, a vote to take today's staggering deficits and hand them to our children and our grandchildren, to give our children and our grandchildren our bills for them to pay.

When the smoke clears, there is one fundamental difference between the President's budget proposal and our budget proposal. Under the President's plan, we will leave our children and our grandchildren our bills. Under our plan, we will balance our budget so our children and grandchildren will not have to pay our bills. For America, I believe it is a clear choice between two very distinct and different futures. That is why I intend to vote for this reconciliation package.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I understand the distinguished Senator from Minnesota [Mr. GRAMS] is here to speak under the order reserved in my name. I yield the floor so he can be recognized at this time.

The PRESIDING OFFICER. The Senator from Minnesota.

## THE BUDGET

Mr. GRAMS. Mr. President, I am honored to join with my freshman colleagues and others this morning as we share our thoughts on the important work that is being undertaken this Congress. We may be new to the Senate, but together we carry the powerful and, in Washington, novel idea that the tax dollars are not the Government's money.

While I was growing up on my family's dairy farm, we did not have much need back then, it seemed, for the Federal Government. As long as the mail got delivered and there was something to collect when they cashed in their war bonds, my folks and their neighbors really did not have much reason to concern themselves much with what was going on in Congress. They certainly did not turn to Washington when they needed a helping hand. They never really thought of doing that, and I expect they never thought anything would come of it if they tried.

They did not believe Government should have the right to take as much money as it thought was fair from some Americans and, in turn, give as much money as it thought was fair to others. If the Government can confiscate the wealth of some, it can take it all from all.

We agree that taxes need to be collected for our national security, our transportation, our good sewer and water systems. But we do not want our hard-earned money taken for social engineering and the redistribution of wealth, disregarding the people who have worked so very hard to earn it, invested all they had, and took, in many cases, enormous risks.

If you had worked hard to save what you have, we have had a Congress over the last 30 years that believed this money actually belonged to Washington. The Democratic leaders have used your money to basically create not a level playing field, but a dependent class. They have used your money to buy, in many cases, political support and votes.

There was a time in this Nation's history when neighbors counted on their neighbors for help. Whatever involvement from the Government they may have needed came partly from the State, but most of their contact with Government came at the local level. If there were improvements that were needed for the good of the community, folks scheduled a town meeting where they talked over their problems and then made those decisions. It was open democracy at its most basic level. Most important, the choices were made by the community and made voluntarily, and the town got to see exactly where their tax dollars were going and they enjoyed the direct benefits of pooling together their money.

They did not need a department of education or housing or transportation. That is what families and the communities were for. But then, beginning sometime during the 1930's, while the Nation was rebounding from the Great Depression, the Federal Government began inserting itself more directly into American life, and the idea started to take hold that Washington somehow had all the answers. That philosophy grew even more quickly during the 1960's and into the 1970's. Washington became the center of power by confiscating the people's money and using that money to make decisions that Washington felt were best for the people.

As that power was taken away from the American people, more and more people were forced to start relying on the Government rather than relying on each other. Mr. President, just ask your constituents. They know how much more of their tax dollars Washington has demanded year after year.

Back in 1948 the average family of four paid just 3 percent of its annual income to the Federal Government. That jumped to nearly one-third of their paychecks by 1993, when President Clinton pushed a $275 billion tax hike through this Congress, a record-breaking tax increase that even now he admits was too much.

Somewhere along the line, the big spenders who used to control Congress forgot just who the money really belongs to. They have passed laws that say you have to pay more so they can spend it where they see fit. When you do this for more than 30 years, they not only forget who the money really belongs to, but they begin to believe that it actually is theirs. They did this again by passing laws one at a time that say you owe Washington its due.

Again, I am not saying that we do not need a strong Federal Government and it will cost us money in the form of taxes to support that, but not half of everything that we earn, while the appetite in Washington for your tax dollars continues to grow. This transfer of cash away from the local communities into the Federal coffers has stripped people of so much of their money that they have little left to invest in their own communities, toward caring for the less fortunate and to making their neighborhoods better places to live. Government has taken the place of private charity, of neighbor helping neighbor, and has even usurped the role of families, in many cases, in caring for children and in caring for the elderly. In fact, a lot of things have become the problem of the Federal Government.

Already this year I have received 155,000 letters from my Minnesota constituents. The majority of those letters express opinions on the issues that we are currently debating in Congress, and I need that kind of feedback. But an ever-increasing percentage of mail we get here in the Capitol is from people looking to Washington for help.

Washington creates the problem. Then Washington offers to fix it. It is a catch-22 cycle, and it certainly is not governing. If the Federal Government reduced taxes and let the people keep the dollars they earned, maybe they would not need to go to the Federal Government with those outstretched hands.

I ask my colleagues on the other side of the aisle, Why do you denounce our plans to give working-class Americans some of their own money back through a tax cut? They argue that we cannot afford to give anybody a tax cut. But who is we, Mr. President? Is not we supposed to be the people? And how can Congress not afford to give back to the people something which is actually theirs in the first place?

It is no wonder that some of our colleagues are fighting us every step of the way on our tax-cutting plans. They see the power being stripped away from them, and it scares them.

The $500 per child tax credit is powerful relief for overtaxed American families. Yet, compared against 1 trillion in tax dollars which the Federal Government will collect in 1996, a tax cut that amounts to about $35 billion a year makes a pretty small dent in the national tax bill. But it is a sign that Congress has heard the people, that the tide which has tugged against the taxpayers for so long is finally beginning to shift in another direction, that someone in Washington has finally remembered that it is not the Government's money.

For too many years, Congress has been eating the people's dessert while the people have been eating the gruel. Congress taxes away the workers' college fund or vacation, or their downpayment on a home, and then make the workers come to Washington looking for help. I say it is time we give them a break.

Congress has enjoyed handing out other people's money so much that they have spent all the taxes that I will pay. They have even spent some of the taxes my children will pay, and they have even begun to spend some of the taxes that my grandchildren will pay.

Mr. President, the soul of any democracy is the idea that the power still rests with the people. The only purpose for which power can be rightfully exercised over any member of civilized communities against his will is to prevent harm to others. And that is something that was written by 19th century English economist, John Stewart Mill. His own good, either physical or moral, is not sufficient. All that my freshmen colleagues and I are trying to do is give back to the people the power that rightfully rests with them.

Finally, Mr. President, we will balance the budget. We are going to push ahead with our tax cuts, and at every opportunity, through our legislation or statements on the floor, we will be here to remind our fellow Senators again and again that it is not the Government's money, that it belongs to those who earn it.

Thank you very much.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I thank the Chair for recognizing me.

Mr. President, I do not know if this is necessary. But I ask unanimous consent that the time I use be taken out of the time as previously under the order allocated to the minority leader, Senator DASCHLE.

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

## GATT AND PRESCRIPTION DRUGS

Mr. PRYOR. Mr. President, the Senate is in the midst of a crucial debate over Medicare and Medicaid. In the midst of this controversy, the fate of a single bill or amendment might be inconsequential. But today I rise to discuss a bill which speaks clearly and directly to a very simple question at the heart of all of this debate, and that question is this: Can the Senate do what is best for the American people?

My colleagues, Senator CHAFEE of Rhode Island and Senator BROWN of Colorado, and I have offered just such a proposal. Compared with the matter that we began debate on Wednesday in the reconciliation bill, our proposal is simple, and it is easy to miss. But it is important. It is crucial. It admits a congressional mistake, and it fixes a congressional mistake. It closes a glaring legislative loophole and saves billions of dollars in the process.

But, most important, it sends a very simple message to the American people: Congress makes mistakes, but Congress can fix those mistakes when the interests of the American people are at stake.

Mr. President, we offered this bill because the interests of the American people—both as taxpayers and as consumers—are clearly at stake here. And deep down my colleagues know it, too.

Let me briefly describe our proposal. It enjoys broad bipartisan support in the Senate and in the House and has been endorsed by every single Federal agency involved with trade, patents, or drugs: the U.S. Trade Representative, the Patent and Trademark Office, and the Food and Drug Administration.

Mr. President, here is what it does: When Congress passed the GATT Treaty last year, we enacted two transition provisions. First, we granted a generous extension to all current patents. Second, as a condition of that extension, we permitted generic competitors onto the market on the old patent expiration date if they had already made a substantial investment and were willing to pay a royalty. That was our agreement. That was our discussion as it related to GATT. These changes were universally understood by all of the negotiators from every country, from every industry, from every economic aspect of our economic life in America.

Let me be very clear on this point. U.S. Trade Representative Mickey Kantor states categorically in a letter dated September 18 to me that the law was meant to apply universally, that there would be no exceptions. The GATT negotiators themselves—the experts who physically sat down at the table and negotiated the GATT Treaty on behalf of the United States—have personally confirmed that the transition provisions were meant to apply to every single person, product, company, and industry in the country.

There was a loophole. And guess who came out smelling like a rose? A few pharmaceutical drug companies, who now—if we do not do something about it—are going to have a free ride for the next 3 years when generic competition is poised and ready to compete with them in the marketplace.

This spring the Congress discovered this loophole. We failed to modify this loophole in the Finance Committee because of a technical problem. When we passed the GATT Treaty, we inadvertently gave the prescription drug industry a giant unintended windfall. Of all the companies, of all the products in America—from automobiles to zippers, computers and TV parts, everything—only prescription drug companies, only drug companies, received a competition-free patent extension, a free ride, a windfall.

In fact, when one of the officials of Glaxo Co., that manufactures Zantac, heard about this loophole being discovered, his first word was—and I quote—''eureka.'' They got the extension, and they were mistakenly shielded from the competition intended by GATT. Without that competition, today a handful of drug companies are now, beginning today, receiving a whopping multibillion-dollar windfall paid for by consumers and paid for by taxpayers.

This was a simple mistake of oversight, Mr. President. I wish to emphasize that. We make mistakes around here every day. Sometimes we correct them and sometimes we do not. But this is an opportunity to correct that mistake. Every authority that I have spoken to, every Member of this body, every Senate committee, and every Government agency admits this was an error, and now we have a chance to change it. Even the companies that gained this unjustified multibillion-dollar windfall admit it was a mistake.

This is why my colleagues, Senators CHAFEE and BROWN and myself, will be offering this amendment. This amendment does one thing and one thing only. It applies GATT to those few drug companies the same way it applies to every other company and every other product in this country. Unless we correct this loophole today, enormous profits, unjustified and unexpected, will go to those few companies. We have already taken the first steps to a solution, but 3 weeks ago we were blocked by a procedural technicality in the Finance Committee. And make no mistake. The only way to rectify this problem is here and it is now. The Senate is the court of appeals for this issue to be decided.

If there is any doubt whether Congress should fix its own mistakes, I have some news for my distinguished colleagues. The Patent Office and the FDA have tried to correct this problem on their own. They failed because of

technicalities. The problem is, their hands are tied by the letter of the law in the GATT treaty.

On last Thursday, despite their best efforts, a Federal court held that three drug makers that had filed suits in the court had actually won, which meant that they ruled against this loophole being corrected. The Federal court said that their hands were tied.

Even worse, the court ruling now means that potentially hundreds of products could be affected. This could mean as much as $6 billion—I repeat, $6 billion—in unnecessary health care costs for every purchaser of prescription drugs—the elderly, hospitals, clinics, HMO's, drugstores, insurance companies and, not the least, the governments, State and Federal governments.

According to securities analyists, the ruling could ''affect sales of billions of dollars of brand name drugs that would otherwise be open to competition from less expensive generic versions.''

For the average person, this means money out of our pockets for no good reason. If they are one of the millions of people who take the world's best selling drug, Zantac, our legislation would cut the cost of Zantac by one-half. Think of it, cutting the cost of one medication by one-half that is the best selling drug in America.

Our legislation would cut the cost of Capoten for hypertension by two-thirds. By over 65 percent we would cut the cost of this drug simply because there would be competition in the marketplace. That competition in the marketplace is going to be delayed unless the court of appeals, in this case the U.S. Senate, the last court of appeals, handles this matter and corrects this very tragic mistake.

Let me tell you three other reasons why we should be supporting this amendment at the proper time. Our proposal will save the Government hundreds of millions of dollars for the poor, the veterans, active military personnel, pregnant women, Native Americans, and every American served by Medicaid, the Department of Veterans Affairs, the Department of Defense, as well as the Public Health Service and the Indian Health Service clinics. All of those would be included and all of those would benefit with the adoption of our proposal.

Second, everyone wants to do what is best for older Americans, the sick and the poor and the consumers. How often do we hear that? Here we have an opportunity to do it. It is clear. It is evident that we can help these groups by supporting this idea. Our proposal is supported by senior citizens, consumers, medical practitioners. It is endorsed by the National Council on the Aging, National Consumers League, the Gray Panthers, the National Women's Health Network, the United Homeowners Association, the National Council of Senior Citizens, and the National Black Women's Health Project.

Finally, this issue has been the focus of intense media scrutiny for the last several weeks. People are beginning to see how a big ripoff is about to happen unless we correct it. Articles and stories inspired by disbelief have appeared in the New York Times, NBC News, Associated Press, Los Angeles Times, Business Week, Reuters, Journal of Commerce, Roll Call, and the Orlando Sentinel, and the list goes on and on.

Why is there so much attention on this issue? Well, the bottom line is there is a lot of money at stake. There are multibillion-dollar health care cuts being debated in Congress today, and here we are about to give an enormous windfall to one of the most profitable segments of our economic activity, the pharmaceutical companies.

Why does anyone care about this particular legislation? I think the reason people care is because they know this bill is the right thing to do. They are sick and tired of the excuses that are given when we fail to do the right thing. Please let me repeat, this is not a partisan issue. It never has been. It is about fixing a mistake. It is about saving taxpayers' money. It is about precluding an enormous windfall in unjustified profit to several drug companies that have gotten, in my opinion, extremely greedy.

This morning, Mr. President, I was just handed a page from the Roll Call newspaper, dated Monday, October 23, 1995, page 8. Here is an advertisement placed by the American pharmaceutical research companies—by the way, that is the old PMA—Pharmaceutical Manufacturers Association. They changed their name a few months ago, Mr. President, so they could add a little cloak of dignity emphasizing research. They take what we are trying to do apart and they try, as they say, separating fact from fiction in this particular ad. But the bottom line is what they have said is extremely misleading. It is motivated by economic gain. In addition to that, it is simply wrong. The motivation for this particular advertisement, in my opinion, is the continuation of economic greed by some of the pharmaceutical manufacturers.

Just in the Wall Street Journal, I believe, on Friday, the drug companies talked about, well, they cannot sell drugs in America as cheaply as they can sell these same drugs in Europe or in the other industrialized nations. Look at this headline: ''Strong Global Sales Lift Drug Company Profits.'' So they are selling overseas these same drugs they sell to us for 40 and 50 and 60 percent more in this country, they sell these drugs overseas at so much less and they are making such an enormous profit that they see their stock is going up in these companies, and once again the drug companies find a way to take advantage of the American consumer and certainly the American taxpayer. If we do not correct this issue now, we are going to be actually a part, in my opinion, of a terrible mistake that we had a chance to correct.

Here is the alternative, Mr. President. We can stand here and do nothing, we can let these drug companies make off like bandits with these unjustified profits, or we can vote for the amendment offered by myself and, hopefully, some of my other colleagues. We can rob older Americans, HMO's and every single taxpayer in this country if we do nothing. We can enrich two or three drug companies, we can keep competition out of the market, or we can make certain that they do not receive money they do not deserve.

We can let a loophole rob American consumers of as much as $6 billion. We can let the intense lobbying efforts by one or two drug companies sway us. We can ensure special treatment to a few companies while the rest of the country plays fair, following the rules and obeying the law.

Once again, Mr. President, a few pharmaceutical drug companies are the only companies that are excluded under this provision. They are the only ones given this mistake. They are the ones taking advantage, I should say, of this mistake in the GATT treaty. Now is our opportunity to change it. And in my opinion, Mr. President, this is the mother of all special interest issues.

Let me read from the New York Times when they observed a few days ago:

> Some of the Nation's largest drug companies will have spent and lobbied heavily against one bill that hardly amounts to budget dust. While its impact on the Federal budget may be minuscule, the measure means a fortune to these drug companies.

Mr. President, I urge my colleagues to join us in supporting this proposal. If we fail, it will allow the legal combination of a legal loophole, a procedural technicality, intense lobbying, big bucks, and our own failure of will, robbing the American consumers of billions of their taxes and their income. Every American citizen will be forced to continue subsidizing an outrageous, unintended windfall to a handful of drug companies simply because we do not have the courage or the foresight or the will to admit and to fix our own mistakes.

Mr. President, I ask unanimous consent that documentation of savings from this proposal, letters of support, and recent media articles be printed at this point in the RECORD.

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

[From the New York Times, Oct. 20, 1995]

THREE DRUG MAKERS WIN SUIT TO EXTEND PROTECTION OF PATENTS

ALEXANDRIA, VA.—Merck & Company, the Schering Plough Corporation, and Roche Holding A.G., have won a lawsuit against the United States Patent Office and the Food and Drug Administration, in which they had sought an extension on some of their patents.

The ruling, reached Monday by the Federal District Court here, is a victory for brand-name drug makers who fought a decision by the F.D.A. and the Patent Office to limit patent protection.

Securities analysis said the ruling could affect sales of billions of dollars of brand-

name drugs that would otherwise be open sooner to sharp competition from less expensive generic versions.

Neil B. Sweig, an analyst with Brown Brothers Harriman & Company, said that based on current sales in the United States, the extension could result in $3 billion in sales of Zantac, the ulcer treatment made by the Glaxo Wellcome Company; $1.45 billion in sales of Mevacor, a cholesterol-lowering drug made by Merck, and $280 million in sales of Capoten, a hypertension treatment produced by the Bristol-Myers Squibb Company.

Mr. Sweig added that the court ruling had been anticipated by investors and was already reflected in drug companies' stock prices.

Under a Federal rule that took effect on June 8, drug makers could either have patent protection under the new world trade organization or the previous system.

The new patent protection for brand-name drugs would last as long as 20 years from the date of the patent filing. Under the old system, drug patents were protected in the United States for 17 years after they were granted, plus some of the time drugs were waiting, regulatory review by the F.D.A. In some cases, protection would last longer under the old system.

''The courts ruled that they were wrong, and you can be protected under both systems,'' said Steve Bercham of the Pharmaceutical Manufacturers Association.

Mr. Bercham said, however, that the court had decided that a patent could never result in exclusive marketing rights for more than 14 years.

As a result of the decision, Merck's patent on its cholesterol-lowering drug Mevacor was extended to June 15, 2001, from Nov. 4, 1999.

Gary Latchow, a Merck spokesman, said the patent for the company's ulcer medication Pepcid had also been extended.

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U.S. TRADE REPRESENTATIVE,
*Washington, DC, September 18, 1995.*

Hon. DAVID PRYOR,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR PRYOR: Thank you for your recent letter updating me on the ongoing concerns of the Congress, health care purchasers and consumers over the exclusion of the prescription drug industry from the scope of the Uruguay Round Agreements Act (URAA) transitional ''grandfather'' provision.

As you note in your letter, I wrote to Food and Drug Administration (FDA) Commissioner Kessler earlier this year to inform him that the URAA ''grandfater'' provision language was intended by its drafters to be generally applicable and to permit generic pharmaceutical producers to market their products where they had made substantial investments in anticipation of the expiration of the unextended patent terms. While the FDA found that the URAA did not permit it to allow the generic pharmaceutical producers on the market until the expiration of the extended patent term, it stated that ''the language of the URAA does not reflect the legislative intent'' which Congress desired.

In light of these events, I applaud your effort to seek to correct this situation through your introduction of the Consumer Access to Prescription Drugs Act. The draft legislation generally reflects the intent of the drafters of the URAA.

With regard to the issue of whether this correction would either weaken patent protection under the URAA or diminish our ability to campaign for stronger patent protection abroad, I believe that any concerns in this area are overstated. As you know, we intended to apply this ''grandfather'' provision to the pharmaceutical area, and so legislation of this type should result in a level of protection that is consistent with our original intent. Additionally, this level of protection is consistent with the obligations under the intellectual property agreement negotiated as part of the Uruguay Round, called the ''TRIPs Agreement.'' Just as we are permitted to make limited exceptions to the grant of additional rights as the result of the TRIPs Agreement, so are our trading partners. As we have already made certain exceptions to the rights granted during the extension period for all types of patents other than pharmaceutical patents, the application of these exceptions to pharmaceutical patents should not weaken our ability to insist on strong patent protection in our trading partners. You can be sure that if a trading partner attempts to expand these exceptions beyond those permitted by the Agreement, we will vigorously oppose them.

Consequently, I do not think that your efforts will have a negative effect on our ability to ensure that the TRIPs Agreement is fully implemented by our trading partners. I look forward to working with you on this issue.

Sincerely,

MICHAEL KANTOR.

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U.S. TRADE REPRESENTATIVE,
*Washington, DC, September 25, 1995.*

Hon. JOHN H. CHAFEE,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR CHAFEE: Thank you for your letter concerning the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and the intended effect of certain provisions of the Uruguay Round Agreements Act (URAA). You raise several significant issues related to the nature of the United States' obligations under the TRIPs Agreement and the way in which the United States implemented those obligations in the URAA. In answering your questions, I would like first to indicate the nature of certain of the obligations under the TRIPs Agreement, and then to discuss the provisions in the URAA that are intended to implement those obligations.

U.S. OBLIGATIONS UNDER ARTICLE 70 OF THE TRIPS AGREEMENT

Article 70 of the TRIPs Agreement generally requires World Trade Organization (WTO) Members to apply the high levels of protection required by the TRIPs Agreement to all existing intellectual property. In other words, if a WTO Member provides an additional right or benefit to the owners of a particular type of intellectual property as a result of its implementation of the TRIPs Agreement, it must provide that additional right or benefit to intellectual property created in the future *and* to intellectual property already created but still subject to protection. Accordingly, in the URAA the United States modified the term of patents from seventeen years from grant to twenty years from application for all future patents, and also applied the new term to existing patents, thereby giving some owners of U.S. patents a longer term of protection.

The primary provisions of Article 70 on treatment of existing subject matter and ''newly infringing acts'' are Articles 70:2, 70:3 and 70:4. Article 70:2 contains the general requirement that TRIPs-consistent levels of protection must be applied to existing intellectual property. Article 70:2 also states that in the case of copyrightable subject matter (e.g., books, movies, sound recordings, computer software), copyright obligations, including the grant of retroactive protection must be implemented solely through the application of Article 18 of the Berne Convention for the Protection of Literary and Artistic Works. This provision makes clear that where copyrightable subject matter must be pulled out of the public domain and granted protection to comply with TRIPs, the terms of Article 18 of the Berne Convention shall control.

Article 70:3 of the TRIPs Agreement provides that no WTO Member is obligated to restore protection to subject matter which has fallen into the public domain. For example, an expired patent need not be granted a new term of protection, even if the patent would still be in effect had it been granted a TRIPs-consistent term of protection. As noted above, Article 70:2 expressly carves-out copyright protection from Article 70:3.

Article 70:4 provides that to the extent that certain activities become infringing because of the higher levels of protection required by TRIPs, WTO Members may allow a person to engage in such infringing acts as long as they pay equitable remuneration to the right holder. This provision was intended to permit WTO Members to treat equitably those persons who in good faith used or made a significant investment in connection with the use of the intellectual property right in a way that would be prohibited after a TRIPs-consistent level of protection applied. For example, if TRIPs requires an extension of the patent term in a WTO Member, that Member may allow a person who built a factory for the purpose of manufacturing a patented product when the patent was previously expected to expire to make the produce during the extension period, as long as that person pays equitable remuneration to the right holder during the extension period.

Consequently, while Article 70:4 could apply to treatment of inventory created before the application of the Agreement, it was not intended to be limited to that situation. The primary intent of this provision was to treat equitably those persons who had made a substantial investment in reliance on the pre-TRIPs level of protection. It was not intended to allow nations with weak patent laws to protect domestic industries while those nations came into conformity with the new TRIPs standards. Investment must be substantial and it must be made by a certain date.

U.S. IMPLEMENTATION OF ARTICLE 70 OF THE TRIPS AGREEMENT

The United States implemented its obligations under the TRIPs Agreement in Sections 501–532 of the URAA. Section 532(a) of the URAA amended Section 154 of the Patent Act to change patent terms from a seventeen years from grant system to a twenty years from application system. As noted above, in accordance with our TRIPs Article 70:2 obligations, Section 154(c)(1) of the Patent Act was amended to grant owners of patents still in force the benefit of this new system to the extent it increased their term.

To treat equitably those persons who had made a substantial investment in reliance on the old patent term, Section 154(c) (1) and (2) of the Patent Act was amended to provide that such persons would be able to make use of the patent during the extension term as long as they paid equitable remuneration to the patent owner. This provision was written neutrally because it was intended to apply to all types of patentable subject matter, including pharmaceutical products. Conforming amendments should have been made to the Federal Food Drug and Cosmetic Act and Section 271 of the Patent Act, but were inadvertently overlooked.

Our creation of the ''transition period'' in Article 154(c) of the Patent Act is consistent with our obligations under the TRIPs Agreement. The extension of this transition period

to pharmaceutical products would also be consistent with these obligations and the intent of the U.S. negotiators involved in drafting the TRIPs Agreement.

Finally, the extension of the Section 154(c) to pharmaceutical products would not undermine ongoing U.S. efforts to seek high levels of intellectual property protection around the world. We are acting wholly within our rights in establishing the transition period, as other countries would be if they did the same. Furthermore, we have already established under our law the transition period with respect to all types of patents other than pharmaceutical patents; extending it to pharmaceutical patents would in no way increase the ability of our trading partners to justify their failure to provide TRIPs-consistent patent protection. You can be sure that if one of our trading partners attempts to overstep the equitable treatment permitted under TRIPs Article 70:4, or otherwise fails to live up to the TRIPs Agreement, we will work vigorously to bring them into compliance with their international obligations.

I look forward to working with you further on this manner. Please let me know if I can provide you with any more information.

Sincerely,

MICHAEL KANTOR.

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[From Prime Institute, College of Pharmacy, University of Minnesota, Health Sciences Unit F–7–159, Minneapolis, MN, March 1995]

ECONOMIC IMPACT OF GATT PATENT EXTENSION ON CURRENTLY MARKETED DRUGS

EXECUTIVE SUMMARY

At least 109 currently patented and marketed drugs will receive a windfall patent extension if GATT rules are retrospectively applied to previously filed or issued patents.

The average patent extension for the currently marketed drugs would be more than 12 months with some drugs receiving more than 28 months of added exclusivity.

The windfall extension of patent exclusivity for currently marketed drugs will mean that the introduction of lower cost generics will be delayed. Therefore, the American consumer will have to pay more for prescription medications.

FDA approved versions of generic drug products typically enter the market at a price more than 25% less than the patented brand. Within one year the price of competing generics will be 45% below the brand; at two years the price will be 60% less and at three years it will average 75% less than the brand name drug (Kidder, Peabody: Generic Drug Industry Overview, October 5, 1994).

FDA approved versions of generic drug products typically capture 45% of the units sold within one year of market introduction. After two years their market penetration averages more than 50% of all units sold and by the third year the penetration approaches 60% (Kidder, Peabody: Generic Drug Industry Overview, October 5, 1994).

The economic impact of extending the GATT rules to currently marketed drugs can be estimated by applying the recent pricing and market penetration performance of generics to the actual and projected sales volume of currently marketed drugs for the additional length of time that American consumers will have to wait for access to lower cost generics.

The projected cost to American consumers from the windfall extension of patent exclusivity for the 109 currently marketed drugs affected by this change will exceed $6 billion (1996 net present value) over the next two decades.

Twenty of the most common prescription drugs will account for an increased cost to American consumers of over $4.5 billion (1996 net present value) in the next two decades.

There are at least 10 drugs whose patents will expire in 1995. The lack of generic competitors for just three of these drugs will cost American consumers $1.2 billion (1996 net present value) in 1996 and 1997.

The lower price and high market penetration of generics, when available, results in substantial savings to American consumers. These savings are also of benefit to Medicaid, federal and state government, private insurers, managed care, employers, unions, ERISA plans, and others who pay for prescriptions. The cost of this windfall extension of exclusivity to Medicaid alone will be about $1 billion (1996 net present value) and the total cost to federal and state government will exceed $1.25 billion (1996 net present value).

The projected cost to American consumers from the extension of GATT rules to currently marketed drugs has been estimated in a study conducted by the PRIME Institute at the University of Minnesota. The PRIME Institute specializes in research involving pharmaceutical benefit management, economics, and public policy issues.

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[From the Associated Press, Oct. 19, 1995]

DRUGS GET EXTRA PATENT TIME

WASHINGTON.—A federal court has decided nearly 100 brand-name drugs may get an extra few years' monopoly in the market, the pharmaceutical industry announced Thursday.

At issue is whether the drugs could get two patent extensions—one from a 1984 law and another under a global trade agreement.

The General Agreement on Tariffs and Trade, which went into effect in June, extends patent protection to 20 years from the date drug makers file for a patent. Until now, those patents have had a 17-year life from the time they were granted. Current patent-holders will get whichever expiration date is later.

A 1984 law already has offered brand-name drugs up to an extra five years' patent life to help offset the time it takes those medicines to get Food and Drug Administration approval for sale.

Makers of brand-name drugs said they were entitled to both extensions, which could have given some drugs patent protection for a total of 25 years.

But the Patent and Trademark Office decided in June that drugs that got the 1984 extension couldn't get one from GATT too. The ruling affected 94 brand-name drugs and meant the longest a medicine could monopolize the market was about 22 years.

The drug industry went to court. Thursday, the Pharmaceutical Research and Manufacturers Association announced that a U.S. District Court in Alexandria, Va., had ruled that both extensions were the law.

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[From the Roll Call, Oct. 5, 1995]

SIMPSON ABSTAINS BECAUSE OF STOCK

(By Amy Keller)

In an unusual acknowledgment of the potential conflict created by Members' financial holdings. Sen. Alan Simpson (R-Wyo) abstained from a Finance Committee vote Friday on an amendment that could affect two major pharmaceutical companies in which he owns thousands of dollars worth of stock. Simpson, who chairs the Finance subcommittee on Social Security and family policy, abstained from voting on an amendment offered by Sens. David Pryor (D-Ark) and John Chafee (R-RI), which according to Pryor would ''close a multibillion-dollar loophole in the General Agreement on Tariffs and Trade for the name-brand pharmaceutical industry.''

According to his 1994 financial disclosure forms, Simpson owns between $1,000 and $15,000 worth of stock in both Glaxo-Wellcome PLC and Bristol-Myers Squibb Co.—two pharmaceutical companies that stand to lose millions of dollars if the Pryor-Chafee amendment is enacted.

Simpson said yesterday that he ''just didn't feel comfortable'' voting on the amendment.

''I abstained . . . simply because I own about . . . four or five thousand bucks of Glaxo stock. . . . It is a serious amendment and I just chose to abstain,'' Simpson said.

The amendment seeks to put an end to exemptions granted to name-brand pharmaceutical companies allowing them patent extensions on drugs.

As Pryor explains it, through GATT, the US ''agreed to extend patents [on all sorts of products] we grant from 17 years to 20 years to conform with the rest of the world,'' but the treaty also included language to allow ''generic manufacturers to come on the market after the 17-year term ended if they agreed to pay a sort of franchise fee to the brand-name company.''

After heavily lobbying Congress to keep the 20-year patent extensions under the treaty, the pharmaceutical industry was granted ''special protection'' for some 100 specific drugs.

The United States Patent and Trademark Office later revoked the protection of 94 of those drugs, and the Pryor-Chafee amendment seeks to revoke the 20-year patents of the handful of drugs that still carry such protection.

Citing a study by the University of Minnesota, Pryor contends that Glaxo, which makes the ulcer drug Zantac prescribed to some 33 million Americans and is the world's largest pharmaceutical company, and Bristol-Myers Squibb, maker of the blood pressure medication Capoten (prescribed to some 15 million), could net a ''windfall'' of $1 billion and $100 million, respectively, if generic companies are prevented from manufacturing the drugs for an additional three years.

Despite a 9–7 vote in favor of the amendment, the measure failed when Finance Chairman Bill Roth (R-Del) ruled that the amendment to the budget reconciliation bill was out of order. Roth said the amendment was nongermane, thus requiring a two-thirds majority vote for passage instead of a simple majority.

Three other members of the 19-member Finance Committee—Sens. Bob Dole (R-Kan) and Larry Pressler (R-SD) and then-Sen. Bob Packwood (R-Ore),—also abstained from voting on the amendment.

According to Pryor press secretary Justin Johnson, Pressler and Dole had prepared ''no'' votes by proxy and only abstained from voting on the amendment when it became apparent the amendment would fail with or without their votes.

And while Dole has no direct holdings in pharmaceutical stock, his wife Elizabeth owns between $1,000 and $15,000 in Bristol-Myers Squibb stock, and she holds between $1,000 and $15,000 in Kimberly-Clark Company stock, another major pharmaceutical corporation, according to 1994 financial disclosure records.

Pryor and Chafee have not given up the fight on their amendment, however, and plan to raise the issue on the Senate floor in the near future. According to Johnson, there will be a modification to the amendment and it will be re-offered.

And should the Pryor-Chafee amendment make it to the Senate floor, at least five of Simpson's colleagues will face the same choice the Senator did last week, on whether to vote on a measure that could constitute a conflict of interest in light of their private investments.

Among those also owning stock in the affected pharmaceutical companies according to their 1994 financial disclosure records are: Sens. Paul Coverdell (R-Ga), who holds between $1,000 and $15,000 in Glaxo; Judd Gregg (R-NH), between $100,000 and $500,000 in Bristol-Myers Squibb; James Inhofe (R-Okla), between $1,000 and $15,000 in Bristol-Myers Squibb; Lauch Faircloth (R-NC), between $1,000 and $15,000 in Glaxo; and Claiborne Pell (D-RI), between $1,000 and $15,000 in Bristol-Myers Squibb.

Simpson said he doesn't know if he will again abstain from voting on the Pryor-Chafee amendment if it reaches the Senate floor.

''I'll go sort it out again and see where we are, but at least everybody will know that I have that type of holding in Glaxo, which is listed in my [financial disclosure] reports anyway,'' Simpson said.

According to Rule 37 of the Senate Code of Official Conduct, no Senator shall ''knowingly use his official position to introduce or aid the progress or passage of legislation, a principal purpose of which is to further only his pecuniary interest. . . .''

Still, it is exceedingly rare for lawmakers to abstain themselves from a vote, an ethics expert confirmed.

According to former House Counsel Stan Brand, ''[Conflict of interest] is something that has been broadly construed in the annals of ethical rule of the House and Senate, and it's only in the most acute cases of a conflict that [someone] is actually barred from voting.''

In the first half of 1995, Glaxo-Wellcome's PAC gave $94,300 in political contributions to Republicans and $28,500 to Democrats, while Bristol-Myers Squibb's PAC gave $22,800 to Republicans and $7,300 to Democrats, according to Federal Election Commission records.

Five members of the Senate Finance Committee—Sens. Max Baucus (D-Mont), Alfonse D'Amato (R-NY), Charles Grassley (R-Iowa), Frank Murkowski (R-Alaska), Pressler, and Simpson—received political contributions from Glaxo.

Baucus and D'Amato each also received contributions from Bristol-Myers Squibb.

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[From the Reuter Business Report, Sept. 29, 1995]

DRUG COMPANY PRESERVES TAX BREAK IN SENATE COMMITTEE

(By David Lawsky)

A major drug company Friday won a fight in a Senate committee, holding on to a loophole that opponents said will cost consumers $3.6 billion.

The Senate Finance Committee, which is considering an omnibus budget bill, turned down an attempt to remove the special treatment for Glaxo Holding PLC and other brand name drug companies.

Those against the break promised to bring the fight up again on the floor of the Senate.

Sen. John Chafee, R-R.I., proposed ending the break for Glaxo because he said it was ''unanticipated and totally inadvertent.'' In fact, Chafee said, when the lawyer for Glaxo discovered the loophole, he said he had a '''Eureka!' moment.''

''I might say he's entitled to shout 'Eureka!' when you've got $3.6 billion'' at stake.

A study cited by Chafee showed that without cheaper competition by generic drug companies 13 drug companies stood to reap $4.3 billion, with Glaxo getting most of it.

Chairman William Roth, R-Del., ruled Chafee's motion out of order. To the consternation of Chafee and his allies, Roth said he was going to require a two-thirds vote to overturn him, citing a rule.

''Mr. Chairman I've never known us to require a two-thirds vote'' in such a situation, said Sen. Daniel Patrick Moynihan, D-N.Y., who was chairman when Democrats held a majority.

But Roth held firm and although the committee voted 9–7 to remove the break, Chafee lost.

The issue arose out of the General Agreement on Tariffs and Trade, which has a section that in many cases stretched patents from 17 to 20 years.

But that section would put generic companies at a disadvantage if they had made expensive preparations to go into business against a patent-holder, anticipating the end of 17-year patents.

So a special section was adopted that permitted companies that had sunk money into competition to go ahead and market their competing product, so long as they paid royalties to the brand name company which won the extra patent time.

U.S. Trade Representative Mickey Kantor said this week in a letter to Chafee the section was supposed to apply to all products but that ''pharmaceutical products . . . were inadvertently overlooked,'' because they needed a special change in the law governing the Food and Drug Administration.

The measure was opposed by Sen. Orrin Hatch, R-Utah, who called it ''complex,'' and by Sen. Carol Moseley-Braun, D-Ill., who said through a spokeswoman she was a friend of the president of Glaxo and had traveled on the company plane to speak at its headquarters.

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[From the Orlando Sentinel, Sept. 30, 1995]

GENERIC-DRUG TALKS STALL IN COMMITTEE

(By Maya Bell)

A bill that would allow generic-drug companies to begin competing with brand-name rivals suffered a setback in Congress on Friday.

The Senate Finance Committee voted 9–7 to consider correcting a congressional oversight that protected the makers of 13 brand-name drugs from generic competition for up to three years. Among the drugs are two best-sellers, Zantac for ulcers and Capoten for high blood pressure.

But committee Chairman William Roth, R-Del., ruled that two-thirds of the committee had to agree to debate the bill. Lacking that majority, the amendment was tabled.

''It's still a victory. The reason we couldn't get a hearing was procedural,'' said Natalie Shear, a spokeswoman for the Generic Drug Equity Coalition, a consortium of consumer groups and generic-drug companies lobbying Congress to correct its mistake. ''The bottom line was the senators indicated their support.''

Sen. Bob Graham, the only Floridian on the committee, voted to consider the bill.

A spokesman for one of the sponsors, Sen. Richard Pryor, D-Ark., said the measure would be brought up again in another forum.

''It's definitely not dead yet,'' said Justin Johnson, Pryor's press secretary. ''There will be a modification, and it will be reoffered. We'll keep after it.''

The bill is intended to correct what is widely acknowledged to have been a congressional oversight. The mistake was made when Congress adopted the language for the global trade treaty known as GATT. While extending U.S. patent terms from 17 years to 20 years to comply with the General Agreement on Trade and Tariffs, Congress inadvertently exempted 13 brand-name drugs from generic competition for up to three years.

The drug coalition estimates that the oversight will cost consumers, who won't have generic alternatives for some prescriptions as early as anticipated, nearly $2 billion.

Among the biggest beneficiaries are drug giants Glaxo-Wellcome Inc., the makers of Zantac, and Bristol-Myers Squibb Co., which produces Capoten. Last year, Glaxo sold $2.7 billion worth of Zantac and Bristol-Myers $581 million of Capoten in the United States.

Neither company could be reached for comment Friday. Glaxo spokeswoman Nancy Pekarek has said the company opposes the GATT fix because it would send a message to other countries that they, too, can tinker with the treaty to protect a favored industry.

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[From the Journal of Commerce, Sept. 28, 1995]

DRUG FIRMS FIGHT TO PRESERVE WINDFALL

(By John Maggs)

WASHINGTON.—A handful of powerful drug companies are waging one of the most furious and extravagant lobbying campaigns seen on Capitol Hill in years, all to preserve an inadvertent change to U.S. law in last fall's trade bill that promises them billions of dollars in unexpected profit.

The drug companies are shelling out millions of dollars to enlist the influence of distinguished former senators such as Warren Rudman of New Hampshire and Dennis DeConcini of Arizona, and former U.S. Trade Representative and Senator William Brock of Tennessee.

The prize for this largess is one of the biggest payoffs for the smallest number of companies ever granted by Congress without a word of debate.

One company alone, Britain's Glaxo Holdings PLC, will rake in $3.6 billion over the next two years as a result of this legal twist of fate, all of it money that it never expected to earn. This windfall will come out of the pockets of ulcer patients, most of them in the United States, who will pay higher prices for Glaxo's revolutionary anti-ulcer drug Zantac.

The explanation begins with last year's bill to implement the Uruguay Round trade agreement, which lowered trade barriers worldwide and increased protection for patented drugs and copyrighted material. As part of that international patent deal, the United States agreed to change the life of new patents from 17 years after they are first granted to the norm for the rest of the world—20 years from the date a patent request is first made.

The trade legislation sent to Congress made the patent term change effective for all patents, so that those coming due less than 20 years after they were originally filed were automatically granted an extension. Mindful that this would have handed drug companies an unwarranted windfall, the trade bill provided that generic drug firms would be allowed to begin manufacturing the patented drugs after the original patent date, provided they pay a licensing fee to the big drug companies.

But unknown to the drafters of this legislation, a 1984 drug law effectively freed Glaxo and other big pharmaceutical companies from this obligation to license their products. In a moment of insight a lawyer for Glaxo discovered this overlooked statute, and set off a bitter fight with generic drug companies to reverse this inadvertent stroke of good luck.

This list of beneficiaries is a long one. Glaxo is by far the biggest—it will receive nearly two years of extra monopoly control over Zantac, earning $6 million a day more than it would have earned if competing with generic drug producers. Also benefitting are Squibb, which will get $311 million of added profits for its ACE hypertension drug; Organon, which gets $108 billion for its Norcoron anestesia; and Searle, which gets $102 million for its Cytolec anti-ulcer drug.

Advocates of the generics have lined up the support of U.S. Trade Representative Mickey

Kantor in arguing that the windfall was an inadvertent one.

As soon as today, Sens. David Pryor, D-Ark., and John Chafee, R-R.I., are expected to offer an amendment to reverse this windfall profit, but they face an uphill battle. Sen. Jesse Helms, R-N.C., is leading the fight for Glaxo, whose U.S. subsidiary is based in North Carolina. Sen. Helms faces re-election in 1996 and some of Zantac's billions of dollars in earnings would be useful in financing his campaign.

Sen. Helms has lined up the support of majority leader Bob Dole, who has in turn made preserving the windfall for the drug companies a partisan issue. Few Republicans other than Sen. Chafee have committed to support the Pryor amendment.

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[From the Journal of Commerce, Oct. 2, 1995]

SENATE PANEL: NO VOTE ON DRUG LOOPHOLE

WASHINGTON.—Senate Finance Committee Chairman Bill Roth, R-Del., refused to allow a vote to repeal a controversial loophole in U.S. patent law, despite opposition to his unusual ruling from a bipartisan majority of the committee.

Behind the maneuvering was a huge amount of money for British-owned Glaxo Holding PLC and the tight grip that Senate Majority Leader Bob Dole, R-Kan., holds over the Finance Committee.

The issue apparently resulted from an inadvertent mistake in drafting last fall's trade bill, which gave Glaxo an unexpected windfall of $3.6 billion by extending for two years its exclusive patent rights on the anti-ulcer medicine Zantac.

Generic drug companies are clamoring to put out knock-off versions of Zantac, but cannot because government lawyers drafting the trade bill overlooked a 1984 law that effectively prevented these generics from starting production. Career trade negotiators who worked on the legislation confirmed Friday that it was an oversight.

Sens. John Chafee, R-R.I., and David Pryor, D-Ark., Friday sought to reverse this mistake with an amendment to the huge budget reconciliation bill before the Finance Committee. Although Finance was hearing other amendments on Medicaid and Medicare, Mr. Roth deemed the patent measure out of order, declaring that it was in the jurisdiction of the Labor Committee and he refused to accept a letter from Labor waiving jurisdiction.

Behind his resolve was Mr. Dole, who had agreed to block a vote at the request of Sen. Jesse Helms, R-N.C., who faces re-election in 1996 and could use the financial help of the U.S. subsidiary of Glaxo, located in North Carolina.

In a perhaps unprecedented move, Mr. Chafee forced a vote on Mr. Roth's decision. Little-used rules required a two-thirds majority to overrule the chair.

Thus a 9-7 vote to overrule failed, despite the majority.

Mr. Roth later declined to comment on whether the ruling had been made under pressure from Mr. Dole. ''I don't discuss my meetings with Sen. Dole,'' he said, ''but this was based on the rules of the Finance Committee.''

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[From the Journal of Commerce, Oct. 5, 1995]

THE SENATOR FROM GLAXO?

When Sen. Bill Roth succeeded Bob Packwood as chairman of the Senate Finance Committee, he had a cloud over his head. Sen. Roth, so the thinking went, would be beholden to Sen. Majority Leader Bob Dole and not act independently on committee business. That may have been an unfair rap, but so far it seems to be coming true.

Consider a case involving patents that came before the Finance panel recently. Last fall, as part of the new Uruguay Round trade deal, Congress changed the term for patent protection to make the U.S. standard match the norm in most other countries. An oversight by government lawyers, however, effectively extended the life of a handful of drug patents, denying generic drug companies the right to compete with these patent-holders.

By far the biggest beneficiary of this mistake is British-owned Glaxo Pharmaceuticals, which will earn $3.6 billion by gaining an extra 19 months of patent protection for a single drug—its Zantac anti-ulcer medicine.

To preserve this windfall, Glaxo has enlisted, among others, Sen. Jesse Helms of North Carolina, the state where Glaxo's U.S. subsidiary is located. Facing re-election in 1996, Sen. Helms reportedly went to Sen. Bob Dole and got his support for squelching any attempt to repeal Glaxo's bonus.

When Sens. John Chafee and David Pryor offered an amendment to close the Glaxo loophole, Sen. Roth blocked them. Using a parliamentary ruling from Sen. Dole's office, he ruled the amendment out of order, even though it fell within the committee's purview on health care and trade.

Even though most committee members favored a vote on the proposal, Sen. Roth ignored their pleas. In a move the committee hadn't seen in decades, a majority of members then voted to overrule the chairman on a procedural point, tossing out a tradition of collegiality.

In the end Sen. Roth prevailed, since two-thirds of committee members were needed to overrule him. But he lost this first test of leadership.

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TRANSCRIPT FROM NBC NIGHTLY NEWS WITH TOM BROKAW, WEDNESDAY, SEPTEMBER 27, 1995—''IN DEPTH'' SEGMENT

[Brokaw in studio standup.]

BROKAW. More on Medicare reform as Congress looks for ways to save. We've got the shocking story of how some drug companies are cashing in—at your expense.

[Video to footage of Congressional Hearing on Capitol Lawn.]

In the Medicare debate today, House Democrats held their second hearing on the Capitol lawn, protesting what they say is Republican unwillingness to hold official hearings.

[Brokaw in studio standup.]

In the Senate, gridlock as Democrats blocked the Finance Committee from working on the Medicare proposal today. But there is one area where Congress could help save millions of taxpayers dollars—now. NBC's Lisa Myers has this Indepth report.

[Video footage of Florence Davis.]

MYERS. Ninety-year-old Florence Davis takes the prescription drug Capoten for her high blood pressure. A month's supply costs $125 at her pharmacy.

DAVIS. If I could get the generic cheaper, I would.

MYERS. Her son, Norman, pays for the medication.

NORMAN. For all of my mother's drugs, I pay for them. She can't afford it.

MYERS. Mrs. Davis was supposed to be able to buy a cheaper generic version of Capoten beginning last month, cutting the cost by as much as half.

[Video footage of pharmacist dispensing pills in pharmacy.]

But, thanks to Congress, she'll have to wait until at least February, and here's why.

[Cut to video of Myers in Senate Hearing Room showing GATT bill.]

Last year, Congress made a costly mistake in this huge bill implementing the trade agreement called GATT. It gave big drug companies longer patent protection on about a dozen drugs, enabling them to charge high prices without competition.

[Cut to video of Senator David Pryor (Democrat-Arkansas) holding pill bottle.]

PRYOR. They're getting a two billion dollar a year windfall. It is a bonanza. This is an absolute ripoff to consumers and to taxpayers.

[Cut to graphic of ''Big Winners'' showing Bristol-Myers Squibb and Glaxo, with picture of drug products.]

MYERS. The big winners: Bristol-Myers Squibb, maker of Capoten, taken by 15 million Americans last year, and Glaxo, maker of Zantac, an ulcer drug prescribed to 33 million.

[Cut to graphics ''Big Losers.'']

The biggest losers: everyone who uses the drugs.

[Cut to graphic of Zantac.]

Take Zantac, the ulcer drug which costs about $83 a month. Buying generic could cut that cost in half, a big savings if you're on a fixed income.

[Cut to video of Horning.]

HORNING. That can mean the difference between her having lunch or not. It's simply that critical to some of our elderly.

[Cut to video of crowded street scene.]

MYERS. And if you don't use the drugs, you still lose. Taxpayers have to pay $200 million more for these prescriptions under health programs for the poor.

[Cut to video of drug production line.]

It's no wonder drug companies are fighting to save their huge windfall. In fact, they claim it was no mistake at all.

[Cut to video of Mossinghoff.]

MOSSINGHOFF. Congress knew exactly what it was doing. It was extending patents across the board.

[Cut to video of Chafee and Dole talking; video of Chafee.]

MYERS. However, Republican Senator John Chafee says that's not true.

CHAFEE. Each of us that were involved never thought that this was taking place.

[Cut to graphic on campaign contributions.]

MYERS. Still, fixing the problem will be an uphill battle. Glaxo has given $600,000 in campaign contributions in the last two and a half years: $375,000 to Republicans; $236,000 to Democrats.

[Cut to video of senior citizen purchasing prescription.]

Senior groups warn that if Congress does not correct its mistake, it would send a powerful message to voters.

[Cut to video of Horning.]

HORNING. It is a signal that, ''Well, we really don't care about you because, you know, the pharmacies are giving me campaign money.''

[Cut to video of Davis.]

MYERS. Florence and Norman Davis say they can't afford to have Congress and big drug companies conduct business as usual.

Lisa Myers, NBC News, the Capitol.

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[From the New York Times, Sept. 28, 1995]

BATTLE OVER BONANZA FOR DRUG COMPANIES

An army of lobbyists has been enlisted to do battle over a loophole in a trade treaty that has created a windfall for the makers of patent drugs.

A Senate committee is considering amending a provision in the General Agreement on Tariffs and Trade that extends the life of patents on prescription drugs. Under the provision, a handful of drug companies would receive billions of dollars in additional profits by having a longer period to sell their products without competition before other companies would be allowed to make low-cost generic alternatives.

On one side are companies like Glaxo-Wellcome, the world's largest pharmaceutical concern, whose ulcer drug Zantac

earns it $2.1 billion a year, a figure that could drop sharply once generic versions of the drug are sold.

On the other side is a coalition of generic drug makers and consumer groups who say that failure to close the loophole will cost consumers billions of dollars.

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[From the New York Times, Sept. 28, 1995]

DRUG FIRMS AT ODDS OVER PATENT EXTENSIONS

SPECIAL PLEADERS—A PERIODIC LOOK AT LOBBYING

(By Neil A. Lewis)

WASHINGTON, September 27.—By the time the Senate Finance Committee resumes consideration of the Federal budget's multibillion dollar issues Thursday, some of the nation's largest drug companies will have spent and lobbied heavily against one amendment that hardly amounts to budget dust.

But while its impact on the Federal budget may be minuscule, the measure means a fortune to the drug companies.

The amendment at issue would close what appears to be an unintended loophole in an international trade treaty enacted last year that extends the life of patents on prescription drugs. A handful of drug companies are fighting to protect the provision for billions of dollars in additional profits they would receive by having a longer period to sell their products before other companies could make low-cost generic alternatives. On the other side of the issue are members of the generic drug industry, which in coalition with consumer groups argues that the failure to close the loophole will cost patients billions of dollars.

While both sides have their teams of lobbyists, the major drug companies have enlisted a virtual army of advocates, including one former Senator and several former senior Congressional aides who have been clustering outside the Senate hearing room in which the committee has been meeting this week. One company, Glaxo-Wellcome P.L.C. of North Carolina, which probably has the most at stake, has retained the most influential phalanx of lobbyists.

Donations from Glaxo's political action committee to members of Congress have more than doubled in the most recent reporting period, compared to the same period two years ago, according to records of the Federal Election Commission.

Glaxo, the world's largest pharmaceutical company, has the patent on Zantac, widely used drug to treat ulcers. The drug, which retails for about $2 a tablet, accounts for about $2.1 billion in annual sales for the company, said Nancy Pekarek, Glaxo's manager of corporate relations. This revenue will drop sharply once generic versions of Zantac are permitted.

That the issue of the patent extensions arises from an unintended loophole is generally beyond dispute.

Glaxo's lawyer told Business Week magazine in May that he had ''a Eureka! moment'' when he was poring over the details of the General Agreement on Tariffs and Trade signed into law last year and discovered that the language could be read to extend patents on prescriptions drugs. The drug companies pressed their interpretation on the Food and Drug Administration, which last May reluctantly acknowledged they were correct. Mickey Kantor, the United States Trade Representative who negotiated the treaty has written a letter to the Senate saying the negotiators did not mean to incur this consequence.

Senator David Pryor, an Arkansas Democrat, has been trying to enact an amendment to the budget bill that would do just that, eliminate what he said is a ''windfall'' for the drug companies. His amendment would restore the 17-year limit on a drug company's patent of a new medicine, the period during which other companies are prohibited from making a generic equivalent.

''It's absolutely an unjust enrichment,'' he said. ''A classic case of the law of unintended consequences.''

What happened to create this fortuitous situation for the drug companies was that when the trade agreement was negotiated, it included a provision for bringing all 123 countries onto the same standard for patent protections. It required the United States to switch from granting 17-year patents from the time of their approval to giving 20-year patents from the time of the application for a patent.

Depending on how long it took to gain patent approval, the law gave companies up to three years of extra protection for their products. About 10 drugs are affected, and Glaxo's Zantac would gain 19 extra months of patent protection.

Ms. Pekarek of Glaxo said that her company was not fighting the amendment because of its effect on Zantac, but because of ''a much broader issue of worldwide patient protections.''

She said that it was important not to tamper with the trade treaty because, ''if we do anything to undercut it that would be opening the door for other countries to make special provisions on patents for their products.''

The United States is the world's leader in producing new medicines, and the pharmaceutical industry has long argued that its profits during the patent protection period finance research on new drugs.

Among those Glaxo has employed to lobby the Senate is William Brock, a former Republican Senator from Tennessee. Mr. Brock is also particularly suited to press the point about worldwide patent consistency because he is also a former United States Trade Representative.

He has been making that argument this week in the Republican cloakroom to which he has access as a former Senator. Mr. Kantor, the current trade representative, has disputed that argument.

The amendment sponsored by Mr. Pryor as well as Senator John H. Chafee, a Rhode Island Republican, may come up as early as Thursday.

But its fate is uncertain, since it is a tenet of Capitol Hill that it is more difficult to pass something than to defeat it. Most of the Democrats are expected to support the measure but at least one Senator Carol Moseley-Braun of Illinois declared her opposition today.

Senator Moseley-Braun said through a spokeswoman today that she was a longtime friend of Robert Ingram, president and chief executive of Glaxo. She flew on the company's jet last March to Glaxo's headquarters to give a speech and meet with community leaders.

She said through her spokeswoman, Joanna Slaney, that she opposed the amendment because she believed the trade agreement should not be tampered with.

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[From the Food and Drug Inside Report, Sept. 29, 1995]

GLAXO ROLLS OUT ''BIG BUCKS'' CARD IN GATT BATTLE ON CAPITOL HILL

REPUBLICANS UNEASY WITH HEAVY-HITTER LOBBYISTS AND SCORE SHEET ON CAMPAIGN CONTRIBUTIONS BEING TOUTED BY GLAXO

When the congressional staffers working on H.R. 5121 sat down last November to draft the specific language that would implement the GATT in the United States, it must have been very late when the final draft was completed. It would, after all, be understandable that these staffers would be tired after laboring for months on multiple versions of the implementing statute for GATT. The complexities of the GATT Agreement are legion, and even experienced international trade lawyers were hard pressed to provide clear explanations of a great deal of the sections of GATT. The bottom line, borne no doubt from those difficult conditions, the Congress made a mistake.

Like much of the grinding machinery of the legislative process, the impact of that mistake took some time to assess. In this case, the mistake was a simple oversight by the drafters who failed to contemplate the importance of including conforming amendments to the Federal Food and Cosmetic Act and Section 271 of the Patent Act.

Shortly after passage of H.R. 5121, no doubt in the richly paneled offices of one of Washington's expensive law firms, a lawyer by the name of Marc Shapiro was laboring on the language of the newly passed legislation. No doubt it was an effort to advise his client, Glaxo Holding PLC, of what they needed to do to comply with the various. For Marc Shapiro, who is known among his colleagues as a professional with a deep understanding of his craft, it was a mind numbing experience when he read the plain language that set forth Congress' view of how GATT would be implemented in the United States.

In order to comply with an ''international harmonization'' of patent terms with member nations of GATT, the United States adopted changes to the patent term to commence at the date of filing with the patent office and extend for a period of 20 years. That contrasts with the previous U.S. patent law that had provided for a 17-year patent term which commenced from the date of approval of the patent by the Patent and Trademarks Office (PTO).

The GATT includes a section known as Trade-Related Aspects of Intellectual Property Rights (TRIPs) which requires member countries to apply high levels of protections for existing patent holders. The United States fulfilled its obligations under TRIPs by amending the Patent Act of grant owners of patents still in force the benefits of the new terms to the extent that it increased their patent protection term.

But TRIPs also had specific provisions to protect those individuals who had made a ''substantial investment'' in anticipation of the expiration of the patent under the old system. To balance the interests to the existing patent holders, those who had made substantial investment would be required to pay ''equitable remuneration'' to the patent holder.

Marc Shapiro, while sifting through the legislation, had what he characterized to a Business Week reporter as a ''eureka moment'' when he discovered that Congress had extended the patents of a number of Glaxo products, and had provided no protections for generic drug manufacturers even if they had made the required substantial investment.

For generic drug manufacturers, it was a setback. For senior citizens on fixed incomes who rely heavily on access to generic drug products to ease the financial burden of needed prescription drugs, it was a disaster. For low-income families with children who are forced to rely upon generic drugs in difficult economic circumstances where the choice is often not to fill a needed prescription because of cost, it was a horrible calamity. For the U.S. government health care programs like Medicare, Medicaid, Veterans Affairs, Indian Health Service, and the Public Health Service, it is an unmitigated catastrophe.

Glaxo executives and lobbyists, however, were whooping it up like they had just won the Super Bowl. In a certain sense, they had.

The flagship Glaxo product, Zantac, was granted an additional 19 months of patent protection. It was totally unanticipated by Glaxo. Indeed, they had priced their product over the 17-year patent term in anticipation of the old term, and the passage of the new law occurred within months of the expiration of the patent. The overall revenue gain was billions.

Glaxo lobbyists now bristle at the characterization of the revenues raked in during the extended patent term as being ''windfall profits.'' ''That is not fair because we all know that we gave up a lot to the generic industry back in 1984. We're just seeing a justified correction,'' claims one Glaxo lobbyist.

The 1984 Drug Price Competition and Patent Term Restoration Act, commonly referred to as ''Hatch-Waxman,'' did indeed involve a carefully crafted compromise between the brand industry and generic drug manufacturers. The generics got pre-expiration access to patented raw materials to conduct testing to theoretically allow FDA to approve the ANDA on the date of patent expiration. The brand industry got a guarantee of 14 years of market exclusivity despite any delays in FDA review.

Many have credited the Hatch-Waxman Act as having been the catalyst for a rapid expansion of the generic drug industry. Senior citizen groups and consumer advocacy groups have lauded the Act as key to improving the health of financially fragile purchases who often deferred purchasing needed drugs simply because of the high cost of brand name drug products.

There has not been any serious attack on the Hatch-Waxman Act as having been ''unbalanced'' to one side or the other over the first ten years of its existence. But now, in 1995, Glaxo points to the need for restoring some balance to the brand industry for injury heaped on it by Hatch-Waxman.

The Generic Drug Equity Coalition, a group of consumer advocate groups, senior citizen lobbying groups, and generic industry supporters, sees the issue a little differently. ''Glaxo has no legitimate gripe with the proposed fix. It will simply mean they won't get to keep the multi-billion windfall profit they received solely from a legislative mistake. They didn't earn that windfall profit. They don't deserve that windfall profit. But they want to take those profits right out of the pockets of people who can least afford their high prices,'' complained one Coalition FDA Insider.

Capital Hill staffers are caught in a tough situation. Privately, of 33 staffers contacted on this issue, none disagreed with the fact the mistake needed to be corrected. None disagreed that the consumers and government would have to pay unjustified higher prices for products that should have generic competition. All of the staffers agreed that Glaxo did not deserve the billions they would receive from this mistake. But only 1 staffer was absolutely confident Congress would correct the mistake.

''What can we do. Glaxo has made campaign contributions to all of our bosses. The Chairman of the company [Glaxo] has been demanding personal meetings with our bosses. Is there any doubt about the subtle message being conveyed. 'We are here to pick up the chit.' This is going to be a case of pure political conflict, with the consumers on the side of the angels and Glaxo with the gold shillings. I just don't know how it will come out,'' laments one Senate Finance Committee staff FDA Insider.

*The battle lines drawn*

The political battle lines are not clearly defined. For the generic coalition, Senator John Chafee (R-Rhode Island), Senator Hank Brown (R-Colorado), and Senator David Pryor (D-Arkansas) have been working to correct the mistake in the GATT language. For Glaxo, there is less public enthusiasm, but a lot of fire-power by virtue of the campaign favors that are being called in. Senator Alfonse D'Amato (R-New York) has obviously been pressed into service by virtue of his position as Chairman of the Republican Senatorial Campaign Committee. Some other Republicans are concerned about the appropriateness of the high-level of visibility that D'Amato has taken on the issue, but sources at the Campaign Committee bluntly told FDIR that ''Glaxo was taking no prisoners'' on this issue.

Senator Jesse Helms (R-North Carolina) has dutifully stepped to the plate to help his home state Glaxo workers (the U.S. Glaxo operations are in the Research Triangle in Raleigh, North Carolina). Beyond that, there are only a group of stealth Glaxo supporters who are desperately hoping that something will happen to allow them to get off the end of the Glaxo spear. For most it is a horrible political position to be in to appear to oppose access to lower cost generic drugs for senior citizens and low-income families.

The Congressional Budget Office (CBO) scored the 5-year savings to Medicaid at $150 million. That is no small potatoes to Republicans seeking savings. But that amount is minuscule compared to the $2 billion cost to consumers identified in a Muse & Associates economic impact analysis. At that number the political pain becomes much deeper and the potential for future constituent problems becomes very real.

The strategy for correcting the GATT legislation mistake is to include a provision in the Budget Reconciliation Act as an amendment in the Senate Finance Committee markup. Glaxo supporters are trying to argue the amendment is not germane under the ''Byrd Rule'' since the savings flow to the Medicaid block grants and not to the Federal deficit. But Glaxo critics argue the block grants are unique to the Finance Committee review cycle this time around, and virtually all of the provisions technically trample on the Byrd rule in order to facilitate the block grants being transferred from the Federal Government to the states.

The central substantive argument Glaxo has relied upon has been that any change now would upset the delicate balance with World Trade Organization (WTO) members who have a history of poor enforcement of patent infringements in their countries. Glaxo points to certain language in the GATT and TRIPs they claim was in fact incorporated in the strategy of the H.R. 5121 drafters. The thesis, then, is that there was no error or mistake, but the language was clearly set forth to express the specific intent of the U.S. Congress.

''They must have their fingers crossed behind their backs when they sling that BS up here,'' commented on House Ways and Means Committee staffer. ''It was a mistake, we know it, and they know it.

Senator Chafee wanted to know the truth of the matter, so he sought the advice of USTR Ambassador Micky Kantor. Kantor was succinct in his view: ''This provision [Section 154(c) (1) and (2) of the Patent Act] was intended to apply to all types of patentable subject matter, including pharmaceutical products. Conforming amendments should have been made to the Federal Food Drug and Cosmetic Act and Section 271 of the Patent Act, but were inadvertently overlooked.''

The key part of the Glaxo argument is directed at the problems encountered around the world with poor enforcement of patents, particularly with some members of WTO. They advance the argument that any tinkering with the present language would send a strong message to our trading partners that they need not aggressively enforce patent rights. It is an argument that seemingly was sufficient for Glaxo supporters to hang their hats on.

But Ambassador Kantor punched big holes in that argument, and has left Glaxo very vulnerable to the charge that they are just trying to keep an unjustified windfall profit. It is a message that Glaxo has tried to gussy up with an elite lobbying corps. Former Senator Warren Rudman and former Senator Bill Brock were both brought in to shore up an eroding Glaxo position. That augments a term of virtually every high-powered lobbyist in Washington available to work. ''The 'alligator shoe' crowd is apparently out in force,'' commented one House Commerce Committee staff FDA Insider.

The generic drug industry, on the other hand, seems to have placed its fate in the hands of a rag-tag band of consumer advocates and senior citizen advocacy groups. It seems to be working. Congressional staffers report a substantial interest in the issue among talk show hosts around the country.

''Our phone lines are burning up with senior citizens who are just hopping mad over the prospect we may add costs to drugs. I don't think we want to be in that position,'' observed a Senate staff FDA Insider.

Whatever the Senate Finance Committee does on this issue in the Budget Reconciliation markup, it promises to be a hot issue over the next several weeks. For Marc Shapiro, he is surely hoping his ''eureka moment'' doesn't turn into a ''Maalox minute.'' Certainly it is a comment he wished he could take back and recast it in less flammatory language.

''This battle boils down to a simple issue. Is there any justification for allowing Glaxo to keep the billions of dollars they will get simply from an error in drafting a piece of legislation.

''Did Glaxo earn these windfall profits? No.

''Did Glaxo expect or need these windfall profits to fund R&D for the product? No.

''Did Glaxo project these windfall revenues into pricing to recover a fair return on their investment? No.

''I have not yet heard one compelling argument to justify a vote to let them keep money Glaxo will get on the backs of senior citizens and poor families. Glaxo is getting access to various members because they have been strong campaign contributors. But they didn't buy votes with those contributions, particularly when they have no credible argument to justify themselves. It is only a lot of smoke and mirrors. No substance. It is a no-brainer to me. Vote to protect consumers.''—Senate Finance Committee Staff FDA Insider.

''The Hatch-Waxman Act established a delicate balance in the pharmaceutical industry between the interests of research-based companies and the generic industry. Any responsible look at the proposal by the generic companies would upset that balance and result in a serious injury to the innovator drug industry. We have no reason to apologize for the revenues that result from the research and development efforts of our company. We are responsible in our pricing policies, and we recognize the needs of low-income families in acquiring our products. Truly needy families can get assistance from community organizations we support.''—Glaxo Lobbyist FDA Insider.

''Finally, the extension of the Section 154(c) to pharmaceutical products would not undermine ongoing U.S. efforts to seek high levels of intellectual property protection around the world. We are acting wholly within our rights in establishing the transition

period, as other countries would be if they did the same. Furthermore, we have already established under our law the transition period with respect to all types of patents other than pharmaceutical patents; extending it to pharmaceutical patents would be in no way increase the ability of our trading partners to justify their failure to provide TRIPs-consistent patent protection.''—Ambassador Michael Kantor, the United States Trade Representative, Letter to Senator John H. Chafee, September 25, 1995.

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[From the Orlando Sentinel, Sept. 3, 1995]

GATT PUTS GENERIC DRUGS ON HOLD

(By Maya Bell)

MIAMI.—Interested in saving money, Phylis Tannen routinely requests generic prescriptions for her ulcer.

So Tannen, 74, was surprised to learn recently that she would have to wait much longer than expected to buy the less expensive medicine. That's because the patent for Zantac, slated to expire this December, had been extended until July 1997, preventing the release of a generic equivalent until then.

The retired Dade County school principal was even more surprised to learn the convoluted reason for the delay, which could cost her roughly $430 over the life of the extended patent. In implementing the worldwide trade agreement known as GATT, the U.S. Congress inadvertently exempted at least 13 brand-name drugs from generic competition for up to three years.

Among them: Zantac and the high blood-pressure medicine Capoten, among the best-selling drugs in the world.

The oversight may have been unintentional but, outraged consumer groups say, its impact is enormous: Brand-name drug companies, primarily Glaxo Wellcome Inc. and Bristol-Myers Squibb Co., the makers of Zantac and Capoten, will reap nearly a $2 billion windfall at the expense of the public.

Last year, Glaxo sold $2.7 billion worth of Zantac and Bristol-Myers $581 million of Capoten in the United States alone. Together, they accounted for nearly 48 million prescriptions.

Paying most for the delayed availability of the generic drugs, advocates say, will be the elderly, who consume a third of the $64 billion worth of prescriptions sold annually. Because Medicare does not cover the cost of prescriptions, seniors such as Tannen often pay for them out of their own pockets.

''It was an unintended mistake by Congress, but the public will pay dearly for it,'' said Dixie Horning, executive director of the Gray Panthers, a lobbying group for the elderly. ''Not only are the people who can least afford it—senior citizens on fixed incomes—paying more for their drugs than they ought to be, but taxpayers are too. The government, and that means you, is a big buyer of these drugs.''

A study conducted for the Generic Drug Equity Coalition, a consortium of 26 consumer groups and generic-drug companies urging Congress to correct its mistake, estimated the cost of delaying the 13 generic substitutes of $1.9 billion. Sen. David Pryor, D-Ark., the ranking minority member and former chairman of the Senate's Special Committee on Aging, introduced a bill to clarify Congress' intent earlier this month. The bill would not alter the GATT treaty, nor require ratification from other countries.

Florida's U.S. senators, Republican Connie Mack and Democrat Bob Graham, are not involved in the issue yet, but their staffs said they will take a close look at the legislation when they return from summer recess. In the meantime, at least one generic-drug company is taking its fight to enter the market to court.

Should the bill pass, senior citizens and the federal Medicaid program stand to gain some of the biggest savings, said Don Muse, a former analyst for the Congressional Budget Office and author of the coalition study. He projected seniors would save $517 million; the Medicaid program, which covers prescriptions, would save another $205 million, and the Department of Veterans Affairs $21 million. Other big savers would include insurance companies, whose medical plans often require members to elect generic drugs.

The estimated savings are very conservative, the coalition says, because the study assumes the generic products would be only 10 percent cheaper than their brand name equivalents. However, generic drugs have historically debuted at a price about one-fourth less than the brand, quickly falling to 75 percent of the brand cost.

How the General Agreement on Tariffs and Trade wound up hurting consumers such as Tannen while helping companies such as Glaxo is as complicated as the 8,000-page treaty itself. The trouble began when Congress changed U.S. patent law to match the global standard set by GATT. The change extended the life of U.S. patents from 17 years to 20 years, benefiting current patent-holders by up to three years.

But Congress recognized that the change would, as one congressional staffer put it, ''move the goal posts back'' for companies that anticipated a patent expiring and already had a generic product in the pipeline. So Congress devised a mechanism allowing those companies to enter the market on the day the original patent would have expired. The compromise: The generic company would pay the brand-name company a royalty until the extended patent expired.

Everything was fine until the generic-drug companies realized that Congress overlooked the very law that launched their industry in 1984. The law plainly states that a generic drug cannot come to market before the brand's patent expires. Hamstrung by the conflict, the Food and Drug Administration forbade generic-drug companies from selling their products until the extended patents expire.

As a rsult, the prescription drug industry is the only industry in the nation that will benefit from longer patent terms but be exempted from generic competition during the compromise period.

The ruling felt like a kick in the teeth to Patrick McEnany, president of Royce Laboratories Inc., a small but rapidly growing generic drug company in Miami that nearly doubled its sales last year to $6.6 million.

Soon after McEnany joined Royce in 1991, the company set out to develop a generic form for Capoten, which was supposed to lose its patent on Aug. 8. Spending more than $1 million to develop a bio-equivalent, Royce hoped to put the first Capoten substitute on the shelf, a key to capturing the generic market.

''In this business, timing is everything,'' said Robert Band, Royce's chief financial officer. ''Once the shelf space is taken up, it's hard to wrestle it away.''

The FDA ruling, however, extended Capoten's patent for six months, keeping Royce and five other companies from competing with Bristol-Myers until February.

The company counted on attracting an enviable share of the nearly 15 million Capoten prescriptions sold annually during the next six months. Instead it was left with the prospect of having even more generic competitors come February.

Not content to let that happen, Royce picked a fight with Bristol-Myers in U.S. District Court in Miami, winning the first round nine days ago when a judge ruled that the FDA was free to approve Royce's Capoten product.

Bristol-Myers appealed, and the FDA said it would not act on the court action until that appeal was exhausted.

''When we enbarked on this product, we relied on a set of rules and the rules changed—not in the middle of the game, but at the end of the game,'' McEnany said. ''It is an injustice to us and to the consumer.''

Royce is not alone. Novopharm USA Inc., an Illinois-based pharmaceutical company, has millions of dollars worth of its generic form of Capoten sitting in inventory. Worse, Novopharm has a $38-million plant under construction in North Carolina, company president Bill Gunter said. It was where Novopharm planned to begin manufacturing its generic alternative for Zantac this December.

''Now we're scrambling to figure out what we can do to justify that huge, white building,'' Gunter said. ''It's not a simple thing.''

Royce and Novopharm are members of the coalition pushing Congress to correct its oversight. They aren't, however, getting much sympathy from brand-name manufacturers, who argue that it is the generic competitors reaping the windfall. After all, generic manufacturers capitalize on the millions of dollars brand-name companies spend on research and development, coming to market without doing the same science.

Bristol-Myers spokesman Bob Laverty points out that, since Capoten was first approved in 1981 to combat high blood pressure, the company has discovered three other life-saving uses for the drug. In his view, Bristol-Myers has more than earned its patent extension.

''We don't feel this is a windfall because the company has continued to invest in this product over the years,'' Laverty said. ''We've continued to pour research dollars into the product and it has helped consumers tremendously.''

Glaxo paints the GATT flap as a trade issue, not a consumer issue. Company spokeswoman Nancy Pekarek warns that if Congress amends the GATT law to appease the genertic drug industry, it will send a message to other countries that they, too, can tinker with their patent laws to protect a favored industry.

''The law is clear and it should be followed,'' Pekarek said ''Generic companies already have a shortcut and for that shortcut they promised to honor the patent expiration date. Yes, the rules changed, but everybody has to abide by the rules.''

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[From USA Today, Aug. 8, 1995]

GATT DELAYED NEW GENERIC DRUGS

(By Anita Manning)

The world trade agreement GATT extended patents on a dozen drugs—including popular blood pressure and ulcer medications—delaying generic manufacturing and costing consumers millions of dollars, consumer advocates say.

The patents were to expire today on Capoten and Capozide and on Zantac in December, but the General Agreement on Tariffs and Trade extends them into 1996 and 1997.

Patents had run 17 years; GATT extended it to 20 years.

''GATT created a windfall for drug companies,'' says Jim Firman of the National Council on the Aging.

In 1994, nearly 15 million prescriptions were written for blood pressure medicine Capoten/Capozide, at $56.29 each wholesale, and more than 33.4 million for the ulcer drug Zantac, at $81.47, says the Generic Drug Equity Coalition.

Steve Berchem, of the trade group Pharmaceutical Research and Manufacturers of

America, says patents are the industry's ''lifeblood.'' ''Patents help companies generate revenue to do further research.''

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[From the Los Angeles Times, June 8, 1995]

RULING SHORTENS BRANDED DRUGS' MONOPOLY

Nearly 100 brand-name drugs lost their chance at an extra few years' monopoly in the market Wednesday under a ruling by the U.S. Patent and Trade Office.

At issue is whether the drugs could get two patent extensions, one from a 1984 law and another under a global trade agreement provision that takes effect today.

The General Agreement on Tariffs and Trade extends patent protection to 20 years from the date drug makers file for a patent. Until now, those patents have had a 17-year life from the time they were granted. Current patent holders will get whichever expiration date is later.

A 1984 law has already offered brand-name drugs up to an extra five years' patent life to help offset the time it takes those medicines to get Food and Drug Administration approval for sale.

Makers of brand-name drugs said they were entitled to both extensions, and in March the patent office tentatively agreed. The proposal theoretically could have given some drugs patent protection for a total of 25 years, although the Pharmaceutical Research and Manufacturers Assn. insisted that was highly unlikely.

But the patent office reversed itself Wednesday, ruling that companies that took the 1984 extension can't also get one from GATT. The ruling affects 94 brand-name drugs and means that the longest a medicine will be able to monopolize the market because of the extension is slightly under 22 years.

''American consumers should get a price break on many drugs as a result of the patent office's reversal'' because it opens the market to quicker generic competition, said Sen. David Pryor (D-Ark.).

The brand-name industry was disappointed by the ruling.

''Their March tentative ruling was the correct one from a legal standpoint,'' said Neil Mulcahy, an attorney for the pharmaceutical association.

Another 15 drugs, including the billion-dollar ulcer drug, Zantac, will get the GATT extension.

But Pryor renewed his pledge to fight those drugs' market exclusivity. GATT had included a provision saying cheaper generic versions of these drugs could proceed to the market on the brand name's original expiration date if they paid the competitor compensation. But the FDA last month said prior law invalidated that provision, meaning GATT will postpone generic competition for these 15 drugs.

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GENERIC DRUG EQUITY COALITION,
*Washington, DC, September 20, 1995.*

Hon. WILLIAM ROTH,
*Chairman, Committee on Finance, 219 Senate Dirksen Office Building, Washington, DC.*

DEAR CHAIRMAN ROTH: As you prepare for action on the reconciliation bill, the Generic Drug Equity Coalition urges you to include language to correct an oversight in the GATT Treaty implementing legislation as it affects the availability of generic drugs.

The Congressional Budget Office has determined that, for budget scoring purposes, Medicaid will save $150 million over five years, if the correction is included in the reconciliation bill.

The GATT treaty extends patents on U.S. products from 17 to 20 years. It also includes transition rules for generic products that were ready to go to market based on the old 17-year patent term. When Congress approved the treaty, however, it failed to change U.S. law to allow the Food and Drug Administration (FDA) to certify generic drugs for marketing during the transition period.

Correcting this oversight will save American consumers almost $2 billion, including $150 million for Medicaid.

Thank you.

Sincerely,

JAMES FIRMAN, Ed.D.

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CITIZEN ACTION, CONSUMER FEDERATION OF AMERICA, CONSUMERS UNION,
*September 26, 1995.*

Hon. WILLIAM V. ROTH, Jr.,
*Chairman, Committee on Finance, 219 Senate Dirksen Office Building, Washington, DC.*

DEAR SENATOR ROTH: We urge you to include provisions in the budget reconciliation bill that would close the current loophole in FDA law that is delaying American consumers' access to low-cost generic drugs. The Congressional Budget Office (CBO) has estimated that by closing this loophole, you would save the Medicaid system $150 million over the next five years, while consumers would save up to $2 billion.

The General Agreement on Tariffs and Trade (GATT), passed by Congress in 1994, requires the United States to switch from its present system of 17-year patents to 20-year patents. Congress tried to balance the detrimental impact of this provision on competitors by including a clause permitting companies to introduce competing products at the 17-year patent expiration point if the company made significant prior investments and if it paid a royalty to the patent holder. When asked to interpret this clause in the light of the 1984 generic drug law, the FDA found that a loophole exists in the GATT that precludes the agency from certifying generic versions of drugs for marketing until the GATT-extended patents expire.

The extension of patents from 17 to 20 years to currently marketed prescription drugs delays the introduction of low-cost generic drugs into the marketplace. Generic drugs typically enter the market at a much lower cost than the patented brand, and the brand-name drugs which would benefit from this extended patent are among the top-selling drugs used. The result of the FDA's ruling could potentially cost American consumers billions of dollars. The detrimental effects of this patent extension go beyond the individual health care consumer. Taxpayers will be forced to absorb the additional costs for more expensive drugs under the Medicaid program.

The FDA's interpretation of the GATT transition rules does not appear to reflect the intent of Congress when it approved the GATT, nor does it reflect the views of Ambassador Michael Kantor, the U.S. Trade Representative who negotiated the agreement. Mr. Kantor recently wrote to Congress that the transition rule was ''intended by its drafters to be generally applicable and to permit generic pharmaceutical producers to market their products where they had made substantial investments in anticipation of the expiration of the unextended patent terms.'' The unintended effects of the patent extension include diminished market competition, an undeserved windfall to pre-GATT patent holders, and further inflated costs to millions of Americans.

At a time of federal, state and local budget-cutting, health care savings are more important than ever for American consumers. Therefore, we strongly urge you to use the budget reconciliation process to redress this unintended, and potentially costly, effect of the GATT.

Sincerely,

MERN HORAN,
*Consumer Federation of America.*
GENE KIMMELMAN,
*Consumers Union.*
CATHY HURWIT,
*Citizen Action.*

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THE NATIONAL COUNCIL ON THE AGING, INC.,
*Washington, DC, September 26, 1995.*

Hon. ROBERT DOLE,
*U.S. Senate, 141 Hart Senate Office Building, Washington, DC.*

DEAR SENATOR DOLE: As you prepare for action on the Medicaid reconciliation bill this week, the National Council On the Aging urges you to support language to correct an oversight in the GATT Treaty implementing legislation as it affects the availability of generic drugs. This language will be introduced by Senator Chafee.

The GATT treaty extends patents on U.S. products from 17 to 20 years. It also includes transition rules for generic products that were ready to go to market based on the old 17-year patent term. When Congress approved the treaty, however, it failed to change U.S. law to allow the Food and Drug Administration (FDA) to certify generic drugs for marketing during the transition period.

The Congressional Budget Office has determined that this correction will result in $150 million in Medicaid savings over five years. The correction will save American consumers almost $2 billion.

Lowering the cost of prescription drugs is particularly important for older consumers. Older Americans spend more than any other group on prescriptions. Over one third of the $64 billion spent on prescription drugs come from seniors. This correction will result in over $500 million in savings to older Americans.

We strongly urge you to support the Chafee language in the reconciliation bill allowing consumers faster access to many generic drugs and creating savings for the U.S. budget and for older Americans. Thank you.

Sincerely,

JAMES FIRMAN, ED.D.,
*Pesident.*

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NATIONAL WOMEN'S HEALTH NETWORK,
*Washington, DC, September 26, 1995.*

Hon. WILLIAM V. ROTH, Jr.,
*Chairman, Committee on Finance, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATOR ROTH: I am writing on behalf of the National Women's Health Network to urge you to close the generic drug loophole in the GATT during the budget reconciliation process. The NWHN is the only national public interest membership organization devoted solely to women and health.

The availability of low-cost generic drugs saves American consumers billions of dollars every year. Under a recent ruling by the FDA, the patent terms of over a dozen brand name drugs will be extended, costing consumers and taxpayers billions of dollars over the next few years. With the costs of health care continuing to skyrocket while the numbers of uninsured keep going up, consumers cannot afford to pay unnecessarily high prices for medicine. Closing this loophole will save the Medicaid system $150 million over the next five years while it saves consumers close to $2 billion.

Women live longer than men, use more health care services than men, and pay more for drugs out of their pockets than do men. If important generic drugs are delayed, women will suffer most.

The generic drug loophole gives pharmaceutical companies a windfall and hurts American health care consumers. This could not have been what Congress intended when it passed the GATT implementing legislation. Congress should fix the law so that drug companies are not given special treatment while consumers are left holding the bag. I urge you to make this fix in the budget reconciliation bill.

Sincerely,

CYNTHIA PEARSON,
*Executive Director.*

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AMERICAN COLLEGE OF NURSE-MIDWIVES,
*Washington, DC, September 25, 1995.*

Hon. WILLIAM V. ROTH, Jr.,
*Chairman, Committee on Finance, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATOR ROTH: The American College of Nurse Midwives urges you to support the Chafee generic drug amendment to the Medicaid reconciliation bill.

If adopted, the Chafee amendment will result in $150 million in Medicaid savings according to the Congressional Budget Office.

The amendment will correct an oversight in the GATT implementing legislation that is delaying the availability of generic substitutes for a dozen popular medications, including the widely prescribed anti-ulcer medication Zantac. United States Trade Representative Mickey Kantor has indicated that this was *not* the intent of the drafters of the GATT implementing legislation.

Left uncorrected, the GATT delay will cost consumers almost $2 billion overall and create an unintended windfall for major pharmaceutical companies.

Please vote to save American taxpayers $150 million by supporting the Chafee amendment.

Thank you.

Sincerely,

KAREN FENNELL,
*Senior Policy Analyst.*

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NATIONAL BLACK WOMEN'S HEALTH PROJECT,
*Washington, DC, September 26, 1995.*

Hon. WILLIAM V. ROTH, Jr.,
*Chairman, Committee on Finance, Dirksen Senate Office Building, Washington, DC.*

DEAR CHAIRMAN ROTH: The National Black Women's Health Project (NBWHP), a national self-help and health advocacy organization, would urge you to include a provision in the budget reconciliation bill to close the generic drug loophole in the General Agreement on Tariffs and Trade (GATT). By closing this loophole, you would help to insure that low-income women and their families have access to safe, affordable prescription and over-the-counter medication.

GATT extends patent terms for U.S. products from 17 years to a worldwide term of 20 years. Because many manufacturers had already invested millions of dollars in competing products in anticipation of patent expiration under the original 17-year limit, Congress adopted rules that allow those companies to introduce generic alternatives on the date a 17-year patent would expire, provided they pay reasonable royalties to the patent holder.

Through an error of omission, though, the pharmaceutical industry wasn't included in these transition rules. As a result, makers of lower-cost generic drugs are prohibited from bringing their result to the market until the full 20-year term of patent protection incorporated in the GATT treaty is expired. This loophole will extend the patent terms on more than a dozen drugs—including big-sellers Zantac and Capoten—with a combined $5 billion share of the market.

As an organization dedicated to ensuring the health needs of low-income women, who are disproportionately Black, we believe that access to low-cost generic drugs is crucial. Low-income women and children are more likely to be uninsured and therefore the least likely to afford the high costs of brand name drugs. In addition, low-income families often have limited resources and are forced to delay treatment because of high drug costs. Increasing access to generic drugs will help to improve the quality of health care received by many low-income families.

By closing the generic drug loophole, health care consumers would save approximately $2 billion. Congress would save $150 million in Medicaid costs over the next five years. We urge you to vote in favor of consumers by removing the loophole afforded the pharmaceutical industry in the budget reconciliation bill.

Sincerely,

KIM YOUNGBLOOD.

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NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE,
*Washington, DC, September 27, 1995.*

Hon. LARRY PRESSLER,
*Committee on Finance, U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR PRESSLER: The National Committee to Preserve Social Security and Medicare urges you to support language to correct an oversight in the GATT Treaty implementing legislation that affects the availability of generic drugs. This language will be sponsored by Senators Chafee and Pryor as an amendment to the Medicaid reconciliation legislation this week. The Congressional Budget Office (CBO) has determined that this correction will result in $150 million in Medicaid savings over five years, and some $2 billion in savings to all consumers.

The GATT treaty extends patents on U.S. products from 17 to 20 years. It also includes transition rules for generic products that were ready to go to market based on the old 17-year patent term. When Congress approved the treaty, however, it failed to change U.S. law to allow the Food and Drug Administration (FDA) to certify generic drugs for marketing during the transition period.

In addition to savings for consumers of all ages, lowering the cost of prescription drugs is particularly important for older Americans. Older persons consume about one-third of the $64 billion spent on prescription drugs in the United States.

On behalf of the nearly six million members and supporters of the National Committee to Preserve Social Security and Medicare, we urge you to support the Chafee/Pryor amendment to the reconciliation bill.

Sincerely,

MARTHA A. MCSTEEN,
*President.*

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PUBLIC CITIZEN,
*Washington, DC, September 25, 1995.*

Hon. WILLIAM V. ROTH, Jr.,
*Chairman, Committee on Finance, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATOR ROTH: Public Citizen, a national consumer advocacy organization with over 120,000 members, urges you to support efforts to fix the generic drug loophole in the General Agreement on Tariffs and Trade with an amendment to the budget reconciliation bill. This amendment will save the Medicaid system $150 million over the next five years. Consumers will save as much as $2 billion.

For nearly 25 years, Public Citizen and its Health Research Group have been at the forefront of efforts to ensure that safe, effective and affordable drugs are available to American consumers. We were part of the citizens' coalition that supported the Waxman-Hatch Act of 1984 to help consumers save billions of dollars by making more low-cost generic drugs available to the public.

Because of the recently-enacted GATT, which calls for longer durations for monopoly drug patents worldwide, consumers will be forced to pay billions of dollars more instead of less. We urge Congress to restore the law to its original intent so that drug firms do not receive a windfall at the expense of health care consumers.

In this time of massive government budget-cutting and soaring medical costs, health care savings are critically important to the American public. The availability of low-cost generic drugs is one way the marketplace can help bring down the high cost of health care. By extending the duration of monopoly patents on more than a dozen drugs, the GATT will add billions of dollars to consumers' medical costs at a time when they can least afford it.

We urge you to support efforts to protect consumers' health and taxpayers' pocketbooks by fixing the generic drug loophole in the budget reconciliation bill.

Sincerely,

MICHAEL CALABRESE,
*Executive Director,*
*Congress Watch.*

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U.S. PUBLIC INTEREST RESEARCH GROUP, NATIONAL ASSOCIATION OF STATE PIRGS,
*Washington, DC, September 25, 1995.*

Hon. WILLIAM V. ROTH, Jr.,
*Chairman, Committee on Finance, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATOR ROTH: I am writing on behalf of the U.S. Public Interest Research Group to urge you to fix the generic drug loophole in the General Agreement on Tariffs and Trade as part of the budget reconciliation bill. U.S. PIRG is the national lobbying office for state Public Interest Research Groups. PIRGs are non-profit, nonpartisan consumer and environmental advocacy groups with members around the country.

Because of a loophole in the GATT that is being eagerly exploited by profiteering drug companies, American consumers face unnecessary higher costs for prescription drugs at the same time as overall health care costs are skyrocketing. Hundreds of millions of taxpayer dollars and billions of consumer dollars are at stake in this critical fight; the health of millions of Americans absolutely depends on affordable access to low-cost generic drugs.

I urge you to restore the original intent of the GATT's implementing language by closing the generic drug loophole in the budget reconciliation bill. Now is the time to stop rapacious drug companies from misusing GATT to gouge the sick and elderly.

Sincerely,

EDMUND MIERZWINSKI,
*Consumer Program Director, U.S. PIRG.*

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UNITED SENIORS HEALTH COOPERATIVE,
*Washington, DC, September 26, 1995.*

Hon. WILLIAM ROTH,
*Chairman, Committee on Finance, Senate Dirksen Office Building, Washington, DC.*

DEAR CHAIRMAN ROTH: The United Seniors Health Cooperative urges you to support language to correct an oversight in the GATT Treaty implementing legislation as it affects the availability of generic drugs. This language will be introduced by Senator Chafee as part of action on the Medicaid reconciliation bill this week. The Congressional Budget Office has determined that this correction will result in $150 million in Medicaid savings over five years.

The GATT treaty extends patents on U.S. products from 17 to 20 years. It also includes

transition rules for generic products that were ready to go to market based on the old 17-year patent term. When Congress approved the treaty, however, it failed to change U.S. law to allow the Food and Drug Administration (FDA) to certify generic drugs for marketing during the transition period.

Lowering the cost of prescription drugs is particularly important for older consumers. Older Americans spend more than any other group on prescriptions. Over one third of the $64 billion spent on prescription drugs come from seniors. This correction will result in $2 billion in savings to all consumers and over $500 million in savings to older Americans.

We strongly urge you to support the Chafee language in the reconciliation bill allowing consumers faster access to many generic drugs and creating savings for the U.S. budget and for older Americans. Thank you.

Sincerely,

ESTHER PETERSON,
Vice Chair.
EDMUND H. WORTHY, JR.,
President and CEO.

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UNITED HOMEOWNERS ASSOCIATION,
*Washington, DC, October 18, 1995.*

Senator DAVID PRYOR,
*U.S. Senate, Senate Office Building, Washington, DC.*

DEAR SENATOR PRYOR: During Senate consideration of the reconciliation bill, Senators Chafee and Pryor will offer an amendment which will save Medicaid $150 million and consumers about $2 billion. The savings can be realized if a prior oversight by Congress is corrected. The oversight by Congress occurred when the General Agreement on Tariffs and Trade (GATT) implementing legislation was adopted,

GATT extends U.S. patents from 17 to 20 years. It also includes ''grandfather'' rules for generic products, including drugs, that were ready to go to market based on pre-GATT patent expiration dates. Congress, however, failed to change the law to allow the Food and Drug Administration to apply to grandfather rules to generic drugs.

As a result, consumers will spend almost $2 billion more for a dozen popular medications, such as Capoten and Zantac, for which 63 million prescriptions were written in 1994.

Senators Chafee and Pryor will offer an amendment to the reconciliation bill to close the GATT loophole.

Congress can save consumers almost $2 billion, including $150 million in Medicaid savings (according to the CBO), by allowing the FDA to apply the grandfather rules to generic drugs.

Such a change would, according to U.S. Trade Representative Mickey Kantor, be wholly consistent with the intent of the drafters of the GATT Treaty.

The United Homeowners Association urges you to support the Chafee/Pryor amendment to the reconciliation bill.

Thank you.

Sincerely,

JORDAN CLARK,
*President.*

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NATIONAL COALITION FOR HOMELESS VETERANS,
*Washington, DC, September 27, 1995.*

Hon. WILLIAM ROTH,
*Senate Finance Committee, Senate Dirksen Office Building, Washington, DC.*

DEAR SENATOR ROTH: On behalf of the more than 200 community-based non-profit programs around the country who provide services for homeless veterans, I am writing to urge you to support the Chafee generic drug amendment to the Medicaid reconciliation bill. The amendment will correct an oversight in the GATT treaty implementing legislation thereby saving consumers $2 billion, including $21 million in direct savings for the Department of Veterans Affairs which could be better used to provide support for local programs who assist needy veterans—instead of being spent on high cost pharmaceuticals.

The Food and Drug Administration has determined that it cannot certify generic versions of popular drugs such as Capoten and Zantac for marketing until the GATT-extended patents expire, thereby delaying the availability of lower priced generics. We do not believe that this is what Congress intended when it approved the GATT treaty in 1994. Specific transition rules were included in GATT implementing legislation to allow generic products to be marketed based on pre-GATT patent expiration dates. Congress, however, inadvertently failed to include conforming amendments to the Federal Food, Drug and Cosmetics Act to allow the FDA to certify the generic drugs for marketing.

It is essential to bring generic drugs to the marketplace as soon as possible to meet the medical needs of veterans and to help the Veterans Health Administration save money. Secretary of Veterans Affairs Jesse Brown estimates that failure to pass this amendment could cost the VA's health budget a significant amount of money. In these times of continuing budget cuts, it is vital that the VA be able to target its limited resources where the need is the greatest.

We urge you to support the Chaffee amendment which will allow the FDA to use pre-GATT patent expiration dates to determine when generic drugs can be certified for marketing and made available to the Department of Veterans Affairs in a manner consistent with the GATT transition rules.

Sincerely,

RICHARD FITZPATRICK,
*Executive Director.*

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PARAQUAD INC.,
*St. Louis, MO, September 22, 1995.*

Memo to: Members of the Senate Finance Committee.
Re: Medicaid Bill.

I write on behalf of members of the Paraquad community—many of whom are users of prescription medication—to urge you to support the Chafee amendment.

Senator Chafee is proposing a change to U.S. drug legislation that would accelerate the development of generic drugs that now are kept off the market by the GATT agreement.

We believe Congress never intended for the GATT to block generic drugs from being made available quickly to American consumers.

Accordingly, the Chafee amendment merely restores the original intent of Congress.

For example, a generic substitute for the popular anti-ulcer drug ''Zantac'' won't be available to American consumers until July 1997—despite the fact that it originally was to be available in December of this year.

Senator Chafee is asking the Finance Committee to make the necessary change as part of the pending Medicaid savings bill. That is because the American taxpayer will have to pay an additional $150 million for Zantac and other drugs for Medicaid recipients that would be required if the generic substitutes were available.

Many members of the Paraquad community are persons of limited income. Many depend on Medicaid. With cost pressures rising, we join with responsible elected officials like Senator Chafee in urging that where cost savings may be realized at no less of quality, the should be.

Please vote ''Yea'' for the Chafee amendment.

Thank you.

Sincerely,

MAX STARKLOFF,
*President, Paraquad Inc.*

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CONSUMER PROJECT ON TECHNOLOGY,
*Washington, DC, September 27, 1995.*

Hon. WILLIAM ROTH,
*Finance Committee, U.S. Senate, Washington, DC.*

DEAR SENATOR ROTH: I am writing to express the Consumer Project on Technology's support for the Chafee generic drug amendment to the Medicaid reconciliation bill. This amendment seeks to correct an error by the previous Congress, which extended the patent terms for several widely used drugs. As you know, investment incentives are forward looking, and actions which award post hoc monopolies on pharmaceutical drugs which are already on the market are economically inefficient. This retroactive extension of monopoly marketing rights is costing American consumers billions of dollars, and should be immediately corrected.

The U.S. Congress and the Clinton Administration have already given the pharmaceutical industry extremely favorable treatment in a wide range of areas, such as the complete lack of price controls on drugs, favorable tax treatment, billions of dollars in direct research subsidies from the National Institutes of Health (NIH) and other federal agencies, and the recent decision by NIH to abandon the reasonable pricing clause for drugs invented by government scientists. We hope that on this issue Congress will demonstrate concern for the problems faced by consumers in obtaining health care.

Sincerely,

JAMES P. LOVE,
*Director, Consumer Project on Technology.*

Mr. PRYOR. Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, my understanding is that we are proceeding under a 1-hour morning business allotment?

The PRESIDING OFFICER. We are in morning business.

Mr. DORGAN. Is there an hour reserved under my name or the minority leader?

The PRESIDING OFFICER. There is time under the minority leader, 1 hour.

Mr. DORGAN. Mr. President, with the consent of the minority leader, let me yield myself as much time as I may consume under that 1 hour.

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

## THE RECONCILIATION PROCESS

Mr. DORGAN. Mr. President, I was interested in the comments by the Senator from Arkansas. He is correct about this and so many other things. It is interesting to me that there are so many special deals going on these days for special interests, especially in the reconciliation bill and, also, in some of these recent appropriations bills.

It makes me think of going into a shopping center. There you see the sign that says, ''Food Court.'' You look around at the food court, and the entire thing is full of all these little places where you get food. Well, we

ought to mark off a little place somewhere here in the Capitol and call it the Favor Court, special interests looking for favors line up here. And by the way, it does not matter how long the line is, you are going to be sure to get them in with this new majority because they happen to agree with virtually all the things special interests want.

This is the Baskin-Robbins of special interest. Do not try one, try all the flavors. This reconciliation bill and the appropriations bills that come to the floor of the Senate now are loaded, loaded with special deals. Do you think it is special deals for mom and pop? No. No, it is not special deals for mom and pop or mom and pop businesses. It is special deals for the biggest special interests, the most powerful special interests, and the wealthiest special interests in this country. And that is a fact.

I want to talk a little today about the reconciliation bill and the plan, where we are headed, where we are going. Last week I read to some colleagues on the floor of the Senate a letter of October 18 from the Congressional Budget Office, from the Director of the CBO, June O'Neill, who wrote to Senator DOMENICI. They proudly brought it to the floor of the Senate and proudly held it up and trumpeted this letter saying, ''This letter from the Director of CBO, the Congressional Budget Office, shows that our reconciliation bill will now result in a small budget surplus in the year 2002.'' That was on October 18. And boy, you know, you almost saw them busting their buttons on their double-breasted blazers here on the floor of the Senate. ''We have produced something that will produce a small surplus.'' October 18.

Now, the next day, October 19, I actually wrote to the CBO and said, ''Well, I saw that letter you sent over here. I am wondering if you computed this the way the law requires you to compute it, in other words, if you do not misuse or loot the Social Security trust funds for the operating budget revenue, then what would you have in the year 2002?'' Same person, same agency, different letter, one day later says, ''Excluding an estimated off-budget surplus of $108 billion''—and what that means in English is that if you do not use essentially the Social Security trust fund surplus and a couple others—CBO would project an ''on-budget deficit of $98 billion in 2002.''

Let me say that again. The next day the agency said, if you do not count the Social Security trust fund, then you have $98 billion deficit in the year 2002. Same person, different letter.

Now, the next day, the day after, October 20, a third letter. The same agency said they made a mistake in the second letter. They now say that the estimated off-budget surplus of $115 billion, from the calculation, would result in an on-budget deficit of $105 billion in 2002.

So here is what we have: Three days, three letters, three different estimates. Presumably the last is the right one, saying that if you misuse the Social Security trust funds in the first letter, you actually get a budget surplus, but if you do not loot the Social Security trust funds you have a $105 billion budget deficit in the year 2002.

So the next time someone comes to the floor and says, ''Boy, haven't we done a good job? We have been patting ourselves so hard on the back we have a wrenched elbow here,'' just ask about the letter of October 20. Do you have more than a wrenched elbow? Do you have a $105 billion deficit in the year 2002? The answer is clearly yes.

Now, the reconciliation bill will come to the floor of the Senate, and I intend to offer a couple of amendments. I would like to discuss just briefly what those amendments are.

We have not had the opportunity to address tax legislation on the floor of the Senate this year except in this reconciliation bill, and then only for the members of the Finance Committee, apparently, because, you know, the rules prohibit certain amendments—so I am going to offer an amendment on the issue of so-called runaway plants or the tax break we now give to companies that move their plants overseas.

I want all Members of the Senate to express themselves on it. Should we close the tax break or should we not? If you have a company in this country and you decide on Wednesday, let's shut the doors, let's close this company up in the United States and move it overseas to a tax haven country, make the same product hiring foreign workers and ship the product back to the United States, we save money, guess what? We'll give you a special deal if you do that, if you close your company in the United States and move it overseas, make the same product and ship it back here. We'll give you a tax break. We'll give you a special tax break.

I think we ought to take that tax break out of the Internal Revenue Service Code and be done with it. And I am going to give every Member of this Senate the chance to decide, do they want to end the tax break for people who move their plants outside this country to use foreign labor to ship it back in? I hope Members will think it is not good for this country.

Second. There are two amendments I will offer on capital gains. I say to the Senator from Arkansas, the capital gains issue is an issue that is very controversial, and I recognize that. Sometimes inflation plays on the value of an asset such that you are now paying, not so much for the increased value of the asset, you are paying taxes on the increase built up. I understand that. I would like to do something to deal with it.

But I am not interested in doing something that substantially improves the well-being of people who already have millions of dollars at this point. They have done very well. They have done better than almost all other Americans recently.

Take the last 10 years. The rich have gotten much richer. That is fine. I am just saying we do not need to give them a big tax cut now.

Capital gains, shall we do something on capital gains? Yes, I think for small business owners, family farmers, people who invest in stocks and buy something for kids to go to college in assets and sell it. Should we do something on capital gains? Yes. The capital gains proposal in the bill contains a 50-percent exclusion benefit. That is in the bill coming to the Senate floor. That is not surprising. They always provide big benefits to the biggest interests.

So, I will have two alternative proposals. One is, no capital gains tax, no tax at all, zero, no 50 percent exclusion, a zero tax rate on $250,000 of capital gains income on assets you have held for 10 years during a taxpayer's lifetime, during your lifetime; if you have held the assets for 10 years, $250,000 in capital gains, you can pass those through with zero tax rate, provided you held it for 10 years. That is a much better capital gains tax proposal for most Americans than the one that will come to the floor. It is twice as generous. But it does not give away the farm to the wealthiest Americans.

Second, if you do not like that, then take the capital gains proposal that is in the bill and say, ''All right, let's do that, 50 percent exclusion, but let's limit it to $1 million of capital gains income during a taxpayer's lifetime.'' Is $1 million not enough? Would that not be sufficient, $1 million of income in capital gains during your lifetime at a preferential tax rate of 50 percent?

Or are you saying, ''No, that's not enough. I stand here representing the interests of the little millionaires or the little billionaires'' these days. We have billionaires in this country, which is fine, too. Much of that is a sign of success, but we do not have to, at a time when we are up to our neck in debt, decide to give very significant tax cuts to people whose incomes yearly in capital gains is in the millions, tens of million and hundreds of million.

The question is going to be, no capital gains at all, no tax on capital gains up to $250,000 during your lifetime, or limit the taxpayers to $1 million of capital gains at the preferential rate during their lifetime?

Those are three of the amendments that I intend to offer on this legislation. I hope that my colleagues will listen and evaluate and come to a judgment that makes some sense. I think all of these make great sense.

Mr. PRYOR. If the Senator from North Dakota will yield just for a moment, I want to compliment him for his statement. I sat through 2 days last week of pretty excruciating—and I see my colleague, Senator CONRAD of North Dakota, here now. We joined in that effort of seeing if we could not return some degree of fairness to the proposal

as sent from the Finance Committee that would be embodied in reconciliation.

I have another idea that I proposed and it failed on a party-line split. I think that the small business owner, the self-employed, should have a greater deduction in trying to buy insurance for himself and his employees.

Simply put, our colleagues on the other side are now trying to bring capital gains for corporations, the biggest corporations in America, from 35 percent down to 28 percent. My amendment was simple. I said, ''If you want to give a capital gains tax to corporations, let's go not from 35 to 28 percent, let's go from 35 to 32 percent, still give them a little break but list also in that, not a 30-percent deduction for health insurance premium, but a 50-percent deduction.''

I would like to do 100 percent, and I think we should do 100 percent, but the dollars are not there. We could, by shaving this little benefit off the major corporations, give 10 million self-employed individuals a 50-percent tax deduction when they pay for insurance for themselves and their employees.

I think it would be one of the best things that we could do. I think we would find a lot of people agree that it makes sense and certainly it represents fairness.

Mr. DORGAN. I certainly support that. I think it makes a lot of sense. They ought to have 100 percent deduction on health insurance costs. I know the Senator has been working on that. So have I and others. It makes a lot of sense.

I would like to summarize a couple of points, because the Senator from New Mexico wants to speak and the Senator from North Dakota, Senator CONRAD, does as well.

I want to make a couple of points about the reconciliation bill more generally. I listened with interest for an hour this morning to people who came to the floor and said what this is about is demagoguery. Anyone who comes to the floor and disagrees with them somehow is trying to scare somebody.

Well, this is not about demagoguery, it is about choices. We can, should and will balance the budget. The question is how do you balance the budget? What choices do you make to balance the budget? I will show you the choices this Congress is making. Not pretty choices, in my judgment, but they are making the choices nonetheless.

They are saying we cannot afford Head Start; 50,000 kids in Head Start, all of whom have a name, will be kicked out of the program. All of them have a name and all of them in their hearts hope they get a chance, a better start in life because they come from a home of low income or troubled circumstances. Fifty thousand kids, we cannot afford them. B–2 bombers, we can afford that, 20 more for $35 billion.

Five hundred million dollars for displaced workers at a time we are saying to displaced workers, ''Get a job.'' What about the training? We cannot afford that, but we can afford the star wars program.

Let us go down to veterans' health care, $989 million cut. Congress had to make a decision about two amphibious ships, which to buy, which to build, one $900 million, the other $1.3 billion. Do you know what the Congress said? Build them both, the sky's the limit. Let us stuff both pockets with money. So we can afford the two amphibious assault ships the Pentagon did not order, but we have a little trouble with veterans' health care.

Low-income home energy assistance, we cannot afford that, but more money for fighters the Defense Department did not order.

I do not have blimps on here, but they did give $60 million for blimps. Low-income home energy, that is a fancy way of saying that this is providing some heat for a house on a cold winter night in North Dakota, some low-income person who needs a little help to get some heat in their house, that is what this is about.

These are choices. The other side says this is all scare tactics. It is not scare tactics, it is about the choices we have made.

Let me tell you about another choice. This is a Wall Street Journal piece yesterday: ''Tax Analysis Now Shows GOP Package Would Mean Increase for Half the Payers.''

Which half? Can anybody guess, with a Republican-controlled Congress, which half of the American taxpayers will be paying more in taxes?

There are only two choices, but can anyone guess which half the majority party would choose to ask to pay more? That is right, the bottom half. Why would that be the case? Because they need to find ways to finance a self-help program for the top half. Actually not the top half, really the top 5, 6, 7 percent.

These are choices. This is not demagoguery. It is choice, and all choices come down to an impact on people.

I want to read to you a couple of letters. These happen to come from some young Indian children who I talked with the other day. I visited these children. They are at a boarding school. They come from dysfunctional backgrounds, backgrounds of significant poverty and trouble. I want to read to you what some of these kids say, because they are the victims of bad choices.

Here is a 14-year-old. They were asked, ''If I had one wish for my family'': ''I wish my grandmother would be alive so I don't have to live in a foster home anymore.''

Wishing for a grandmother.

A 13-year-old: ''If I had one wish for my family, I wish we were all a family again.''

''If I had one wish for my family,'' this 12-year-old says, ''for my mother and brother to be happy together. He lives in Oregon someplace and I haven't seen my father since birth.''

A 14-year-old says, ''My wish for my family would be for my mother and my father and for my brother and sisters to be together on Christmas Day.''

And a 13-year-old says, ''My wish is for my real father to quit drinking and my grandmother, too.'' Think about what people wish for—amphibious ships, bombers, star wars—and then a 13-year-old wishes that her mother, brother, father, and sister could be together on Christmas Day. That is something most of us take for granted.

A lot of people in this country live in a fair amount of poverty and trouble. We ought not turn our backs on them. We ought to make the right choices for them.

Last week, I told of a woman who met me at the Minot Airport about a week or two ago. She asked to speak to me and took me to one side. She was in her late seventies. Her chin began to quiver and her eyes teared up as she spoke in a low voice, because others were around, and she said her husband has been in a nursing home for 3 years. They had a small farm that they lived on for half a century. She sold most of the farm to pay for the nursing home care. She wants to continue to try to live in the house. This woman is in her late seventies. She had tears in her eyes because she is worried she may not be able to stay in her home because her husband is in a nursing home.

These are real problems faced by people who are not the caricature of what we hear about welfare. Sometimes the debate rises above the caricature, but sometimes not. The caricature is some slothful indolent, overweight, lazy, shiftless, no-good bum sitting in a La-Z-Boy, legs up, watching a 32-inch television, watching Oprah and Montel, drinking two quarts of beer and munching on nachos, refusing to go to work.

Well, here is welfare, really: Two-thirds of welfare recipients are children under 16 years of age.

Do you know where the need is in this country? It is 75-year-olds or 80-year-olds who are no longer working and who wonder whether they are going to have enough money to keep their home or pay the nursing home for their spouse. That is where the low-income problems are in this country.

These choices that are made time after time in this Chamber by the majority party, regrettably, have been choices that say to those people: We are sorry. What you have is something we call ''tough luck.'' The majority's response to that is ''tough luck.''

But to the other bigger interests, the response has always been to try to see if we can give you benefits. Do you want a capital gains tax cut, 75 percent of which goes to people with $100,000 or more income? Do you want to build more bombers? How about some F–15's or F-16's? What about amphibious ships?

Those choices are not the right choices for this country. We can, should, and will balance the budget,

but we have to make the right choices to do that. I regret to say that this reconciliation bill that comes to the floor of the Senate is filled with special interest deals—the flavor of the month for all of the special interests. Regrettably, it does not make the right choices.

I would like to leave you with one question that I think we need to answer during the next hour or so. It is interesting to me that the analysis of the House bill provides that the $270 billion cut in Medicare extends the solvency of the Medicare Program for the same length of time that the $89 billion cut in Medicare does. Question: Why would that be the case? Answer: Because at least part of the money is used to provide a tax cut. That is a simple answer—the only answer.

The Senate does it differently. They cut Medicare $270 billion and then use the money twice in a lockbox, and they do exactly to Medicare what they do to Social Security—that is, misuse the trust funds so they can use the money twice. Double-entry bookkeeping is one where you can use the money twice. That is for not only restoring solvency of the Social Security trust fund, but for triggering a device that says you have reached a balanced budget and, therefore, you can proceed with a tax cut.

I will finish with this observation, which is the one I started with. I have three letters in my hand, one dated October 18, one dated October 19, one is October 20, all written by the same person, signed by the same person, all addressed to me. In the October 18 letter it says this reconciliation bill reaches a slight budget surplus in the year 2002. The next letter says that if you do not take the Social Security trust funds, if you are prevented from using Social Security trust funds as revenue for operating budget deficits, then the CBO would project an on-budget deficit of $98 billion in 2002. The next day, in the October 20 letter, it said we were wrong about that as well. Actually, the budget deficit in 2002 would be $105 billion.

Mr. President, this, I think, describes what is happening with the reconciliation bill. I hope that we will have a significant debate in the coming days about these issues. It is not fear mongering. It is not trying to scare anybody. It is talking about priorities. What are the priorities for this country? What advances this country's interests? What moves us ahead? Who should pay and who benefits? Those are questions all of us should ask in the coming days.

Mr. President, I yield the floor.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER (Mr. CRAIG). The Senator from New Mexico.

## EDUCATION IS A PRIORITY

Mr. BINGAMAN. Mr. President, I appreciate the excellent comments by the Senator from North Dakota. I want to speak about one portion of the priorities that he discussed there with his chart. I want to talk about education—and education is a priority for this country—and what is reflected in the budget that is about to be passed here in the Senate and, in the next few weeks, sent to the President.

This week, the Senate is getting ready to take up a reconciliation bill which contains a $10.8 billion cut in financial support for Federal student loans. I share my colleagues' distress that at the moment tuition costs are rising, the Senate is asking to save billions of dollars on the system that helps students and their families pay their tuition.

If such a change in the student loan program was the only cut being made in education, obviously, we would be concerned. And if there were no other way to balance the Federal budget, we would be concerned and perhaps be able to see our way clear. But neither is the case. Cuts in student loans are, unfortunately, the tip of an education-cutting iceberg. The debate on the reconciliation bill will be in the spotlight on these cuts in higher education. The Labor-HHS appropriations bill cuts billions more in elementary and secondary education.

Mr. President, I am concerned at the magnitude of the cuts. I am concerned at the erosion of the bipartisan commitment that we have had to support education here in the Congress. Most of all, I am concerned with the abandonment of a clear vision and a sense of urgency regarding the need to raise the performance of our educational system.

The magnitude of these cuts, Mr. President, is enormous. Let me show a chart here that indicates some of the problems as I see it. This chart shows the last 7 years—1996 being the seventh year, so it is the last 6 years, I guess, of support for education. It is easy to see from this chart that, in each year, from fiscal year 1990 to fiscal year 1995, there has been some increase in funds for education voted by the Congress. That was, in some years, not as much of an increase as I would have liked and, in some cases, it was not as much of an increase as an increase in inflation, but there was some increase. I should make clear, this is not a chart that shows increases in growth; this is a chart that shows absolute increases and absolute cuts.

In 1996, according to the budget resolution which we are about ready to have a final vote on, there is a proposal for a $3.7 billion cut in the educational funds. This reverses a bipartisan agreement over the last three administrations that improving education is a top priority in this country. That priority has been expressed each year in annual increases in total educational funding that varied from $2.6 billion in 1991 to $0.6 billion in 1993. Compare this to the House proposal to cut $3.7 in fiscal year 1996. We are making a very dramatic reversal in our priorities this year for the first time in many years.

Twelve years ago, the Reagan administration appointed a blue ribbon group called the National Commission on Excellence in Education. In 1983, they issued a report, which many of us have heard about now for over a decade, called ''A Nation At Risk.''

That commission concluded in that report in 1983:

> * * * the educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people. What was unimaginable a generation ago has begun to occur—others are matching and surpassing our educational attainments.
>
> If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war. As it stands, we have allowed this to happen to ourselves. * * * We have dismantled essential support programs which helped make [prior] gains possible. We have, in effect, been committing an act of unthinking unilateral educational disarmament.

That report ''A Nation at Risk,'' called on the public to rally to deal with the situation. It challenges Americans to undertake a long-term effort to achieve excellence in education and the public did respond. States raised their high school graduation requirements. Today, States require more years of study in the basic subjects of the curriculum that were recommended by that commission—subjects of English and mathematics and science and social studies and computer science.

In 1982, the year before the ''A Nation at Risk'' study came out, only 13 percent of all high school students graduated with 4 years of English, 3 years of math, 3 years of science, and 3 years of social studies. Those are the amounts recommended in that report.

By 1987, that percentage had gone from 13 percent up to 29 percent. By 1990 it was at 40 percent. In 1992 when this administration took office, it was 47 percent.

At the same time, student achievement—this is not just the number of courses taken, but this is actual achievement—as measured by the National Assessment of Educational Progress made only modest improvements.

These achievements resulted from a broadly based bipartisan effort involving educators, public policymakers and the public itself focusing on how to achieve excellence. These efforts received an additional boost in 1989 when President Bush invited State Governors to an education summit in Charlottesville. In fact, then-Governor Clinton was one of those who attended that Charlottesville summit.

The purpose of that summit was to focus on a list of specific national education goals for the country. The goals were to be measurable and to be attainable by the year 2000.

The Bush administration developed an America 2000 strategy, lending the authority and the bully pulpit of national leadership to a program to focus schools on how to improve performance

and how to achieve better educational results.

The business community has embraced these goals and become the most articulate spokespersons for this national need to raise education standards. When the Goals 2000 legislation was passed into law in the last Congress it was endorsed by the National Alliance of Business, the National Association of Manufacturers, and the U.S. Chamber of Commerce, as well as by the National Parent Teacher Association, and a long list of other educational associations.

Why has business taken such an interest? Because business leaders are acutely aware that modest improvements in student achievement cited above are just not adequate to prepare young people to succeed in the work force. Competition in the global economy would demand higher levels of reading and writing and problem solving than we have ever needed before.

Schools need to help graduates meet the real world standards that will be applied when graduates are hired and retained and promoted in jobs. Business leaders recognize the urgency of the need for schools to realign their academic standards which the higher standards at the workplace will demand of them as graduates.

Lou Gerstner, who is the chairman and CEO of IBM Corp., addressed the Nation's Governors at one point earlier this summer. He pointed out to the Governors that it has been 12 years since ''A Nation at Risk'' was published and U.S. students still finish at or near the bottom on international tests of math and science.

He said the first priority for public education should be ''setting absolutely the highest academic standards and holding all of us accountable for results. Now. Immediately. This school year. Now if we don't do that, we won't need any more goals, because we are going nowhere. Without standards and accountability, we have nothing.''

Now, how does the budget that we are going to vote on this week match up to Lou Gerstner's sense of urgency and the need to improve education? He talks about how we have to do it ''now, this school year.''

I submit that this budget does not measure up at all. This budget is an abdication of our responsibility to deal effectively with this problem. The budget cuts in education are too much and they are in the wrong places.

Mr. President, the reconciliation bill proposes $10.8 billion be saved from student loans in postsecondary education over the next 7 years. The appropriations bill which eventually will have to be passed in some form magnifies this very unfortunate trend.

In fiscal year 1996, the House appropriations bill cuts overall spending for elementary and secondary education in the Department of Education by $5.9 billion—from $32.9 to $27 billion.

Cuts are made in Head Start programs, safe and drug-free schools, and bilingual education, Indian education, and the list goes on. These are the wrong priorities. Let me show one other chart here, Mr. President, just to make the point about priorities.

This is a chart that summarizes the various discretionary spending accounts in this year's budget proposal. Starting on the left, we have agriculture, where there is a slight cut in discretionary spending, going on across. There are additional cuts in entitlement programs that are not reflected on this, but these are the additions and the cuts in discretionary spending where we get to make a decision every year without question.

When we look at where the largest single area of cut in discretionary spending is, it is in education and training. Obviously, the largest area of increase is defense, and the only other area of increase is in crime. But the largest single area of cuts in discretionary spending is in education and training.

Mr. President, these are the wrong priorities. These do not reflect the priorities of the American people.

One particular program I want to talk about which concerns me greatly in this budget bill is the Goals 2000 Program. In the House appropriations bill dealing with education they cut the funding in that program from $361 million in 1995 to zero dollars in 1996.

Yet the purposes for which Goals 2000 makes Federal funds available to States and local school districts are exactly the purposes that as a Nation we most need to pursue.

This Goals 2000 Program is a flexible program. It makes block grants to States for their own school improvements. Next year, 90 percent of the funds that will be used in that program will go to local districts. In 48 States, these grants are being used as the States decide to use them.

In Washington State, for example, for 30 districts in which mentor teachers train other teachers. In Kentucky, for homework hotlines and other efforts to enhance parental participation. In Massachusetts, for 14 charter schools. In other States, for other efforts at achieving high educational standards.

This program will not tell States what higher standards have to be. The States decide that for themselves.

In my own home State of New Mexico, our State has developed the educational plan for student success. Like other States, we use our Goals 2000 money to bring together the citizens and the educators and the business leaders to look at existing State policies, compare them with where we want to go. They—this group in New Mexico—will use the Goals 2000 funds to pursue strategic planning, to improve student learning and success and New Mexico's own standards of excellence.

We are not a rich State in New Mexico. Without Goals 2000 funds, New Mexico's efforts to reach the vision that Louis Gerstner talks about will be significantly slowed down.

Worse, without support from Goals 2000 and other important Federal programs, we signal to New Mexico and to other States that Louis Gerstner's sense of urgency is misplaced. We signal that it is enough, in our view, to allow States to progress at whatever pace they would like, without any help from the Federal Government. That simply is not true.

This year, the year 2000, is fast coming on us. How we balance the budget today is going to shape how we enter this new century. The budget needs to reflect our priorities. Improving education needs to be high on that list of priorities. And while some progress has been made, our Nation is still at risk.

Presidents Reagan and Bush and Clinton have joined with the public to improve the education offered to the next generation. The budget that is going to be on this Senate floor for a vote later this week is a retreat from that commitment. We know better. And we owe much better to the next generation.

I hope we can find ways to do better before we adjourn this year.

I yield the floor.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from North Dakota.

## BUDGET RECONCILIATION

Mr. CONRAD. Mr. President, I rise today to talk about the budget reconciliation process that is underway. I think this is most important because we have been told now that the Budget Committee is only going to spend an hour and a half on the debate on the budget reconciliation package that is going to affect every American, that is going to set the spending priorities for this country for the next 7 years, a budget reconciliation package that many of us believe, while it moves toward balancing the budget, does not actually balance the budget. And, also, it is done in a way that is unfair—fundamentally unfair in terms of who is asked to fight this budget battle.

After being deeply involved in the budget reconciliation process, both in the Budget Committee and the Finance Committee and the Senate Agriculture Committee, as well, I believe very strongly that while it is critically important that we balance the budget and that we do it as rapidly as possible, the choices that have been made in the proposal that is before us do it in a way that asks the middle class and working families in this country to be in the front lines in the battle to balance the budget but says to the wealthiest among us, ''You are ushered to the sidelines.''

Even worse than that, it says to the wealthiest among us, ''You are first in line for additional tax preferences, tax loopholes, and tax benefits because we are going to let the rest of America fight this fight, not the wealthiest among us. The wealthiest among us,

you can just stand by. You can be observers. You can be on the sidelines. And while you are on the sidelines, we are going to actually direct some of the resources that we are saving from this budget plan toward you.''

Mr. President, I do not think that is what the American people have in mind in terms of balancing the budget. I think they want this job done. They want the job done fairly. Most of all, they want the job done.

Unfortunately, the reconciliation package that is on its way to the floor does not even balance the budget. That is not just my opinion, that is the answer from the Congressional Budget Office in a letter that was sent to Senator DORGAN and myself on October 20, by June O'Neill, the Director, in which she says in the last line in the first paragraph, ''Excluding an estimated off-budget surplus of $115 billion in 2002 from the calculation, CBO would project an on-budget deficit of $105 billion in 2002.''

What is June O'Neill talking about when she talks about an off-budget surplus of $115 billion in 2002? She is talking about the Social Security surplus in that year—the Social Security surplus. And the only way you can call this budget that is coming toward the Senate floor balanced is to use every penny of Social Security surpluses, every penny, over the next 7 years.

The law does not permit that. If one looks at the Budget Enforcement Act—and I have a copy of it right here—on page 745 it says:

**EXCLUSION OF SOCIAL SECURITY FROM THE CONGRESSIONAL BUDGET**

Section 301(e) of the Congressional Budget Act of 1974 is amended by adding at the end the following:

The concurrent resolution shall not include the outlays and revenue totals of the Old Age Survivors and Disability Insurance program established under Title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection, or in any other surplus or deficit totals required by this title.

That is the law. Mr. President, 98 Senators voted for it; 98 Senators said we should not count Social Security surpluses in determining whether the budget of the United States is in surplus or deficit.

Those Senators were right. They were right to cast that vote. They were right because it is absolutely wrong to count Social Security surpluses toward balancing the budget. That is just fundamental. You do not take trust funds and throw those into the pot to balance an operating budget. There is no accountant or accounting firm in America that would tell one of its clients to follow that policy. It is wrong.

Some will say, ''But it is the practice we are following now.'' Absolutely, it is what we are doing now. That does not make it right. There are a lot of things being done now that are not right. It is not right to balance the budget using the Social Security surpluses. That is precisely the point. That is why 98 Senators voted to change it.

Mr. President, 98 Senators said we ought not to continue this practice, we ought to make a change; we ought not to be raiding Social Security trust funds; we ought not to be looting in order to make the deficit look smaller.

Mr. President, this has a very critical, practical impact, because it is true we have been doing it, but the consequences for keeping this practice in place are much more severe in the years ahead. Let me indicate why. These Social Security surpluses that we are running now are about to explode. They are going to explode because we have more and more baby-boom generation people paying payroll taxes. We are paying those taxes at a higher rate on a larger share of our wages and so the surpluses are going to build. They were designed to increase, and the reason they are exploding is because we are supposed to be getting ready for the time the baby-boom generation retires.

But, instead of doing that, instead of saving these funds or paying down the rest of the debt with these funds—which would be a good strategy, a sound strategy for the future—instead, the Republican plan is to loot every penny of Social Security surplus over the next 7 years to call their budget balanced.

This next chart shows that the conference report on the budget demonstrates this point very clearly. It shows deficits over the years covered by the budget resolution. And while our friends on the Republican side say over and over they have offered a balanced budget, their own conference report on the budget shows something quite different. This shows the deficits for the fiscal years 1996 through 2002. If they were telling the American people the truth when they say they have balanced the budget in fiscal year 2002, their budget document would show no deficit. It would show a zero. That would be a balanced budget. But their own budget document does not show a zero.

It shows a deficit in fiscal year 2002 of $108.4 billion. Boy, this is going to come as a big surprise to a lot of the media who keep reporting it is a balanced budget. And it is going to come as an even bigger surprise to the American people who have been told every day that they are getting a balanced budget. It is not a balanced budget. It is $108.4 billion in deficit. That is very close, by the way, to the number that the head of the Congressional Budget Office told us in her letter—that the deficit in the year 2002 would be $105 billion.

Mr. President, how is this occurring? Well, very simply. This is the looting of the Social Security trust funds from the year 1996 to 2002. One can see the total Social Security surpluses, that are being raided or being looted, which are $636 billion. That is what is being thrown into the pot to call this a balanced budget. Do not anybody be misled. This is not a balanced budget. It is not a balanced budget in law. It is not a balanced budget in fact. Any accounting firm in America would tell you do not count the trust fund surpluses. You do not count the retirement funds in balancing a budget. That is precisely what is wrong around this town.

That is why we are in so much trouble now because we keep saying things that are not true. It is not truthful to tell people you are balancing the budget when you are raiding the trust funds because those funds are going to have to be replaced. And the reason we are running surpluses now is to get ready for the time the baby-boom generation retires. Why is that so important? Because it is going to double the number of people eligible for Social Security. We are going to go from 24 million people eligible for Social Security to 48 million people eligible for Social Security. That is why we are running surpluses now. And the thing we ought to be doing is either stockpiling that money or paying down the national debt so that we are better prepared to deal with the demographic time bomb represented by the baby-boom generation.

I guess the thing that I have found most frustrating about Washington in the 9 years I have been in the U.S. Senate is that we say things that confuse people. We use words in a way that are not accurate, that do not really reveal what is actually happening. And to call it a balanced budget when you are taking every penny of Social Security surplus is not accurate. It is not honest. It misleads people.

That is not the only problem with the reconciliation plan that is headed for this Senate floor. I think another fatal flaw is that we are increasing the debt under the Republican plan by $1.3 trillion—increasing the debt over the next 7 years under the Republican plan by $1.3 trillion. The chart here shows that from 1996 to 2002 the national debt is actually increasing by $1.3 trillion. About half of that is the raiding of the Social Security trust funds that I have talked about. That is increasing the national debt. Yet, we are talking about providing a massive tax cut.

I think if the American people were aware that the debt of America is increasing by $1.3 trillion over the next 7 years they would not be very interested in a tax cut. I just did a survey of the people in my State. Overwhelmingly they have said to me—I have asked them the question directly—get the budget balanced before any tax cut. Then we can have a tax cut after we get our problems taken care of.

We are adding $1.3 trillion to the national debt, and a big chunk of that is a tax reduction. It reminds me a lot of kids eating their dessert before dinner. We have played this game before in this town. We always say, ''Gee. We are going to cut spending so we can have a tax cut now.''

We did that before. Do you remember what happened? The debt exploded in

the 1980's when we played this game with the American people and told them we are going to cut spending. We promised. We really are so we can have a tax cut now. We did that in 1981. What happened? The deficits went from $50 billion a year to $200 billion a year because guess what happened? We took the tax cuts but we never did the spending cuts, or certainly not of the magnitude necessary to keep the deficit from exploding. The result is we went from being less than $1 trillion in debt to being $5 trillion in debt in the space of 12 years. This is not smart. This is not responsible fiscal policy.

This chart shows the debt increases under the Republican balanced budget plan year by year, the amounts that are contributed by the budget deficits—that is, the spending over what we take in—and the amounts that come from the tax cuts that are added to the debt. You can see for every year here we are adding money to the debt of the country. And there are large sums added, $240 billion, $125 billion, $220 billion.

You can see the light orange part of each of these bars shows how much of that is being contributed by a tax cut. I just say to my colleagues, and I say to the American people. This is not wise—to be adding to the national debt in order to take a tax cut at this time. It especially is unwise given who benefits and who loses under this Republican tax plan.

We have now a series of estimates that were done by the Joint Committee on Taxation—this is a bipartisan group—and an analysis done by the U.S. Treasury Department. That shows who benefits, and who loses under the Republican tax plan. It is very interesting.

What we find, as this chart shows, is how the Senate GOP tax plan affects America's families. Half get hit with a tax increase. It is not a tax cut. Half the people in this country are going to get a tax increase. That is according to the Joint Committee on Taxation and the U.S. Treasury Department.

I ask unanimous consent that each of these charts be printed in the RECORD.

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

DISTRIBUTIONAL EFFECTS OF REVENUE RECONCILIATION PROVISIONS OF THE CHAIRMAN'S MARK SCHEDULED FOR MARKUP IN THE FINANCE COMMITTEE ON OCTOBER 18, 1995 AND PREVIOUSLY ADOPTED CHANGES IN THE EITC [1]

[Calendar Year 2000]

| Income category [2] | Change in Federal taxes [3] | | Federal taxes [3] under present law | | Federal taxes [3] under proposal | | Effective tax rate [4] | |
|---|---|---|---|---|---|---|---|---|
| | Millions | Percent | Billions | Percent | Billions | Percent | Present law Percent | Proposal percent |
| Less than $10,000 | $879 | 9.6 | $9 | 0.7 | $10 | 0.7 | 8.6 | 9.4 |
| $10,000 to $20,000 | 922 | 2.2 | 42 | 3.0 | 43 | 3.1 | 9.0 | 9.2 |
| $20,000 to $30,000 | 417 | 0.5 | 86 | 6.1 | 87 | 6.3 | 13.6 | 13.6 |
| $30,000 to $40,000 | −4,221 | −3.4 | 125 | 8.9 | 121 | 8.8 | 16.7 | 16.2 |
| $40,000 to $50,000 | −5,347 | −4.0 | 132 | 9.4 | 127 | 9.2 | 18.4 | 17.6 |
| $50,000 to $75,000 | −11,740 | −4.2 | 280 | 19.9 | 269 | 19.5 | 20.5 | 19.5 |
| $75,000 to $100,000 | −5,814 | −2.8 | 209 | 14.8 | 203 | 14.8 | 22.9 | 22.1 |
| $100,000 to $200,000 | −3,850 | −1.6 | 246 | 17.5 | 242 | 17.6 | 24.1 | 23.4 |
| $200,000 and over | −2,792 | −1.0 | 277 | 19.7 | 274 | 19.9 | 29.8 | 28.8 |
| Total, all taxpayers | −31,546 | −2.2 | 1,407 | 100.0 | 1,375 | 100.0 | 20.4 | 19.7 |

[1] Includes the tax credit for children under age 18, student loan interest credit, marriage penalty relief, IRA changes, long term care, capital gains deduction, treatment of adoption expense, aviation fuel exemption, and repeal of the wine and flavors credit as well as EITC changes previously adopted by the Senate Finance Committee.

[2] The income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: [1] tax-exempt interest, [2] employer contributions for health plans and life insurance, [3] employer share of FICA tax, [4] worker's compensation, [5] nontaxable social security benefits, [6] insurance value of Medicare benefits, [7] alternative minimum tax preference items, and [8] excluded income of U.S. citizens living abroad. Categories are measured at 1995 levels.

[3] Federal taxes are equal to individual income tax (including the outlay portion of the EITC), employment tax (attributed to employees), and excise taxes (attributed to consumers). Corporate income tax is not included due to uncertainty concerning the incidence of the tax. Individuals who are dependents of other taxpayers and taxpayers with negative income are excluded from the analysis.

[4] The effective tax rate is equal to Federal taxes described in footnote (3) divided by: income described in footnote (2) plus additional income attributable to the proposal.

Source.—Joint Committee on Taxation. Detail may not add to total due to rounding.

TAX PROVISIONS IN THE SENATE FINANCE COMMITTEE CHAIRMAN'S MARK FOR REVENUE RECONCILIATION AND THE EITC PROVISIONS PREVIOUSLY ADOPTED BY THE COMMITTEE [1]

[1996 income levels]

| Family economic income class [2] ($000) | Number of families (millions) | Average tax change (dollars) | Total tax change | | Tax change as a percent of income | Tax change as a percent of current Federal taxes |
|---|---|---|---|---|---|---|
| | | | Amount [3] (millions) | Percent distribution | | |
| 0–10 | 12.5 | $19 | $239 | −0.5 | 0.34 | 4.20 |
| 10–20 | 16.2 | 48 | 773 | −1.7 | 0.32 | 3.60 |
| 20–30 | 15.1 | 88 | 1,319 | −2.9 | 0.35 | 2.63 |
| 30–50 | 22.7 | −249 | −5,668 | 12.4 | −0.63 | −3.63 |
| 50–75 | 18.3 | −565 | −10,363 | 22.6 | −0.92 | −4.63 |
| 75–100 | 10.8 | −927 | −10,011 | 21.9 | −1.08 | −5.11 |
| 100–200 | 10.6 | −1,183 | −12,505 | 27.3 | −0.91 | 4.13 |
| 200 and over | 2.8 | −3,416 | −9,496 | 20.7 | −0.71 | −3.00 |
| Total [4] | 109.4 | −418 | −45,786 | 100.0 | −0.72 | −3.59 |

[1] This table distributes the estimated change in tax burdens due to the tax provisions in the Senate Finance Committee Chairman's Mark (JCX–44–95, September 16, 1995), and the EITC provisions adopted by the Committee on September 30, 1995.

[2] Family Economic Income (FEI) is a broad-based income concept. FEI is constructed by adding to AGI unreported and underreported income; IRA and Keogh deductions; nontaxable transfer payments such as Social Security and AFDC; employer-provided fringe benefits; inside build-up on pensions, IRAs, Keoghs, and life insurance; tax-exempt interest; and imputed rent on owner-occupied housing. Capital gains are computed on an accrual basis, adjusted for inflation to the extent reliable data allow. Inflationary losses of lenders are subtracted and gains of borrowers are added. There is also an adjustment for accelerated depreciation of noncorporate businesses. FEI is shown on a family rather than a tax-return basis. The economic incomes of all members of a family unit are added to arrive at the family's economic income used in the distributions.

[3] The change in Federal taxes is estimated at 1996 income levels but assuming fully phased in law and long-run behavior. The effect of the IRA proposal is measured as the present value of tax savings on one year's contributions. The effect on tax burdens of the proposed capital gains exclusion is based on the level of capital gains realizations under current law. Provisions which expire before the end of the budget period and provisions which affect the timing of tax payments but not liabilities are not distributed. The incidence assumptions for tax changes is the same as for current law taxes.

[4] Families with negative incomes are included in the total line but not shown separately.

Source—Department of the Treasury, Office of Tax Analysis, October 18, 1995.

TAX PROVISIONS IN THE SENATE FINANCE COMMITTEE CHAIRMAN'S MARK FOR REVENUE RECONCILIATION AND THE EITC PROVISIONS PREVIOUSLY ADOPTED BY THE COMMITTEE [1]

[1996 income levels]

| Family economic income quintile [2] | Number of families (millions) | Average tax change (dollars) | Total tax change | | Tax change as a percent of income | Tax change as a percent of current Federal taxes |
|---|---|---|---|---|---|---|
| | | | Amount [3] | Percent distribution | | |
| Lowest [4] | 21.4 | $26 | $562 | −1.2 | 0.30 | 3.97 |
| Second | 21.9 | 77 | 1,688 | −3.7 | 0.34 | 2.76 |
| Third | 21.9 | −233 | −5,110 | 11.2 | −0.61 | −3.49 |
| Fourth | 21.9 | −578 | −12,658 | 27.6 | −0.93 | −4.66 |
| Highest | 21.9 | −1,380 | −30,195 | 65.9 | −0.87 | −3.87 |

TAX PROVISIONS IN THE SENATE FINANCE COMMITTEE CHAIRMAN'S MARK FOR REVENUE RECONCILIATION AND THE EITC PROVISIONS PREVIOUSLY ADOPTED BY THE COMMITTEE [1]—Continued

[1996 income levels]

| Family economic income quintile [2] | Number of families (millions) | Average tax change (dollars) | Total tax change | | Tax change as a percent of income | Tax change as a percent of current Federal taxes |
|---|---|---|---|---|---|---|
| | | | Amount [3] | Percent distribution | | |
| Total [4] | 109.4 | −418 | −45,786 | 100.0 | −0.72 | −3.87 |
| Top 10 percent | 10.9 | 1,771 | −19,375 | 42.3 | −0.79 | −3.59 |
| Top 5 percent | 5.5 | −2,416 | −13,220 | 28.9 | −0.74 | −3.18 |
| Top 1 percent | 1.1 | −5,626 | −6,155 | 13.4 | −0.68 | −2.77 |

[1] This table distributes the estimated change in tax burdens due to the tax provisions in the Senate Finance Committee Chairman's Mark (JCX–44–95, September 16, 1995), and the EITC provisions adopted by the Committee on September 30, 1995.

[2] Family Economic Income (FEI) is a broad-based income concept. FEI is constructed by adding to AGI unreported and underreported income; IRA and Keogh deductions; nontaxable transfer payments such as Social Security and AFDC; employer-provided fringe benefits; inside build-up on pensions, IRAs, Keoghs, and life insurance; tax-exempt interest; and imputed rent on owner-occupied housing. Capital gains are computed on an accrual basis, adjusted for inflation to the extent reliable data allow. Inflationary losses of lenders are subtracted and gains of borrowers are added. There is also an adjustment for accelerated depreciation of noncorporate businesses. FEI is show on a family rather than a tax-return basis. The economic incomes of all members of a family unit are added to arrive at the family's economic income used in the distributions.

[3] The change in Federal taxes is estimated at 1996 income levels but assuming fully phased in law and long-run behavior. The effect of the IRA proposal is measured as the present value of tax savings on one year's contributions. The effect on tax burdens of the proposed capital gains exclusion is based on the level of capital gains realizations under current law. Provisions which expire before the end of the budget period and provisions which affect the timing of tax payments but not liabilities are not distributed. The incidence assumptions for tax changes is the same as for current law taxes.

[4] Families with negative incomes are excluded from the lowest quintile but included in the total line.

Note.—Quintiles begin at FEI of: Second $15,604; Third $29,717; Fourth $48,660; Highest $79,056; Top 10% $108,704; Top 5% $145,412; Top 1% $349,438.

Source.—Department of the Treasury, Office of Tax Analysis, October 18, 1995.

Mr. CONRAD. Mr. President, how can it be? We heard all of this talk about a tax cut. Yes; in overall terms, in dollar terms, there is a tax cut; about $245 billion. But not everybody gets a tax cut. Half the people in the country are going to get a tax increase. That is what these charts show from the Joint Committee on Taxation and from the U.S. Treasury Department. Fifty-one percent of Americans, those earning up to $30,000 a year, 44 million American families, are going to get a tax increase. On the other side of the ledger, higher income people are going to get a tax reduction. Forty-nine percent of the American people are going to get a tax reduction. But 48 percent of the benefit is going to go to those earning over $100,000 a year.

Let us just see. This is the top 5 percent. What do they get? The top 5 percent. The 2.8 million families making over $200,000 a year get a $3,400 tax break. The top 5 percent get a $3,400 tax break.

How about the top 1 percent? Those are the 1.1 million American families that earn over $350,000 a year. They get a $5,600 tax break. Gee. You might wonder. How about my family? How about my family? We are earning $25,000 a year, a family of four. Do you know what is going to happen to you? You are going to get a tax increase. How about a family of four earning from $30,000 to $50,000 a year? What happens to them? They are going to get a slight tax cut of $249.

Compare that to the people getting over $350,000 a year. They are going to get $5,600—20 times as much, 20 times as much if you are earning over $350,000 than if you are earning between $30,000 and $50,000. And, of course, the dirty little secret of this tax plan is that Americans earning less than $30,000 a year—51 percent of the American people, 44 million American families—are going to have a tax increase. And then you look at the spread among those who are going to get a tax reduction, and it is unfair. A family earning between $30,000 and $50,000. They get only $250.

This small tax cut is going to be completely overwhelmed by the other effects of this overall package because those folks are going to find things that help them being cut, and they are going to wind up in a negative. If you look at how spending programs are being reduced and how the tax cuts affect them, you are going to find that people in the $30,000 to $50,000 category lose under this plan. The same will be true of $50,000 to $75,000. While they get a $565 tax cut, when you take into account the Medicare-Medicaid changes, the college loan changes and all the other Government programs that affect them, you find out their tax cut is going to be completely overwhelmed by the spending cuts that affect them.

So what you have here is an overall program that is an enormous transfer of wealth program. It transfers wealth from those who are on the low end of the totem pole and the middle of the totem pole to those who are on top. That is what the overall effect of this Republican plan is. And you know, that is what has been going on in this country for a long time.

This chart shows the share of wealth held by the top 10 percent of households in America. It shows in 1969, the top 1 percent had 20 percent of the wealth in this country. By 1979, the top 1 percent held 30 percent of the wealth in this country. And by 1989, they were up to 39 percent of the wealth. The top 1 percent, in 1989, held 39 percent of the wealth in this country.

I just say to my Republican colleagues, they accuse the Democrats of being for redistributing the wealth of America. Let me just say they have been the champions of redistribution of wealth, but instead of redistributing wealth from the wealthy down to those who are middle income and lower income, the Republicans have transferred wealth up to the top 1 percent, from the top 1 percent holding 20 percent of the wealth to the top 1 percent now holding 39 percent of the wealth of the Nation.

If anything is clear from history, it is that if wealth is concentrated in the hands of fewer and fewer people, that leads to political instability and that leads to deep trouble in the future.

Mr. DORGAN. I wonder if the Senator will yield.

Mr. CONRAD. I would be happy to yield.

Mr. DORGAN. I noticed a comment the Senator made about the fact that this reconciliation proposal will increase taxes for nearly 50 percent of the American families. Some say that is not a tax increase. If you limit or scale back the earned income tax credit, that is not a tax increase. And I was noticing that Jack Kemp, noted national Republican figure, former Congressman, former Cabinet official, said last week when he testified before the Senate Small Business Committee:

> I hope you guys do not go too far on removing the earned-income tax credit because that is a tax increase on low-income workers and the poor which is unconscionable.

So at least Jack Kemp thinks that when you scale back the earned income tax credit, what you have is a tax increase on low income and poor people. Is the Senator saying that the combination of those changes means that 50 percent of the working families in this country will have a tax increase?

Mr. CONRAD. These are not my estimates, I might add. These are the estimates of the Joint Committee on Taxation, these are the estimates of the U.S. Treasury Department, that do, as the Senator from North Dakota knows, distribution tables. And the distribution tables they provided the Finance Committee show that everybody earning up to $30,000 a year is going to get a tax increase. That is 51 percent of American families. Of the others who are going to get a tax reduction, interestingly enough, 48 percent of the benefit goes to those earning over $100,000 a year.

Let me just make one other point on the question the Senator asks with respect to the notion that the earned income tax credit is a welfare program. We heard that in the Finance Committee, that the earned income tax credit is really a transfer payment to people, at least in part. It is interesting because President Ronald Reagan said the earned income tax credit is the best profamily, prowork, antiwelfare measure ever to come out of Congress.

That is what Ronald Reagan thought about the earned income tax credit.

What these folks want people to believe is that the earned income tax credit only relates to the income tax, because it is true; some of the folks who get the benefit of the earned income tax credit do not have an income-tax liability, but guess what. They have a payroll tax liability that is huge. In fact, 73 percent of the American people pay more in payroll taxes than they pay in income taxes, and the earned income tax credit was devised not only to provide relief on income tax but also on payroll taxes for working families. These are not people on welfare. These are people who are working, working families who get a break on their taxes, on their payroll taxes and their income taxes.

Mr. DORGAN. I wonder if the Senator would yield for another question.

I am interested in this proposition of the three letters from the Congressional Budget Office. The Senator and I jointly wrote a letter to the Director of the Congressional Budget Office.

It is not a secret; I have said on the floor of the Senate here when the Director of the Congressional Budget Office was appointed, the chairman of the House Budget Committee said, ''I want to appoint this person because I think we will get the answers that we want from this person.'' This is a person who believes in the kind of an estimating process that is going to make them comfortable.

So I came to the floor and said I was pretty concerned about that. I want the CBO to be the referee, the one that is wearing the striped shirt, that is unbiased at the signal calling, or at least calling the issues as they see them.

And June O'Neill, the Director of CBO, in scoring this proposal, provided a letter on October 18, and the majority party brought it to the floor and they held it up and they were proud as new parents, blushing and showing all of us, gushing with pride, gee, we have now reached with this plan of ours a budget surplus in the year 2002. They did not claim that everyone would bear the same burden of lifting in order to reach the surplus, but nonetheless we have now reached a budget surplus in the year 2002.

Then the Senator and I wrote a letter to the Director of the CBO and said, well, that would be using the Social Security trust funds as operating revenues, would it not? The law will not allow us to do that, so will you provide us with a letter telling us what the year 2002 would look like if you cannot do what the law says you cannot do, that is, misuse the Social Security trust funds? Then what would the answer be?

The next day, October 19, we received a letter. And I noticed nobody from the other side has come and talked about this letter. But this letter says if you are going to count it that way, then in the year 2002 the budget deficit is $98 billion.

Then my understanding is they made a mistake in the computation of this. So the next day we got a third letter. And the third letter says, well, if you are going to count it that way with Social Security, we have made another adjustment and the deficit in the year 2002 is $105 billion.

So we went from a small surplus to a $98 billion deficit, now to a $105 billion deficit in 2002.

I raised the question last week about using the Social Security trust funds, and someone from the other side stood up and huffed and puffed and then gave me the answer kind of mumbled, like their mouth was full of tobacco or something. I could not quite hear what they said, but I got the gist of it. And the gist of it was that this is income.

You know, you do this like a business. You count all your income. I am thinking to myself, I wonder what they would say if the business counted as their operating income the pension money? I suspect the business man or woman would be somewhere on the road to 2 years of hard tennis in some Pennsylvania facility. Right.

You cannot do that. It does not work. It is dishonest. You cannot take Social Security trust funds that are dedicated to taxes, only to be used for that purpose, bring them to the operating budget, and say, ''By the way, we have taken all this money out of the Social Security trust funds. We now have a budget surplus.''

And because you cannot do that, cannot do it honestly, we asked the Congressional Budget Office Director to tell us, what is the deficit, if you are prevented from doing what is dishonest? The answer—$105 billion in 2002.

Can the Senator comment on these three letters?

Mr. CONRAD. First of all, when we talk about how it is counted, what the Senator and I asked for is, how about if you do it according to what the law is? The law is very clear. I read the law.

The law says you cannot count Social Security surpluses in determining whether the budget is in surplus or deficit. That is what the law says. Ninety-eight Senators voted for that law. They thought it was a good idea to protect Social Security then. They thought it was a good idea not to count surpluses, Social Security surpluses, in establishing whether the budget is in deficit or surplus then. They recognized when they cast that vote that it is absolutely wrong to take Social Security trust fund surpluses and use those to make the deficit look smaller.

Now, obviously I think that is right. And then when we asked the question of CBO, here is the final answer we got. There were three answers. The first answer, as the Senator noted, said we are going to have a slight surplus. When we said, ''Yeah. But follow the law, obey the law. What happens when you exclude Social Security trust fund surpluses that are off-budget by law?'' Then she came back and said—her final answer was, you have a $105 billion deficit in the year 2002, if you obey the law and you do not take Social Security trust fund surpluses.

Obviously, that is what we must do. That is what the law requires us to do. And what is the reason for that? The reason is, no place in America would any institution take the retirement funds of its employees, throw those into the pot and say they balanced the budget. Obviously you have got to run surpluses in your retirement accounts if you are going to have money for when your folks retire. It does not take any rocket science to figure that out.

If you spend all of the money, what happens when the folks retire? Their retirement funds are gone. That is what is at the heart of this issue.

I asked my accountant back in North Dakota, called him up one day, and I said, ''Larry, what would you say to a client, business client, who came to you, and said, you know, he was having some rough economic times, and his company was running in the red. And if this business owner figured out a way to balance was to take the retirement funds of his employees and throw those into the pot and call the budget balanced,'' what would his advice be to a client who came to him with that question?

My accountant said, ''I would tell him, 'You are on your way to Federal jail because that is a violation of Federal law.' ''

And that is precisely what this Republican budget plan contemplates.

Mr. DORGAN. I wonder if the Senator would yield for one additional question.

The reason this is an important issue is either there is a surplus with this plan—despite the fact that you might or might not think this plan is well done; you might think the plan takes from the poor and the middle-income families and gives to the wealthy—that is neither here nor there; we will have that debate, and have had that debate—but either it produces a surplus or it does not.

Some came to the floor of the Senate boasting. They had this new letter. They said, ''Look. We did all the heavy lifting, and we have a surplus in 2002.'' The reason they say that is germane is that it allows us to proceed with a tax cut. That triggers the ability to do tax cuts.

Well, if part of the triggering of the tax cuts is to use the Social Security trust funds, then what you have is a circumstance where, in my State, at least two-thirds of the senior citizens are living on $15,000 a year or less. You are saying to those people, ''Your trust funds in Social Security, we're going to use those to provide a tax break to some Wall Street bankers or some others in this country who don't need a tax break.''

So there is this tremendous transfer going on. That is why this question is important. And, again, I would say, Director O'Neill is, by all accounts, smart, capable. I have no reason to be

critical of CBO, except we now have three different answers, the last of which is apparently correct.

And my sense is that it tells us what you and I have been talking about for some long while. The only way this adds up is if you add it wrong. It is the only way this adds up. Add it wrong, you get the right answer. Add it right, you get the wrong answer.

Mr. CONRAD. The Senator is exactly right. This is a fundamental question. And let me just say those who defend it by saying it is what we have been doing, that is no defense at all. That is just no defense at all.

What we have been doing is wrong. We have been doing it since 1983. For most of the time it has not made that much difference because the Social Security surpluses have been very small. But now the Social Security surpluses are growing dramatically. And they are going to continue to grow dramatically. There is a reason for it. The reason was to get ready for the time the baby-boom generation retires. That is why Congress acted in the early 1980's to change the Social Security fund, to design it to run surpluses. And what have we done? We have raided them. We have looted them. And now we will continue that practice to the tune of $636 billion over the next 7 years and call it a balanced budget. That is a fraud. That is an absolute fraud.

There is no one who would consider taking trust funds, throwing those into the pot to balance an operating budget as the correct way to do business. It is maybe the Washington way to do business; it is not the right way to do business. And we should stop it. We should stop it now.

I thank the Chair. I yield the floor and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## RECONCILIATION AND BALANCING THE FEDERAL BUDGET

Mr. KYL. Mr. President, we are going to be taking up later on this week what we call in the Senate the reconciliation bill. Some of the Members from the other side have been talking about that bill this morning as it pertains to balancing the Federal budget. I would like to speak to some of the things that Senators addressed this morning, and also to the President's plans for dealing with our budget deficit over the course of the next 7 years.

Mr. President, Senator DORGAN and Senator CONRAD were just on the floor, and I think Senator HOLLINGS spoke earlier to this problem of the Federal budget deficit as it pertains to the Social Security surplus. They objected to the fact that the Republican balanced budget did not account for the fact that the Federal Government is spending that Social Security surplus and, therefore, makes it more like we are in balance when, in fact, we are spending money that does not really belong to the general Government; it belongs to the Social Security surplus. If you exclude that surplus, then, in fact, they charge that we would be running a deficit of about $100 billion in the year 2002.

Of course, it is true, that if the U.S. Government were not spending the Social Security surplus funds, then those funds would not be reflected in the budget and, obviously, there would be a deficit beyond that which has been calculated by the CBO.

But, Mr. President, the Senators that I just mentioned, the Senators from North Dakota and the Senator from South Carolina, while they have been consistent in speaking out in support of segregating those Social Security trust funds, I note have, with most of the other Members of both Houses of the legislative branch of Government, failed to refrain from voting for budgets that use those Social Security funds. My point is that everybody likes to talk about not spending those Social Security funds, but the fact is they vote for budgets that use the Social Security funds.

In 1993, all three of the Senators aforementioned voted for the budget resolution and, by the way, the reference is rollcall vote 94, April 1, 1993. Senator DORGAN, Senator CONRAD, and Senator HOLLINGS—all three—voted for the budget resolution that spent every dime of the Social Security surplus and, by its own admission, left a projected deficit of about $200 billion, even taking into account the Social Security surplus at the end of its 5 year period.

They all voted for the 1993 budget reconciliation bill, on August 6, 1993, that relied on the use of the Social Security surplus. Senator DORGAN, speaking on behalf of the budget reconciliation bill, said on the floor on August 6:

> The fact is, we are going to decide today whether we do something about this crippling deficit or whether we continue to do nothing.

And then he voted for the budget resolution that spent every dime of the Social Security surplus. They all voted for the budget resolution in 1994, that is May 12, 1994, that spent every dime of the Social Security surplus and, again, by its own admission, left a projected deficit of about $200 billion, even taking into account the Social Security surplus at the end of its 5 year period.

Excluding the Social Security surplus, the budget resolution in 1994 provided for deficits of $239 billion in 1995, rising to $300 billion in 1999. Yet, Senators DORGAN, CONRAD, and HOLLINGS all voted for it, and I note, by the way, Mr. President, that that compares with our budget which, excluding Social Security, would go from $245 billion in 1996 to about a $100 billion deficit in the year 2002 and, of course, if you do not count Social Security, according to CBO we would be in balance by then with a zero deficit.

These three Senators are claiming that the Republican budget is a phony budget because it counts Social Security, the same as it has always done. But our budget, as I said, leaves a deficit of zero at the end of the 5-year period—zero—and that is certified by the bipartisan Congressional Budget Office.

If you excluded the surplus, the question is, what would you do with it? And I ask the question of those three Senators, because I think it is odd, it is strange that they come here today criticizing the Republican budget because it allows the expenditure of those funds when, in fact, all three of them have supported the same practice over and over and over again. So what would they do with those funds?

The surplus, of course, is invested in U.S. Government securities. By definition, it is borrowed by the Treasury. We do not put our money under a mattress any more than anybody else does. So do these three Senators all contend that we should borrow the money, pay interest to the trust funds, and then let the money sit idle, not do anything? That is a poor use of the funds.

Perhaps they would be willing to join us in finding a way to allow people to invest that in the private sector as a way of creating a surplus to Social Security earnings.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KYL. Mr. President, I ask unanimous consent for 1 additional minute.

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

Mr. KYL. Mr. President, I will conclude by making this point. If we can invest that money in the private sector, it would both return a supplement to the people who are receiving Social Security in the future and prevent the general Government from expending the funds so that it would truly be used for Social Security purposes.

I hope that our colleagues' ultimate purpose is not to support what President Clinton has suggested, using pension funds for ''economically targeted investments.'' In other words, pension funds would not be invested soundly for the benefit of retirees or, in this case, Social Security recipients, but used to advance social programs that benefit third parties.

I hope that is not what they are talking about. I hope it is more a political point they are making. Again, Mr. President, I point out that we would all like not to use those funds for general expenditure purposes, and we will be talking in the future about how we can assure those funds are used strictly for the benefit of Social Security retirees. I believe we should be supporting the Republican budget which the CBO confirms gets us to a zero deficit by the year 2002.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Parliamentary inquiry, Mr. President. Are we in morning business?

The PRESIDING OFFICER. We are in morning business. Senators are authorized to speak up to 5 minutes.

Mr. DOMENICI. I ask unanimous consent that I be permitted to proceed for up to 7 minutes.

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

## TAXES AND THE BUDGET

Mr. DOMENICI. Mr. President, I hope my friend from Arizona, if he is not terribly busy, can be with me on the floor for a moment.

I have three issues to address. Let me take the first one. I regret over the weekend in talking about the President's statement that he made in Houston that he thought he raised the taxes too much and that it was because of Congress, in particular I assume his party and our party, the Republican Party, that he raised taxes this much, implying that if somehow or another there would have been more help up here, he would have raised less taxes.

Let me make it absolutely clear, the President of the United States asked for more taxes than he got. Let me state that again. He sent us a budget and he ultimately got a tax increase and not a single Republican voted for that tax increase. But let me review what the President had done prior to that. He sent a budget to the Congress stating his master plan. What was in the master plan in terms of tax increases?

I have the number now. It is $360 billion. Remember, he had a Btu tax in it, an energy tax. Some of his own Members, such as then Senator Boren and others, said that will never fly. The ultimate tax increase was $270 billion. Over the weekend, the numbers were bantered around, but this is the right number. So essentially he asked us, if my arithmetic is right, for $90 billion more than he got.

What does that mean? That means that it was not Congress that forced him to get these big tax increases, it was the President's own plan. So what really happened was that he was asking for more tax increases than his Democratic supporters ended up giving him.

Is that not a shame that he would imply that it was the Democratic Senators and Congressmen who forced him to raise taxes so much? I will get this together in a memo with all of the number spread and put it into the RECORD. I trust my staff implicitly, and I now recall the Btu tax. So I say to my friend, Senator KYL from Arizona, over the weekend we heard an incredible change of mind by the President—a flip-flop or whatever you want to call it. The President was up here asking, in 1993, for $360 billion in tax increases. He gets only $270 billion from the Congress, and he suggests if he would have had more cooperation from the Congress, he would not have raised taxes so much.

Mr. KYL. Will the Senator yield?

Mr. DOMENICI. Yes.

Mr. KYL. Mr. President, I was in the House of Representatives when this was proposed. I remember a lot of my Democratic colleagues who were not happy about supporting a Btu tax. The Senator from New Mexico will recall that the House Members ended up supporting that budget with the request for tax increases, including the Btu tax increase. Of course, the Senator from Arizona, then a Member of the House, and most of the other Republicans voted against the Btu tax increase, but most of the Democrats voted for it. I know they were greatly distressed when the Senate then turned it down and, in effect, were critical of the President for making them walk the plank when there was never really a chance that that tax would be imposed at the end of the day.

I agree with the Senator from New Mexico that it is unfortunate to cast the blame on the Congress, including a lot of good Democrat Members of Congress, who did not want to increase taxes as much as the President, and certainly the Republican Members of the Congress. The President, therefore, was pointing the finger in the wrong direction when he alleged that it was the Congress that made him do it. It is like that old comedian that said, ''The devil made me do it.'' It was really the President himself who offered the tax increase to the American people.

Mr. DOMENICI. The Senator, in rebuttal of statements by Senators KENT CONRAD and BYRON DORGAN, referred to whether we have a balanced budget or not. Let me make sure the American people understand. See this nice certificate with the red ribbons? It says, ''certified balanced budget.'' What is that about? What is this? This is the budget for fiscal year 1996, the concurrent resolution that was passed and now implemented by the bill we are talking about, called reconciliation.

What is this ''certified balanced budget''? The Director of the Congressional Budget Office, Dr. June O'Neill, who is charged by almost everyone that knows anything about our fiscal problems with being in charge of an agency that we ought to believe because they are neutral, they belong to no one, they are funded by us, and they work independently for both the President and the Congress.

Why do I know that? Well, I know it because I have been working with them for 20 years. But the President told us that. He told us 2 years ago in his State of the Union Address, and I paraphrase: If you do not want to be accused of smoke and mirrors and if you want to be conservative so you are more apt to come out right, in terms of assumptions, let us all agree to use the Congressional Budget Office.

That is how important they are. They wrote us an analysis of the Senate's reconciliation bill—the one coming up soon—along with the budget resolution. What did they tell us? They said, ''We certify that you have a balanced budget.''

How could it be that the Congressional Budget Office is telling America the Republicans' 7-year plan gets to balance, and we have the Senators coming to the floor saying it is not in balance? It is interesting. If it is not in balance and we ought to do it another way, maybe we ought to hear their plan for cutting even more, which is apparently the proposal. If you do not want ours, you ought to cut more, so you get the proposal they are advocating.

I will tell you why they are doing it. I am not going to say this myself. I am going to read from a column by Charles Krauthammer from about 3 months ago. I will read one paragraph:

> In my 17 years in Washington, this is the single most fraudulent argument I have heard. I don't mean politically fraudulent, which is routine in Washington and a judgment call anyway. I mean logically, demonstrably, mathematically fraudulent, a condition rare even in Washington and not a judgment call at all.

I ask unanimous consent that this column be printed in the RECORD.

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

[From the Washington Post]

SOCIAL SECURITY 'TRUST FUND' WHOPPER

(By Charles Krauthammer)

Last week, Sens. Kent Conrad and Byron Dorgan managed to (1) kill the balanced budget amendment, (2) deal Republicans their first big defeat since November and (3) make Democrats the heroes of Social Security. A hat trick. How did they do it? By demanding that any balanced budget amendment ''take Social Security off the table''—i.e., not count the current Social Security surplus in calculating the deficit—and thus stop ''looting'' the Social Security trust fund.

In my 17 years in Washington, this is the single most fraudulent argument I have heard. I don't mean politically fraudulent, which is routine in Washington and a judgment call anyway. I mean logically, demonstrably, mathematically fraudulent, a condition rare even in Washington and not a judgment call at all. Consider:

In 1994 Smith runs up a credit card bill of $100,000. Worried about his retirement, however, he puts his $25,000 salary into a retirement account.

Come Dec. 31, Smith has two choices: (a) He can borrow $75,000 from the bank and ''loot'' his retirement account to pay off the rest—which Conrad-Dorgan say is unconscionable. Or (b) he can borrow the full $100,000 to pay off his credit card bill and keep the $25,000 retirement account sacrosanct—which Conrad-Dorgan say is just swell and maintains a sacred trust and staves off the wolves and would have let them vote for the balanced budget amendment if only those senior-bashing Republicans had just done it their way.

But a child can see that courses (a) and (b) are identical. Either way, Smith is net $75,000 in debt. The trust money in (b) is a fiction: It consists of 25,000 additionally borrowed dollars. His retirement is exactly as insecure one way or the other. Either way, if he wants to pay himself a pension when he

retires, he is going to have to borrow the money.

According to Conrad-Dorgan, however, unless he declares his debt to be $100,000 rather than $75,000, he has looted his retirement account. But it matters not a whit what Smith declares his debt to be. It is not his declaration that is looting his retirement. It is his borrowing (and over-spending).

Similarly for the federal government. In fiscal 1994, President Clinton crowed that he had reduced the federal deficit to $200 billion. In fact, what Conrad calls the ''operating budget'' was about $250 billion in deficit, but the Treasury counted the year's roughly $50 billion Social Security surplus to make its books read $200 billion. According to Conrad-Dorgan logic, President Clinton ''looted'' the Social Security trust fund to the tune of $50 billion.

Did he? Of course not. If Clinton had declared the deficit to be $250 billion and not ''borrowed'' $50 billion Social Security surplus—which is nothing more than the federal government moving money from its left pocket to its right—would that have made an iota of difference to the status of our debt or of Social Security?

Whether or not you figure Social Security in calculating the federal deficit is merely an accounting device. Government cannot stash the Social Security surplus in a sock. As long as the federal deficit exceeds the Social Security surplus—that is, for the foreseeable forever—we are increasing our net debt and making it harder to pay out Social Security (and everything else government does) in the future.

Why? Because the Social Security trust fund—like Smith's retirement account—is a fiction. The Social Security system is pay-as-you-go. The benefits going to old folks today do not come out of a huge vault stuffed with dollar bills on some South Pacific island. Current retirees get paid from the payroll taxes of current workers.

With so many boomers working today, pay-as-you-go produces a cash surplus. That cash does not go into a Pacific island vault either. In a government that runs a deficit, it cannot be saved at all—any more than Smith can really ''save'' his $25,000 when he is running a $100,000 deficit. The surplus necessarily is used to help pay for current government operations.

And pay-as-you-go will be true around the year 2015, when we boomers begin to retire. The chances of our Social Security benefits being paid out then will depend on the productivity of the economy at the time, which in turn will depend heavily on the drag on the economy exerted by the net debt that we will have accumulated by then.

The best guarantee, in other words, that there will be Social Security benefits available then is to reduce the deficit now. Yet by killing the balanced budget amendment, Conrad-Dorgan destroyed the very mechanism that would force that to happen. The one real effect, therefore, that Conrad-Dorgan will have on Social Security is to jeopardize the government's capacity to keep paying it.

Having done that, Conrad-Dorgan are now posing as the saviors of Social Security from Republican looters. A neat trick. A complete fraud.

Mr. DOMENICI. Mr. President, we all understand that the unified balanced budget is what has been used ever since Arthur Burns was chairman of the Federal Reserve Board. It is still used today. It is used by the President, it is used by the Federal Reserve Board, it is used by the Congressional Budget Office. What it essentially says is, if you put everything on budget, including not just the Social Security trust fund, but the myriad trust funds, that is the unified budget. Do not take some off and put some on; put it all on. With it all on, we are in balance.

I suggest—and it may come as a surprise—that we might even be able to show you, before the debate is finished, that in the 10th year we may be balanced—let us take Social Security balances off budget. We may be very close to getting there, under the projections of the Congressional Budget Office.

Having said that, let me talk about just two other things. My colleague from New Mexico took to the floor and spoke about education, relating with some specificity to my State and his, New Mexico. Let me make sure that we all understand what we are talking about. Let me try my best to make sure everybody understands about education. First of all, we appropriate 1 year at a time. There are no binding caps on appropriations for 1997, 1998 or 1999. Congress will do that each year, unless and until we set some legislative targets.

So let me talk for a minute about where we are in 1996, if everything works out the Republican way. Can we do that? In the year 1992, for the latest official data, total public spending on education programs in the country was $292.2 billion. So on top of that figure, you add $100.5 billion for the private education.

Get this: The Federal education budget, the U.S. Government helping or hindering education—whichever the case may be, but it is money spent—we spent, in 1992, $28 billion on the national Government's education participation. That is 7.2 percent of what is spent in the country on education—7.2 percent. So let us remember when the Federal Government says we are not going to spend quite that much, we are reducing 7.2 percent of the education budget of our schools, not the 100 percent, because the 100 percent is paid by local governments, by the State; 7.2 percent is paid by us.

Today, 3 years later, the percentage has declined to about 6.2 percent. The Federal Government's education component is 6.2 percent of what we spend as a nation. Here are the facts about the year 1996. The Senate-reported education and labor bill provides $22.3 billion for education programs in 1996—nearly $1.5 billion higher than the House-passed bill. The Senate-reported education appropriations bill is a grand sum of less than $400 million below the Federal contribution in the year 1995—$400 million less. Guess what that is in the percent reduction, Mr. President, of education in America? While we are trying to balance the budget, everybody takes a little bit of a cut, it is one-tenth, Mr. President, it is one-tenth of a percent; one-tenth of a percent of all of the expenditures on education is what the Senate did in the Labor education bill. It reduced it by $400 million—one-tenth of 1 percent.

As the President speaks of education, as Senators speak of education, would anyone believe we are talking about, in the Senate-passed education bill, reducing the level of expenditures on education into which we now, as a nation, spend $400 billion, roughly?

We have reduced it $400 million—one-tenth of 1 percent—1996 or 1995. That is not what anyone would understand from the statements that are made. We will wait until 1997 and 1998 and 1999 and see how those counts come out.

For the year 1996, that is it—one-tenth of 1 percent reduction under the Senate's proposal in education funding.

Mr. President, I have a number of other things I will save for later discussions. There is a huge misunderstanding around about the earned income tax credit and how it relates to the $500 per child tax credit. We have now figured it out and we will put it out for everybody to understand.

The one big thing right off for those wondering what we will show you when we put it all together, the President's child care tax credit goes up to 13 years of age and was $300. You had to take the earned income tax credit first and then apply the $500 after—very big difference than ours.

We take the $500 credit before the earned income tax credit and it turns out very, very few people get less than they did in 1995. The overwhelming percentage of Americans with children get a very significant tax cut, EITC changes or not.

I yield the floor.

## RECONCILIATION

Mr. FORD. Mr. President, I was listening to the debate by all of our Senators and how well words are used and how well numbers are used.

We see this big board that is here—you may take it down; it should not be on the floor after the Senator has left, anyhow—that the budget is balanced. The budget is balanced under the proposal. That is the reason we can give a $245 billion tax cut; the budget is balanced. If you take $245 billion out of it, it is unbalanced. Figure it any way you want to. I have a balanced budget, but all of a sudden I have an expenditure that I did not account for, so my budget is out of balance.

Anybody sitting around the kitchen table at night trying to figure up their bills, has a balanced budget, then all of a sudden they have a doctor bill, have a car that breaks down, whatever it might be; therefore, their budget is out of balance.

Instead of a medical bill or car breaking down, they want to give a $245 billion tax cut.

We hear about cutting education, only just a minimal amount—$400 million is $400 million. The distinguished occupant of the chair and other Senators here know States that put up anywhere from 60 to 70 percent of their general fund in that State to education. Every little bit of help makes

education better, gives the States an opportunity.

Talk about private education—sure, the big companies, corporations give to their private institution of higher learning. What about the State institutions? We have 55,000-plus students in Kentucky that get some kind of grant or loan to go to school. Now we will reduce those or eliminate them or make them higher at the end, and we will lose somewhere in the neighborhood of 600,000 Pell grants in my State.

They say, well, we will increase Pell grants by $100. That is true. But you will knock out from 600,000 down, so eliminate my students that have an opportunity to have a little bit to get over the hump.

It is the same way with the earned income tax credit. We have a poor family out here struggling to get into the middle class at $27,000 annual income, a family of four. You tell him you cannot have any credit for working, you cannot have any help for working, you cannot have any help to get over the poverty line. So we will cut that out.

They say, CBO said we would balance the budget. That is true, but then you will take $245 billion out of it. I hear a lot about what the President said about taxes; he may have taken too much or gone too far. Let me say this, Mr. President. In my State, after I voted for that package in 1993, those who paid taxes in 1992, 12,500 of my constituents, according to the information I have, paid increased taxes—12,500 filers in 1992 paid more for 1993. Mr. President, 315,000 of my constituents paid less. Everybody else paid the same. We reduced the budget by $500 billion, and by that we reduced interest rates, and that made a $600 billion reduction.

We eliminated or reduced over 300 programs in the Federal Government; going to remove 272,000 Federal bureaucrats, and we are on the way—close to 200,000 less than in 1993.

I thought that was a pretty good vote and I thought the path had been drawn pretty clear. I do not believe the Republicans would be here today with their deficit reduction tax cuts—all these things—if we had not cast that vote in 1993 to make this country better.

We hear a lot about Social Security and Medicare and the commission that reports it. The commission reported a year ago that we would have solvency problems in Medicare a year earlier. Now it is a year later. We are in better shape.

For a small amount we can take care of Medicare as it is for a decade. We have always taken care of the problems in Social Security and Medicare.

So now we hear they will cut Medicaid. Medicaid is what the middle-income, if you want to call it that, $35,000 to $75,000 income—most of them, after they spend everything they have, they are on Medicaid in a nursing home.

About August they will pick up the phone and say, ''WENDELL, come get Dad. We have run out of money.'' ''WENDELL, come and get Ma. We have run out of money.'' Do not worry about that; that will never happen, they say.

They have reduced the regulations on the nursing homes, and the statement was that you can sedate these old folks in nursing homes. They will be easier to handle and you can have fewer employees. That is exactly what got the Federal Government in the nursing home regulation business in the first place—the damage that was being done to our elderly that we were trying to help.

When you begin to look at the morass of what we are getting ready to vote on and shove down our throats, you will find in the days to come that there will be a lot of words that were said on the other side, how great it will be, take our money, put it in stocks and bonds. You get on the stock market one of these days and you will have problems. Pension funds; use them. Do all these things. This is one Senator that is not going to vote for it.

I hope that the question that the distinguished Senator from North Dakota asked the chairman of the Finance Committee or the Budget Committee the other day, where is the meat? Where are the hearings? We do not have any hearings. Are you afraid to debate it? I am not afraid to debate it. But you come here on the floor with public relations house statements, statements that are written—I have the book sent to all the Republicans. Everyone has one. Here is what you say when asked this question. Here is what you say when asked that question. If they do not ask this question, you raise this. All from the public relations house.

Mr. President, I know my time is up, and I wish that we would have more time when reconciliation comes up so we could really look at it in depth, but we are going to be limited, we are going to be limited.

I yield the floor.

## AMBASSADOR REED DELIVERS U.N. SECRETARY-GENERAL'S MESSAGE IN HIROSHIMA CITY

Mr. PELL. Mr. President, on August 6, 1995, U.N. Under Secretary-General Joseph Verner Reed attended the Hiroshima City Peace Memorial Ceremony in Hiroshima, Japan, where he delivered a message on behalf of U.N. Secretary-General Boutros Boutros-Ghali.

As many of my colleagues will recall, Ambassador Reed has an accomplished, remarkable record of service in the United States Government, including serving ably and with distinction as the United States Ambassador to Morocco and as Chief of Protocol. Ambassador Reed is now dedicating his talents to the United Nations, where he serves as Under Secretary General and Special Representative of the Secretary General for Public Affairs.

In his introductory remarks to the Secretary-General's message, Ambassador Reed asked that we remember and praise the determination of the Hiroshima community to rebuild in the destructive aftermath of the war, and to work for nuclear disarmament and a nuclear test ban.

As a longtime advocate, friend, and supporter of the United Nations, and as one who has tried to work for a world free from the threat of nuclear weapons, I believe the ceremony in Hiroshima was a particularly important and compelling event.

In my view, the remarks by Ambassador Reed, and the message he delivered on behalf of Secretary-General Boutros Ghali, help to set precisely the right tone for the event. Mr. President, I commend those remarks to my colleagues and ask unanimous consent that they be printed in the RECORD.

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

REMARKS BY AMBASSADOR JOSEPH VERNER REED

Mr. Prime Minister, Mr. Mayor of Hiroshima, Excellencies, ladies and gentlemen, friends, 50 years ago today life on our planet Earth was changed forever.

The Hiroshima City Peace Memorial Ceremony is a highly symbolic and extraordinary event. For me, both as an international civil servant at the United Nations and as an American, today is a very emotional and significant day. I am very proud to represent the United Nations and Secretary-General Dr. Boutros Boutros-Ghali at this 50th Peace Memorial Ceremony in the year of the 50th anniversary of the United Nations. On this day, let us remember the first words of the Charter of the United Nations: ''We the peoples of the United Nations, determined to save succeeding generations from the scourge of war . . .''

On this day, let us remember the determination of the citizens of Hiroshima to rebuild their lives and to overcome war. Let us praise their determination to work for nuclear disarmament and nuclear test ban.

On this solemn day, let us take to heart that there is a time to remember, a time to heal and a time to look forward. Hiroshima is living proof of man's ability to recover from the most horrible destruction and that gives hope to our planet.

The crushing coda to the most violent war in history altered global politics and war. The bomb introduced a new age of terror—the Atomic Age; a whirlwind was sowed.

The international community has to make sure that there is no reason ever again to employ destructive nuclear force. The United Nations, your United Nations, needs you, the citizens of Hiroshima, the people of Japan.

Ladies and gentlemen, let me now bring you a message from the Secretary-General of the United Nations, Dr. Boutros Boutros-Ghali:

''Today's is a poignant anniversary. Fifty years ago the infinite capacity of the human mind was given proof. And we saw how the skills and talents of man could harness the mysteries of science itself, to purpose that could be ennobling or to purpose that could simply destroy.

In that sense, this is an anniversary to remind us of what we can do and just how far it is possible for us to go. We saw that on the sixth of August, 1945. But in the sunlight of the awakened day, new realisations emerged, new resolves were fashioned. And this is also a commemoration of the will not necessarily

to do what is within our means to do. It is a commemoration of the conciliation of capacity and conscience, of power with prudence. It is a commemoration of our awareness of the terrifying levels to which conflict, once begun, can escalate. It is a commemoration of the resolve, enshrined in the Charter of the United Nations barely 6 weeks earlier, to reaffirm faith in the dignity and worth of the human person.

You have dedicated this ceremony to peace. And, without doubt, the introspection the horror of Hiroshima compelled has made our world a safer place. Machinery has been put in place to support nuclear controls and safeguards, to carry out the destruction of nuclear weapons, to ban nuclear testing. The nuclear nonproliferation treaty has been validated in perpetuity. It has signatories whose number falls only a few short of the membership of the United Nations itself. Given tact, reason, and understanding it should be possible to aspire to a truly universally regime. Such a regime becomes all the more necessary and compelling given the clear and unambiguous assertion by the Security Council at the highest political level in January 1992 that the proliferation of weapons of mass destruction constitutes a threat to international peace and security.

In 2 years we shall commemorate the 40th anniversary of an unfulfilled mission: The question of a comprehensive nuclear test ban, which first appeared on the agenda of the General Assembly in 1957. It would be an achievement well worth striving for. The progress being made towards a comprehensive test ban treaty must be enhanced and build upon. The vast potential for the peaceful uses of nuclear energy must be addressed and given realisation unhindered by its diversion for essentially combative ends. And it is clear that non nuclear-weapon states must be provided international security assurances that are legally binding.

These are some thoughts that come to mind on an occasion such as this. In Hiroshima hope has succeeded hate, determination despair. For a half a century you have lived with an awareness at first hand of what the phrases the world uses can really mean. Please share that awareness, that sense of the possibilities that we can and we must realise. The world owes you no less, nor you the world.[1]

This is the message from the Secretary-General of the United Nations.

Excellencies, citizens of Hiroshima, this expression of the Secretary-General is what we at the United Nations want to do together with you, the citizens of Hiroshima and the people of Japan.

I thank you.

## PROCLAMATION HONORING THE 25TH ANNIVERSARY OF KICKAPOO HIGH SCHOOL OF SPRINGFIELD, MO

Mr. ASHCROFT. Mr. President, today I would like to salute a high school from my hometown of Springfield, MO, that defines excellence in secondary education. Kickapoo High School has been recognized by the U.S. Department of Education as one of the excellent secondary schools in America. Opened in 1971, Kickapoo will celebrate its 25th anniversary on October 25 after a rich history of academic achievement. Over 8,000 Missourians have graduated from the halls of Kickapoo High School. These students have attended some of America's finest universities including: Yale, Northwestern, University of Chicago, Duke, and Washington University.

Kickapoo High School continues to be a leader in educational diversity, serving as a model, not just for southwest Missouri, but for the Nation as a whole. The needs of physically and academically challenged students have been served by the opening of a learning resource center and by establishing an orthopaedically handicapped program. In an era when test scores are emphasized for college admissions, Kickapoo High School's students exceed the national average on the ACT by two points on each of the three sections. Students' educations are supplemented by advanced placement courses, where 80 percent of Kickapoo students earned scores, qualifying them for college credits upon enrollment.

A defining characteristic of a school is the honors bestowed upon it. Kickapoo High School had seven National Merit Scholar finalists and nine National Merit Commended Scholars in 1994 alone. For these achievements listed and many others not, I am pleased to honor Kickapoo High School on the 25th anniversary of its charter.

The teachers, students, administrators, and community of Kickapoo High School should be commended for their achievements and service to our Nation. All of those who have been affiliated with Kickapoo High School are charged with a duty to leave America as a better place. Kickapoo serves as an emblematic secondary educational institution and prime example of academic excellence in the United States of America.

## THE CONSUMER PRICE INDEX

Mr. MOYNIHAN. Mr. President, some 32 years ago, in the administration of John F. Kennedy, I became Assistant Secretary of Labor for Policy Planning and Research. This was a new position. In this new position, I was nominally responsible for the Bureau of Labor Statistics. I say nominally out of respect for the independence of that venerable institution which long predated the Department of Labor itself. The then-commissioner, Ewan Clague, could not have been more friendly and supportive and in time I grew to know more of the field. At that time the monthly report of the unemployment rate was closely watched by capital and labor, as we would have said, and was frequently challenged. Committees regularly assembled to examine and debate the data. Published unemployment rates, based on current monthly survey methodology appeared, if memory serves, in 1948 and so the series was at most 14 years in place at this time. By contrast, the Consumer Price Index dated back to 1919. And yet, while the statisticians were increasingly confident of the accuracy by which they measured unemployment, they were never entirely happy about the CPI. Its computation was, and remains, a difficult and ever-changing effort. In particular, the statisticians worried that the Consumer Price Index was increasingly used as a surrogate for the cost-of-living index. They felt this would lead to great troubles as surely the CPI overstated inflation. I think they would have been even more alarmed to know that in the two decades that followed we would use the CPI to index some 30 percent of Government outlays and 45 percent of Government revenues.

This problem inevitably grew more salient at times of true inflation. Thus, on October 26, 1980, an article in the Business and Finance section of the Washington Post described the election difficulties President Carter was facing owing to double-digit inflation. The story noted ''The consumer price index overstates the impact of inflation, the White House contends.'' As we know, it contended to no avail, but the difficulties with the CPI as a proxy for the cost of living continued.

In the spring 1981 issue of the Public Interest, Dr. Robert J. Gordon, now chairman of the department of economics at Northwestern University, wrote:

> . . . the [United States] CPI is probably the single most quoted economic statistic in the world.

We are now slowly waking up to the further fact, well known in the economics and statistics communities, that the Consumer Price Index is not a measure of the change in the cost of living. It is so stated in a pamphlet published by the Bureau of Labor Statistics entitled ''Understanding the Consumer Price Index: Answers to Some Questions'':

> Is the CPI a cost-of-living index?
>
> No, although it frequently and mistakenly is called a cost-of-living index. The CPI is an index of price change only. It does not reflect the changes in buying or consumption patterns that consumers probably would make to adjust to relative price changes. For example, if the price of beef increases more rapidly than other meats, shoppers may shift their purchases away from beef to pork, poultry, or fish. If the charges for household energy increase more rapidly than for other items, households may buy more insulation and consume less fuel. The CPI does not reflect this substitution among items as cost-of-living index would. Rather, the CPI assumes the purchase of the same market basket, in the same fixed proportion (or weight) month after month.

Despite this caution from the agency that compiles the CPI, the index is used as a yardstick for adjusting Government benefits, including Social Security, and provisions of the Internal Revenue Code.

And yet, it is now well recognized that changes in the CPI overstate the change in the cost of living.

The administration recognizes this fact.

Congress recognizes this fact.

And a Commission of eminent economists appointed by the Senate Finance Committee recognizes this fact.

In an October 3, 1994, memorandum entitled ''Big Choices,'' Dr. Alice

Rivlin, then Acting Director of OMB and now Director—and a distinguished economist who has served as the president of the American Economic Association—noted that among the options available to reduce the budget deficit were several COLA proposals including, and I quote:

CPI minus 0.5 ''technical'' reform (CPI may be overstated by 0.4% to 1.5%).
CPI minus 2 for five years.

The budget resolutions passed by the Senate and House built into their baseline lower CPI assumptions than were projected by CBO in January. The lower assumptions reflect the expectation that scheduled BLS revisions of the CPI will lower the reported CPI. The Senate assumed a two-tenths of a percentage point adjustment; the House assumed a six-tenths of a percentage point adjustment. The conference report adopted the Senate version.

In their report—Senate Report 104–82—the Senate Budget Committee noted:

In January, CBO projected CPI inflation would remain at 3.4 percent for 1998 and thereafter. The downward revision reported here relative to the January figures reflects CBO's new appraisal that the 1998 benchmark revision to the CPI planned by the Bureau of Labor Statistics will likely reduce the rise in the computed measure of the CPI by 0.2 percentage points a year. Federal Reserve Chairman Greenspan and CPI experts have recently testified before the Senate that incomplete evidence suggests CPI inflation may be overstated by as much as 1.0 to 1.5 percentage points a year. However, in advance of further, more conclusive analysis, CPI biases remain speculative and have not been incorporated into the Committee assumptions.

And the budget resolution, adopted by the Senate on May 25, 1995, contained this language:

**SEC. 304. NONPARTISAN ADVISORY COMMISSION ON THE CPI.**

(a) FINDINGS.—The Congress finds that—
(1) Congress intended to insulate certain government beneficiaries and taxpayers from the effects of inflation by indexing payments and tax brackets to the Consumer Price Index (CPI);
(2) approximately 30 percent of total Federal outlays and 45 percent of Federal revenues are indexed to reflect changes in the CPI; and
(3) the overwhelming consensus among experts is that the method used to construct the CPI and the current calculation of the CPI both overstate the estimate of the true cost of living.
(b) SENSE OF THE SENATE.—It is the sense of the Senate that—
(1) a temporary advisory commission should be established to make objective and nonpartisan recommendations concerning the appropriateness and accuracy of the methodology and calculations that determine the CPI;
(2) the Commission should be appointed on a nonpartisan basis, and should be composed of experts in the fields of economics, statistics, or other related professions; and
(3) the Commission should report its recommendations to the Bureau of Labor Statistics and to Congress at the earliest possible date.

The conference agreement on the concurrent budget resolution for fiscal year 1996 passed the Senate on June 29, 1995. The conference report included the following:

**SEC. 309. SENSE OF THE SENATE ON THE ASSUMPTIONS.**

It is the sense of the Senate that the aggregates and functional levels included in this budget resolution assume that—

* * * * *

. . . (6) a temporary nonpartisan commission should be established to make recommendations concerning the appropriateness and accuracy of the methodology and calculations that determine the Consumer Price Index (CPI) and those recommendations should be submitted to the Bureau of Labor Statistics at the earliest possible date.

Earlier, on March 13, April 6, and June 6, the Finance Committee held hearings on this subject. Testimony was received from 13 established economists who collectively represented virtually all the expertise that exists on this issue.

A remarkable consensus emerged at those hearings.

I ask unanimous consent that a list of the witnesses, along with their affiliations, and their estimates of the degree to which changes in the CPI overstate changes in the cost of living be printed in the RECORD.

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

ESTIMATES OF CPI OVERSTATEMENT
(In order of appearance of witnesses)

March 13, 1995 Hearing:
Chairman Alan Greenspan, Federal Reserve: 0.5 to 1.5 percentage points.
Cmsr. Katharine Abraham, Bureau of Labor Statistics (BLS): No estimate offered.
Dr. Robert Gordon,[1] Northwestern University Dept. of Economics: Minimum of 1.7 percentage points.
Director June O'Neill, Congressional Budget Office: 0.2–0.8 of a percentage point (based on CBO report 10/94).
April 6, 1995 Hearing:
Dr. Dale Jorgenson,[1] Harvard University Dept. of Economics: Around 1 percentage point.
Dr. W. Erwin Diewert, Univ. of British Columbia/Dept. of Economics: 1.3 to 1.7 percentage points.
Dr. Ariel Pakes, Yale University Dept. of Economics: 0.8 of a percentage point.
Dr. Joel Popkin, Popkin & Co. (former Assistant Commissioner for Prices and Living Conditions at BLS): No estimate offered.
June 6, 1995 Hearing:
Dr. Michael Boskin,[1] Senior Fellow, Hoover Institute, Stanford Univ.: At least 1.0 percentage point, maybe 2.0 percentage points.
Dr. Ellen Dulberger,[1] Director, Strategy and Economic Analysis IBM: CPI overstatement is greater than others have stated and likely to grow.
Dr. Zvi Griliches,[1] Harvard University Dept. of Economics: 0.4 to 1.6 percentage points.
Dr. Janet Norwood, Senior Fellow, Urban Inst. (former BLS Commissioner): No estimate offered.
Dr. Robert Pollak, University of Washington Department of Economics: No estimate offered.

[1] CPI Commission members.

Average of Mid-Point Estimates by CPI Commission Members: 1.3 percentage points at a minimum (assumes Dulberger's minimum is 1.3 points, the average of other four members).

Mr. MOYNIHAN. Mr. President, again: Dr. Alan Greenspan, Chairman of the Federal Reserve Board—0.5 to 1.5 percentage points.

Dr. Dale Jorgenson, chairman of the department of economics at Harvard University—around 1 percentage point.

Dr. Robert Gordon, chairman of the economics department at Northwestern University—at least 1.7 percentage points. Note that in 1981 Professor Gordon wrote the Public Interest article, cited earlier, in which he laid out many of the issues related to the accurate measurement of changes in the cost of living.

Dr. Michael Boskin, professor of economics at Stanford University and Chairman of the Council of Economic Advisers in the Bush administration—at least 1 percentage point, maybe 2 percentage points.

In all, 9 of the 13 witnesses provided numerical estimates of the overstatement. The average of the estimates: about 1.1 percentage points. The calculation is based on a minimum estimate for some witnesses. Even if we assume a zero estimate of the overstatement for those who provided no estimate—and few, if any, would so contend—the average for all the witnesses would be 0.8 of a percentage point.

Not too different from the 0.4 to 1.5 percentage points noted by OMB Director Rivlin in her memo last October.

The complete record of these hearings is printed as Senate Hearing 104–69—Consumer Price Index. I hope Senators will obtain copies and review the hearing record.

Following the hearings, then Finance Committee Chairman Packwood and I, as ranking member, announced on June 26, 1995, the appointment of a nonpartisan Commission to:

. . . study the methodology used to calculate the Consumer Price Index (CPI) and to advise Congress on whether this methodology provides an accurate measure of the cost of living.

At that time I stated:

. . . Current law makes it clear that certain federal programs should be adjusted for changes in the cost of living. What is not clear is whether changes in the CPI, which is used as a proxy for changes in the cost of living, accurately measures these changes. A study by a non-partisan commission will provide invaluable advice to Congress on this important issue.

The Commission, chaired by Dr. Michael Boskin, issued its interim report on September 15, 1995.

The report, ''Toward a More Accurate Measure of the Cost of Living,'' included the following observations and conclusions in the executive summary:

. . . While the CPI is the best measure currently available, it is not a true cost of living index (this has been recognized by the Bureau of Labor Statistics for many years). Despite important BLS updates and improvements in the CPI, changes in the CPI have substantially overstated the actual rate of price inflation, by about 1.5% per annual recently. It is likely that a large bias also occurred looking back over at least the last couple of decades, perhaps longer, but we make no attempt to estimate its size.

. . . Changes in the CPI will overstate changes in the true cost of living for the next few years. The Commission's interim best estimate of the size of the upward bias looking forward is 1.0% per year. The range of plausible values is 0.7% to 2.0%. The range of uncertainty is not symmetric. It is more likely that changes in the CPI have a larger than a smaller bias.

. . . The upward bias programs into the federal budget an annual automatic real increase in indexed benefits and real tax cut.

Let me now elaborate on the implications of these points made by the Commission.

Current law requires the Government to adjust some benefits and tax provisions for changes in the cost of living.

The 1972 Amendments to the Social Security Act included this language:

Section 202. (a) 1 Section 215 of the Social Security Act is amended by adding at the end thereof the following new subsection: Cost-of-Living Increases in Benefits.

Similarly, section 104(f)(3) of the Economic Recovery Tax Act of 1981 states:

. . . the cost of living adjustment for any calendar year is the percentage . . .

The objective of these statutes is clear: Benefits and Tax Code provisions should be adjusted for changes in the cost of living. However, the law stipulates that the adjustments should be based on changes in the CPI as a proxy for changes in the cost of living. But with mounting evidence that changes in the CPI overstate changes in the cost of living, implementation of the policy is thwarted. The law is being thwarted.

What can be done to ensure that the policies Congress has adopted are faithfully executed? That is, how can we ensure that adjustments in benefits and Tax Code provisions more accurately reflect changes in the cost of living? Two things.

First, continue to support ongoing efforts by the BLS in its routine updating and rebenchmarking of consumer expenditure patterns, and in its research activities. Talented and dedicated BLS researchers have identified many of the complex measurement issues that must be addressed when compiling a CPI in a world in which the quality of products changes and new goods are introduced with resolute regularity.

Second, Congress must recognize that, despite the best intentions of the BLS as it continues with its updates and research, the CPI is not, as the BLS readily acknowledges, a cost-of-living index. To achieve its policy objectives—so clearly stated in the law—Congress must implement legislative corrections that, when combined with the most accurate CPI that the BLS can produce, will result in changes in benefits and Tax Code provisions that accurately reflect changes in the cost of living.

As noted earlier, the Boskin commission on the CPI suggests that for now, the correction Congress should adopt is 1 percentage point.

The Commission's report also highlights the budget implications of failing to correctly implement policies designed to adjust for changes in the cost of living. We should not harbor any misgivings merely because these changes will dramatically improve the budget outlook. The error is there and should be corrected without regard to budget implications.

Even so, it must be acknowledged that the budget implications are enormous. One could say awesome.

CBO estimates a cumulative 10-year reduction in the deficit of $634 billion from a 1 percentage point downward adjustment in automatic changes of benefits and tax provisions. By the 10th year the annual reduction in the deficit is almost $140 billion. Extrapolating from these CBO projections, my staff estimates the 12-year cumulative reduction in the deficit at almost $1 trillion.

And the corrections affect both sides of the budget ledger. About one-half of the cumulative reduction in the deficit is due to lower outlays; one-third due to higher revenues, and the remainder results from reductions in interest payments.

And while we are thinking about saving the Social Security trust fund, consider this fact. Harry Ballantyne, Chief Actuary of the Social Security Administration, estimates that the date of exhaustion of the OASDI fund is extended by 19 years from 2030 to 2049 by a 1 percentage point downward adjustment in the CPI.

Exhaustion is defined as the year in which the trust fund has used up all its reserves of Treasury securities with the expectation that annual outlays will continue to exceed annual income.

This is a real fiscal dividend. We can get things right and save the trust fund.

Mr. President, I ask unanimous consent that the following reports and documents cited in my remarks be printed in the RECORD after my statement.

First, ''The Consumer Price Index: Measuring Inflation and Causing It'' by R.J. Gordon, 1981, in the Public Interest 63: Spring.

Second, ''Understanding the Consumer Price Index: Answers to Some Questions'' by the U.S. Department of Labor, Bureau of Labor Statistics, May 1994.

Third, ''Toward a More Accurate Measure of the Cost of Living'' by the Advisory Commission to Study the Consumer Price Index, September 15, 1995.

Fourth, table on the change in deficit from a downward adjustment in the CPI of 1 percentage point by the Congressional Budget Office, March 15, 1995.

Fifth, memorandum prepared by Harry C. Ballantyne, September 28, 1995, on: Estimated Long-Range Effects of Alternative Reductions in Automatic Benefit Increases.

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

[From the Public Interest, Spring 1981]

THE CONSUMER PRICE INDEX: MEASURING INFLATION AND CAUSING IT

(By Robert J. Gordon)

Inflation is widely believed to be the most important economic problem facing the United States and most other countries in the world. Thus it is not surprising that the monthly publication of the U.S. Consumer Price Index (CPI) is so closely watched both inside and outside of government. Large increases in the CPI are bad news for Administration officials, particularly in election years, and may lead to sudden policy reversals such as the introduction of the Carter Administration's ill-fated credit controls in March 1980. Large increases in the CPI, however, are good news for millions of recipients of social security benefits, government retirement pay, and other payments that by law or contract must be escalated in step with the CPI. Also, since foreigners watch the CPI closely for clues to the future course of U.S. interest rates and the exchange value of the dollar, the CPI is probably the single most quoted economic statistic in the world.

Imagine that someone pushes the wrong button on a computer at the Bureau of Labor Statistics (BLS), the division of the Department of Labor that is responsible for the CPI, and records that the increase in the CPI over a particular year is 15 percent instead of the true rate of 10 percent. Government officials would probably react with restrictive policy measures—some combination of expenditure reductions, tax increases, and higher interest rates. Thousands, perhaps millions, of Americans might be thrown out of work. Millions of others receiving social security benefits or union wages escalated by the CPI would enjoy a windfall gain, since their payments would go up by more than the true inflation rate. The unnecessary extra benefit payments would cause the government deficit to balloon, putting extra pressure on the Federal Reserve to print more money and finance still more inflation, while the higher union wage payments would put pressure on firms to raise prices faster than otherwise.

Exactly this chain of events occurred in the United States in 1979 and 1980, but not because of an easily correctable slip by BLS. Instead, a serious overstatement of inflation by the CPI was caused by built-in design flaws. These defects have come to light not through the snooping of some measurement-minded Woodward or Bernstein, but rather as a result of a growing discrepancy between the CPI and a competing government measure of consumer prices called the ''Personal Consumption Expenditures deflator,'' published by a division of the Department of Commerce, and usually called the ''PCE deflator'' for short. Table I shows that after registering only a small difference in early 1978 and most earlier years, the inflation rate recorded by the two indexes grew apart by an amount that reached an annual rate of 5 percent in the first half of 1980.

TABLE I.—INFLATION RATES AS ESTIMATED BY THE CPI AND PCE DEFLATOR

[Percentage changes at annual rates] [1]

| | | CPI | PCE Deflator | Difference |
|---|---|---|---|---|
| 1. | 1947–77 | 3.4 | 3.3 | 0.1 |
| 2. | 1978–80 by half year | | | |
| | 1978, first half | 8.9 | 8.3 | 0.6 |
| | 1978, last half | 9.0 | 6.8 | 2.2 |
| | 1979, first half | 12.6 | 10.0 | 2.6 |
| | 1979, first half | 13.0 | 9.8 | 3.2 |

TABLE I.—INFLATION RATES AS ESTIMATED BY THE CPI AND PCE DEFLATOR—Continued

[Percentage changes at annual rates] [1]

| | CPI | PCE Deflator | Difference |
|---|---|---|---|
| 1980, first half | 16.2 | 11.2 | 5.0 |

[1] Source: CPI from Bureau of Labor Statistics, PCE Deflator from Survey of Current Business, various issues. These figures do not reflect the data revisions announced in December 1980 for the PCE deflator. A preliminary inspection suggests that the inflation rate of the PCE deflator in the new data is between 0.5 and 1.0 percentage points lower for each period shown since 1977. Because the CPI has not been revised, the difference between the two indexes has been further enlarged by the revisions.

The story of the two inflation indexes is a fascinating one, even for those whose eyes glaze over at talk of measurement procedures and who prefer to treat government economic data as unchallenged gospel. Since the CPI and PCE deflator are compiled from a common set of underlying price data by two different sets of rules, part of the tale involves the rules themselves, why the lead to different results, and why the CPI rules are widely believed to be inferior to those used in the PCE deflator. Another aspect involves the internal workings of the BLS, where staff bureaucrats have long urged the replacement of obsolete rules for the measurement of housing prices but were forced by political pressure to retain the old rules in the new version of the CPI introduced in 1978. A final and less-reported chapter involves the adequacy of the underlying price data that both the CPI and PCE deflator share in common. These form the basis for all economic measures of real economic progress, or the lack of it, including those that show a drastic slowdown in the growth of U.S. productivity in the last decade. Howe effectively do official procedures handle innumerable situations when a new model or product costs more than the item it replaces, but differs in quality as well? New radial tires last longer than the old bias-ply type, and recent-vintage television sets both perform better and need fewer repairs than their predecessors. But if price indexes are not adjusted adequately for these quality improvements, inflation is overstated and the improvement in our productivity and standard of living is understated.

A TWO-CLASS SOCIETY?

The CPI was first published by the BLS in 1919 to help set wage levels for workers in shipbuilding yards, and its use as a standard for wage increases has always been one of its main purposes. Currently about 8 million workers are covered by collective bargaining contracts that provide for increases in wage rates based on increases in the CPI, and these wages set a pattern that millions of other workers try to emulate. More recently, many types of government payments have been linked to the CPI. Among those who reap a windfall if the annual CPI increase is overstated are 31 million social security beneficiaries and 2.5 million retired military and Federal Civil Service employees and survivors. Others receive payments geared to a particular component of the CPI, especially 20 million food stamp recipients and 25 million children who eat federally subsidized school lunches. In all about half the population, including dependents is affected by changes in the CPI.

The use of escalator clauses has created a two-class society, separating those who are protected against inflation, legally or by contract, from those who are not. Steelworkers, Chicago bus drivers, and other union members enjoying generous escalator clauses have moved several steps up the relative income ladder at the expense of white-collar workers and others whose wages are not escalated. Social security recipients enjoyed a 14.4 percent boost in benefits in July 1980, as compared to an increase in the government's average hourly earnings index of only 9.2 percent in the year ending that month. Use of that earnings index rather than the CPI for escalation in 1980 would have reduced the federal deficit by about 8 billion.[1] Thus some of the much-discussed financial crisis of the Social Security System results from the use of the CPI for escalation purposes.

While adjustment of payments is the most tangible function of the CPI, there are two other uses which figure prominently in discussions of economic performance and policy. The first and most obvious is that the CPI itself is a readily available measure of inflation and serves as a widely-quoted verdict on the success or failure of economic policy. The second is that the individual CPI item indexes for pork gasoline, and other products are the sources of other price indexes. The CPI and PCE deflator displayed in Table I are both based on the same price-change data for pork and gasoline, but they combined these individual item indexes with different weights. Because the Commerce Department procedures put less weight on energy prices, which rose rapidly during the 1978–80 period (as well as no weight at all on mortgage interest rates), they yield a slower overall increase when the PCE deflator is added up. It is the PCE deflator, and the broader ''GNP deflator'' of which it is a major component, that allow the Commerce Department to translate data a current-dollar sales and personal income into quarterly estimates of real Gross National Product. The basic measure of the economy's productive performance.[2] Real GNP, in turn, is divided by BLS data on hours spent at work to yield data on the nation's hourly productivity.

THE EVER-CHANGING MARKET-BASKET

The CPI reports the price in any given month of a so-called ''fixed market-basket'' of commonly purchased items. Today's price of the market-basket is expressed relative to what the same items would have cost in 1967, the arbitrary ''base year'' of the index. As shown on the top line of Table II, the CPI was at a level of 251.7 in September 1980, indicating that items costing $10,000 in 1967 would have cost $25,170 if purchased in September 1980. Public attention tends to focus on recent changes in the CPI rather than on the cumulative change since 1967. Thus, newspaper reports do not highlight the index level of 251.7, but rather the change over the past year and month. In September 1980, the change in the CPI over the previous year registered 12.7 percent, and the change from August to September was 1.0 percent, usually expressed at an annual rate. The sense of panic that surrounded the Carter Administration's economic policy in March and April of 1980 was directly set off by three consecutive monthly CPI increases of 1.4 percent, or 18.2 percent when expressed as an annual rate.

[1] The actual social security increase was based on the CPI change in the twelve months ending in March, 1980.

[2] About two-thirds of Gross National Product consists of Personal Consumption Expenditures deflated by the PCE deflator. The other third consists of construction spending, business equipment purchases, government wages and purchases of goods, and the excess of exports over imports. Each of these other components has its own deflator based on a wide variety of data sources.

TABLE II.—A SAMPLE OF CPI ITEM INDEXES, SEPTEMBER 1980.[1]

| | Index Level (1967=100) | Percent change from September 1979 |
|---|---|---|
| All items | 251.7 | 12.7 |
| White bread | 219.6 | 9.4 |
| Sirloin Steak | 280.9 | 11.9 |
| Eggs | 179.9 | 5.4 |
| Potatoes | 313.2 | 57.2 |
| Roasted coffee | 426.1 | 0.0 |
| Whiskey | 137.6 | 6.7 |
| Residential rent | 195.1 | 9.0 |
| Contracted mortgage interest | 500.9 | 26.3 |
| Fuel oil | 585.4 | 21.3 |
| Telephone services | 137.0 | 3.5 |
| Television | 105.0 | 2.0 |
| Women's dresses | 168.5 | −1.5 |
| New cars | 181.7 | 9.4 |
| Airline fares | 310.3 | 44.9 |
| Hospital room | 428.4 | 13.8 |
| School books and supplies | 221.0 | 9.7 |

[1] Source: Consumer Price Index Detailed Report, September 1980.

The task of constructing the CPI involves (1) determining what people buy, (2) determining where they buy, and (3) determining what they pay for what they buy. The first task was carried out by the BLS and Census Bureau in 1972–74 and involved quarterly interviews with about 20,000 families and a survey of another 20,000 families who were asked to keep diaries of small, frequent purchases for two weeks. Because this effort of carrying out the Consumer Expenditure Survey is so complex and expensive, Congress is only willing to allocate funds for such a survey every decade. The previous Consumer Expenditure Survey had been carried out in 1960–61 and was the basis of the CPI until 1977. Thus in late 1977 the ''old CPI'' was based on expenditure data that were sixteen years out of date, and the ''new CPI'' introduced in 1978 was based on an expenditure survey that was already five years out of date.

Determining where people buy, so that the right amount of information might be collected from particular retail outlets, discount stores, and mail-order houses, was accomplished by a ''point-of-purchase'' survey of another 23,000 families in the early 1970s. This scientific basis for the collection of price data represents a substantial improvement on the arbitrary choices of outlets in the CPI for earlier years. With the allocation of individual items and retail outlets established by these various surveys, the month-to-month job of collecting the actual price quotations is carried out by BLS data collectors who have considerable latitude to choose the specific brands and types of goods to be priced each month within the general item definitions laid down by the central BLS office. An incredible total of one and a half million individual price quotations are obtained each year, of which 700,000 are for food, 100,000 are for rent and property taxes, and the remainder are for other items. Data sources, called ''reporters,'' include about 2,300 food store outlets, 18,000 rental units, 18,000 housing units, and 22,300 other sources.

THE IMPORTANCE OF WEIGHTING PROCEDURES

Every month the CPI publishes an overall index, summary indexes for major groups of items like food and apparel, and about 250 item indexes, a few of which are shown as examples in Table II. What is striking here is the wide variety of price increases registered by different items since 1967, ranging from 5 percent for television sets to 485 percent for fuel oil. Clearly the overall inflation rate registered by the CPI depends on how much weight is attached to each item. Someone who spends equal shares of his income on rent, TV sets, telephone calls, eggs, and whiskey, would have experienced a price increase since 1967 of only 51 percent, or a compounded rate of only 3.2 percent per

year. Someone else who spends equal shares on steak, potatoes, coffee, fuel oil, and mortgage interest, would have experienced an increase since 1967 of 321.3 percent, or a compounded rate of 11.7 percent per year. Since average hourly earnings increased by 7.5 percent over the same period, the first spending pattern would have allowed a substantial increase in real income, whereas the second pattern would have resulted in a drastic drop in real income.

Consumers are under constant pressure to shift their spending patterns to avoid goods that have unusually high price increases—for example, to reduce fuel usage in favor of wool sweaters, or to shift from coffee to whiskey. Any index like the CPI that uses fixed expenditure weights must exaggerate the inflation rate as compared to an index like the PCE deflator that uses current weights, since the CPI assigns relatively large weights to high-inflation items like fuel oil and coffee based on their shares in consumer expenditure in the ''good old days'' of 1972–73, before the consumer reaction against their increase in price. The fixed weights used in the CPI would not be an important defect if all products changed in price by roughly the same amount over long periods of time. But the large variety of price changes between 1967 and 1980 displayed by the index numbers for individual items in Table II has made the fixed-weight problem a source of upward bias in the CPI during the past three years, as obsolete weights magnify the high inflation rates of products like fuel oil.

How much of an exaggeration in the CPI's measured inflation rate is caused by this so-called ''substitution bias''? We do not learn the answer to this question by examining the massive differences between the CPI and PCE deflator displayed in Table I, since these are largely caused by other factors besides substitution. Instead, we can determine the contribution of consumer substitution away from high-inflation items by examining the effect of three different weighting schemes for the data used in the PCE deflator. The first is the scheme used in the published ''implicit PCE deflator'' itself. Table III shows an example of how the implicit PCE deflator would be calculated for a simple economy consisting only of spending on coffee and whiskey. Sections 1 and 2 exhibit prices and quantities in three different periods: the 1972 base period and two successive quarters in 1980. Section 3 multiplies price times quantity in each period to obtain actual expenditures. Section 4 then computes ''real'' expenditures in constant 1972 prices by multiplying the actual quantities purchased in each period by the constant prices of 1972.

THE CONSUMER PRICE INDEX AND INFLATION

Table III.—METHODS OF CALCULATING PRICE INDEXES (FOR A HYPOTHETICAL ECONOMY) [1]

| | 1972 | 1980 | |
|---|---|---|---|
| | | First quarter | Second quarter |
| THE HYPOTHETICAL ECONOMY | | | |
| 1. Prices: | | | |
| Coffee per pound | $1 | $4 | $5 |
| Whiskey per bottle | $5 | $5 | $5 |
| 2. Units sold: | | | |
| Pounds of coffee | 5 | 3 | 2 |
| Bottles of whiskey | 1 | 2 | 3 |
| 3. Actual expenditures: | | | |
| Coffee | $5 | $12 | $10 |
| Whiskey | $5 | $10 | $15 |
| Total | $10 | $22 | $25 |
| 4. Real expenditures in 1972 prices: | | | |
| Coffee | $5 | $3 | $2 |
| Whiskey | $5 | $10 | $15 |
| Total | $10 | $13 | $17 |
| THE EFFECTS ACCORDING TO THREE INDEXES | | | |
| 5. Implicit PCE deflator | 100 | 169 | 147 |
| 6. Chain index of 1980 change | ..... | ..... | 11.7 |
| 7. 1972 fixed-weight index | 100 | 250 | 300 |

[1] Notes: The implicit PCE deflator in section 5 is 100 times the ratio of total actual expenditures (section 3) to real expenditures (section 4).

The Chain Index in section 6 multiplies the price change for the second quarter of 1980 for each item (25 percent for coffee, zero for whiskey) by the average expenditures share of each product in both quarters of 1980 (22/47 and 24/47, respectively).

The Fixed-weight Index in line 7 multiplies the level of the item index for each period (100, 400, and 500 for coffee; 100 each period for whiskey) by that item's share in 1972 expenditures (50 percent for each product in this case).

The PCE deflator is simply defined as the ratio of actual expenditures to real expenditures, and this is written in section 5, along with the percentage change between periods. This extreme example reveals a defect of the PCE deflator, which uses weights that shift each period. The alteration in weights in successive periods causes the deflator to mix up the measurement of price changes with the effect of shifting weights. Thus, in the second quarter of 1980 the price of coffee increases by 25 percent, and the price of whiskey stays constant, but the PCE deflator registers a 13 percent decline in spite of the fact that no single price has dropped! Why? Expenditures in that quarter have shifted toward whiskey, which has had no price increase at all since the base year of 1972; thus the higher weight increases the influence of whiskey's cumulative absence of price change since 1972, which has nothing to do with actual inflation in 1980.[3]

How can we obtain the advantage of the up-to-date weights used in the PCE deflator without the deflator's disadvantage of mixing together price changes and weight changes? This is accomplished by the ''chain index,'' which is calculated by averaging together the changes in individual prices between and periods rather than by computing an index level as in the case of the implicit deflator. These individual changes are weighted by the average share of expenditures of each category in the two adjacent quarters taken together. In our example the increase in the chain index is 11.7 percent (shown in section 6), which makes intuitive sense as an average of the 25 percent increase in the price of coffee and the zero percent increase in the price of whiskey. (Since the share of expenditures on constant-price whiskey is a bit more than half in the two quarters, $25/$47, the chain index comes out showing a bit less of an increase than a simple unweighted average of 25 and zero).

Finally, the third alternatives is to combine the coffee and whiskey prices with fixed 1972 expenditure weights. This creates an index analogous to the CPI. As shown in section 7, the fixed-weight index yields a 20 percent price increase for the second quarter of 1980, reflecting the higher weight of coffee in 1972 spending patterns. In this extreme case the bias in the fixed-weight index stemming from consumer substitution is represented by the difference between the 20 percent increase in the index compared to the 11.7 percent increase in the chain index.

While real-world price changes vary all over the map, the relatively large share in spending of items experiencing roughly average price increases makes the problem of consumer substitution in the actual CPI less important than in our extreme example. This is shown in Table IV, which displays an array of price change indexes, ranging in order from the implicit PCE deflator in section 1 to the CPI itself in section 5. The five indexes here allow us to decompose the difference between the implicit PCE deflator and the CPI into three main factors. The chain index in section 2 differs from the implicit deflator in section 1 by eliminating the undesirable impact of changing weights, thus the difference between section 2 and section 1 shows the modest quantitative impact of shifting weights. Next, section 3 lists the PCE deflator recalculated with fixed 1972 weights. The difference between this fixed-weight version of the PCE deflator and the chain index in the section above shows the effect of consumer substitution away from items with rapidly rising prices. The difference is negligible in 1977 and 1978 but became magnified in 1979 and 1980, largely due to the over-weighting of energy prices in the fixed-weight index. Nevertheless, in the first half of 1980 shifting weights and the substitution effect together contributed only 0.8 out of the 4.4 percentage point difference between the Consumer Price Index and the implicit PCE deflator.

Table IV.—FIVE MEASURES OF INFLATION, 1977–80 [1]

[In percent]

| | Late 1976–77 | Late 1977–78 | Late 1978–79 | Late 1979–mid 1980 |
|---|---|---|---|---|
| 1. PCE deflator | 5.6 | 7.4 | 9.9 | 11.6 |
| 2. PCE deflator with ''chain weights'' | 6.0 | 7.8 | 10.3 | 11.9 |
| 3. PCE deflator with ''fixed weights'' | 5.9 | 7.9 | 10.7 | 12.4 |
| 4. CPI with PCE treatment of home ownership | 6.3 | 7.9 | 10.8 | 12.2 |
| 5. CPI | 6.8 | 9.0 | 13.3 | 16.0 |

[1] Source: Alan S. Blinder, ''The Consumer Price Index and the Measurement of Recent Inflation,'' Brookings Papers on Economic Activity, vol. 11 (1980, no. 2), Tables II, IV and VI.

Note.—CPI figures are for December through December, or December through June in the last column. PCE deflator figures are for fourth quarter through fourth quarter, or fourth quarter through second quarter in the last column.

ACCOUNTING FOR HOME OWNERSHIP

The bulk of the excessive inflation rate measured by the CPI can be explained by its bizarre treatment of home ownership. Section 4 displays a special version of the CPI that replaces the actual home ownership component by the PCE measure and weighting of home ownership cost. The difference between the actual CPI in section 5 and the special version in section 4 shows that the choice of home ownership treatment makes an enormous difference, a full 3.8 percentage points in the first half of 1980.

Far from being a source of higher prices, squeezed budgets, and falling living standards, most Americans have found home ownership to be a source of wealth creation and one of the few spots in the family budget that is largely insulated from inflation. The treatment of homeownership in the CPI makes the fatal error of treating the whole population as if it were in the predicament of a newlywed couple buying its first house. This unlucky pair, late arrivals on the housing inflation merry-go-round, over the past several years has indeed faced a substantial increase in the monthly payment required to own its first house. But the vast majority of home owners has been protected from these higher costs. Increases in home purchase prices for existing home owners are a source of higher wealth, and ''leverage'' (the small initial share of their down-payment equity) makes the value of their equity increase by a multiple of the percentage annual increase in house prices. Because income is properly defined as consumption plus the change in

[3] If the same example were recalculated for a deflator using a base of 1980, second quarter (rather than 1972), the result would be an increase in the deflator of 14 percent rather than a decline of 13 percent.

one's wealth, higher home prices by this definition also raise individual incomes. Increases in mortgage interest rates do not represent a higher cost for holders of existing mortgages, since most of these were negotiated at fixed interest rates. The monthly payment to the local savings bank is the same today as it was in the month of the first payment when the house was purchased two or five or fifteen years ago, and thus is a steadily falling proportion of annual earnings that allows the paycheck to be diverted to other needs. Home ownership has been a blessing—a source of wealth and six-figure balance sheets for many Americans—rather than the curse that the CPI's treatment would imply.

In Table V the housing component of the PCE deflator is compared with the various parts of the rent and home ownership component of the CPI. It is evident that the difference between the PCE and CPI treatments involves both the weights and the actual price increases registered by the individual components. The housing component represents 17.4 percent of the weight in the PCE deflator, as contrasted with the 30.2 percent weight for rent and home ownership together in the CPI. The increase in the PCE component in the year to September 1980 was only 9.0 percent, as compared to a weighted average of 15.4 percent for rent and home ownership together in the CPI. There are numerous weak points, both major and minor, in the CPI treatment of housing. The most important are (1) the overweighting of the home-purchase and mortgage-interest-rate components, (2) the treatment of existing mortgage contracts as involving variable rather than fixed rates, and (3) the failure to subtract from the higher home prices and mortgage rate the benefits that consumers receive from interest tax deductions and from the capital gains due to higher house prices.

Table V.—RENT AND HOME OWNERSHIP COSTS: CPI WEIGHTS AND PRICE INCREASES [1]

[In percent]

| Item | Weight in total index, December 1979 | Annual rate of change September 1979–September 1980 |
|---|---|---|
| A. PCE deflator housing component | 17.4 | 9.0 |
| B. CPI components: | | |
| 1. Residential rent | 5.3 | 9.0 |
| 2. Home ownership | 24.9 | 16.8 |
| Home purchase | 10.4 | 13.8 |
| Contractual mortgage interest cost | 8.7 | 21.8 |
| Property taxes | 1.7 | 3.5 |
| Property insurance | 0.6 | 13.6 |
| Maintenance and repairs | 3.4 | 9.0 |

[1] Sources: CPI: Same as Table II. PCE Deflator: Survey of Current Business, October 1980. PCE data refer to the quarter in which indicated month occurred.

1. Overweighting of home purchase prices and mortgage interest rates. Table V shows that the weight attached to mortgage interest is almost as large as that attached to home purchase. The CPI makes the incredible error of treating home purchase and mortgage interest payments as separate unrelated transactions; it counts the house price once as the weight for home price changes and then counts most of it again as the weight for changes in mortgage interest rates. This double-counting can be appreciated in an example involving a new home purchased for $40,000 in 1972, financed by a 20 percent down payment ($8,000) and a twenty-five-year $32,000 mortgage taken out at a typical 1972 interest rate of 7.5 percent.[4] The BLS procedure computes the weight for the purchase price component from the 1972–73 consumer expenditure survey based on purchases of newly constructed houses; if every survey respondent had annual consumption expenditures of $20,000, and 5 percent of them purchased a new $40,000 house, this would yield a weight for a home purchase of 10 percent. But that is not all. Fully half of the mortgage payments over the 25 year term ($26,429, in this case) is included as an additional expenditure, so that mortgage interest costs receive a weight of 6.6 percent in this example. A minimum requirement for consistency in the CPI should be that the weight on housing reflects the amount actually spent—$40,000 in this case. People do not buy houses and mortgages separately; they obtain mortgages so that they do not actually have to lay down $40,000 in cash!

2. Assumption of variable rates on all existing contracts. The CPI does not describe the housing-cost experience of actual U.S. homeowners but rather of a fictitious society in which the interest rate on all outstanding mortgages is renegotiated every month. Imagine that the average mortgage lasts 10 years, and that the mortgage rate has risen in the past decade from 5 to 15 percent at a pace of exactly one-twelfth of a percentage point every month. Then the average rate paid on outstanding contracts would be 10 percent. Now imagine that on January 1, 1981, the rate on mortgage closings suddenly jumps from 15 to 17 percent. The CPI uses the mortgage closing rate for the first five days of the previous month, and so in this example the mortgage component of the February 1981 CPI would show an increase of 13.3 percent. If all other items were increasing at an average of 1 percent per month, or 12.7 percent per year, this treatment of the mortgage interest rate would be enough to cause scare headlines, since the annual rate of increase of the all-items CPI in February would be 27.9 percent. But in truth, since a single month is initially involved and the average mortgage lasts for ten years, less than one percent of total mortgage payments are affected by the new rate. The average mortgage interest rate paid would change from 10.0 to 10.1 percent, for an increase of just one percent, exactly the same as the assumed increase in all other items. Scare headlines would be avoided, and the February announcement of the CPI would report an annual rate of increase of 12.7 rather than 27.9 percent.

3. Use of actual rather than real after-tax interest rate. Does a higher mortgage interest rate actually raise the true cost of borrowing, as assumed by the CPI? Not necessarily, because borrowing cost consists of the actual interest rate paid, less the percentage increase in the price of the item purchased with the borrowed funds, less any tax deductions for interest paid. Sensible home owners and business borrowers know that a 15 percent interest rate is not a suffocating burden if borrowing allows them to buy cheap now and sell dear later. In fact it is easy to show how an increase over a decade from a 5 to 15 percent mortgage rate actually could have reduced real borrowing costs. Imagine that over the same period the inflation increased from zero to 10 percent, and that the income tax rate remained fixed at 20 percent. Since all interest paid (not just the net-of-inflation part) is deductible, the real cost of borrowing can decline if inflation is high enough.

THE HOME-OWNERSHIP BLUNDER, AND HOW TO RIGHT IT

There are no defenders of the present treatment of home ownership costs in the CPI, which has remained essentially unchanged since 1953.[5] Yet year after year between 1977 and 1980 its damage grew as escalated union wages, government transfer payments, and the government deficit were pushed up. During the deliberations that led to the 1978 CPI revision, there was unanimous staff support in BLS for killing the present procedure. Yet the staff was overruled by the late Julius Shiskin, then Commissioner, who wrote that "I have decided that the present treatment will be continued . . . This decision is based on the fact that there is widespread disagreement among the business, labor, and Government advisers to the Bureau of Labor Statistics concerning the approaches to the cost of shelter proposal by the Office of Prices and Living Conditions."[6] One interpretation of this remark is that the last refuge of a bureaucrat faced with controversy is to retain the status quo. Another possibility is that the key word in Shiskin's letter is "labor," and that labor unions were unwilling to accept any tampering with the CPI that might jeopardize the privileged position that they had enjoyed during the 1973–74 high-inflation period thanks to their CPI-escalated contracts. In light of the fact that the Carter Administration bowed to union pressure on the issue of the minimum wage, it is not implausible that union pressure was behind Shiskin's decision. In any case there is no doubt that labor unions have been among the main beneficiaries of his vote for the status quo.

The two main candidates suggested by economists to replace the present treatment are the same as those proposed by the BLS staff during the 1972–77 deliberations on the CPI revision—the "user cost" and "rental equivalence" approaches. In fact, in an end run around its own index, the BLS now publishes five alternative versions of the CPI using different measures of home ownership cost. Of the five alternatives, four represent different ways of treating user-cost, and the fifth is based on the rental equivalence method. (It is the fifth alternative that is displayed on line 4 of Table IV.)

1. The user-cost of housing. Economists love to dazzle their students with "user cost" formulas of the type developed in the early 1960's by Harvard's Dale Jorgenson for the purpose of explaining business investment behavior. The aim is to come up with a figure to represent the amount for which a capital good could be rented. Unlike the present CPI approach, which is based on the current price paid for new houses by the small fraction of people who actually purchase them in a given year, the user-cost approach measures the current annual capital and operating cost of home ownership for everyone. User-cost formulas typically sum up the annual mortgage interest costs, plus the interest that would have been earned on the down payment if it had been invested in a financial asset, plus operating costs like taxes, insurance, and repairs, minus capital gains due to higher house prices, and minus tax deductions made possible by the payment of mortgage interest.

The basic problem with the user-cost approach is that there are several alternative ways of measuring the ingredients in the formula, especially interest rates, tax rates, and capital gains. Are capital gains to be

[4] This example is taken from the article by Alan Blinder cited in the note to Table IV.

[5] In January 1981 the BLS announced that "the much-criticized home-purchase component of the consumer price index will be deleted and will probably be replaced with an estimate for rents" (New York Times, January 29, 1981, p. 1). This announcement thus endorses the conclusion of this section (written before the announcement) that the "rental equivalence" method should have been used all along. Unfortunately, the change will not be made until 1985, so this section of the text remains relevant for the first half of this decade.

[6] Letter from Julius Shiskin to Lyle Gramley of the Council of Economic Advisers, April 15, 1977.

counted as those expected when the mortgage was taken out or those actually realized? Is the mortgage interest rate to be the current rate or an average of past rates? How is the personal tax rate relevant for mortgage interest deductions to be determined? The BLS provides four different measures of user cost to provide a menu of outcomes, and all of them display much more volatility than actual rent. If an economist's approximation of how much a house should rent for does not behave at all like actual observed rents, then that ought to be telling him something.

2. Rental equivalence. The idea of rental equivalence is simple and in fact is already used in the PCE deflator: Simply assume that the costs of home ownership moves in proportion to actual rents as measured by the CPI rent index, and apply a weight based on the estimated rental value of owner-occupied homes. Residential rent has increased more slowly than the average for other CPI items, and much more slowly than the present CPI home ownership component. Objections to the rental equivalence approach center around the fact that most single-family homes are not rented, and so the rental information collected by the CPI may not reflect hypothetical rents of single-family homes. Nevertheless landlords face the same interest costs as home owners and enjoy roughly the same tax deductions and capital gains. The fact that actual rents exhibit more gradual changes than hypothetical user-cost measures does not necessarily imply an error but rather reflects the tendency for prices of physical goods and services to adjust more slowly to changing conditions than prices of financial assets. Just as a company's stock price typically jumps around much more than the prices of the things it sells, so housing prices and interest rates jump around more than the rental value of houses. This makes sense in the case of rent, since changes in current mortgage interest rates do not actually affect landlords who have long-term fixed-rate mortgages, and changes in current capital gains have no impact (except on paper wealth) if the building is going to be held over a long period rather than sold at today's price.

Since the rental equivalence method is appealing, why not just adopt it? Use of rent data for the CPI home ownership component would justify expanding the sample of rent information to include more single-family houses. I suspect that much of the resistance to the rent approach stems from a belief that rent data are tainted, since rents have been rising so much less rapidly than the cost of construction (95 percent vs. 192 percent, respectively, between 1967 and 1980). But there is an economic reason for this divergence. My parents recall renting a house in Berkeley, California, in 1938 for $65 per month that was also for sale at the same time for $7,500. The house now would sell for $250,000 but could not rent for $2,167 a month (an equivalent percentage of sale price). In fact, a rent below $1,000 would be typical for the kind of house in the current Berkeley rental market. Why? Landlords and home owners renting out their homes no longer have to recoup all of their cash mortgage interest and operating expenses from rent, since likely taxed capital gains and tax deductions on mortgage interest now pay part of the bill. Thus the slow increase in rents is not a fiction, but reflects economic reality.

ACCOUNTING FOR CHANGING QUALITY

Up to this point all of the issues have involved differences between the CPI and PCE deflator. But now we turn to the question of the changing quality of products, where both indexes are on the same footing because they use the same underlying price figures obtained by the BLS data collectors. When a new model of a product is introduced that contains one or more extra features, part of its higher price may be explained by its higher quality. The gradual acquisition of higher quality goods has been an important source of a rising standard of living for Americans, and so we must make sure that adequate adjustments are made for the fraction of price increases that actually represent higher quality.

Quality change poses a problem for the CPI, which attempts to measure changes in the price of goods and services in a fixed market basket. The apparently straightforward task of collecting information on the price of a fixed set of goods is continually complicated by the fact that some goods go out of existence to be replaced by new models or new products. The issue of quality adjustments involves precisely how and when the new models are introduced into the overall index.

Over its history the CPI market basket has continually changed, providing an interesting—though usually out-of-date—commentary on social history. From 1918 to 1940, the CPI index that covered shaving was the price of a barber shave, and then switched in 1940 to the safety-razor blade, despite the fact that safety razors had largely replaced other barber shaves in the 1920's. From 1940 to 1952 the index item was the blade, joined from 1952 to 1964 by shaving cream, followed from 1964 to 1977 by the shaving cream alone, followed since 1977 by a combination of dental and shaving toiletry products. Since 1964 there has been no blade in the CPI, and thus no consideration of the new world opened up for most men by the invention of the double-edged blade in the early 1970's.

Other products have come and gone as well. In 1940 the index dropped not only barbershop shaves, but also high button shoes, men's nightshirts, and girls' cotton bloomers. The 1953 revision eliminated salt pork and laundry bar soap but added televisions, frozen foods, Coca-Cola, and whiskey. Pajamas, which had replaced nightshirts in 1940, themselves disappeared in 1964, leaving only sheets and blankets to cover the sleeping American male. Appendectomies also disappeared in 1964, the year funeral services were added. Among the new product categories introduced in the 1978 revision were pet supplies and expenses, indoor sports equipment, tranquilizers, and electronic pocket calculators.

How are new models and products introduced into the CPI? There are three main methods.

1. Direct comparison. When a quality change is considered to be ''small,'' in the judgment of BLS staff members, it is neglected. All of the observed price change would be recorded as a change in the CPI item index, with no adjustment for quality change. If we assume that most model change-overs involve quality improvements, the direct comparison method imparts an upward bias to the CPI—that is, causes it to register too much inflation.

2. Linking. When the BLS staff members assess the quality change as too important to be ignored, then they introduce a linking procedure. This effectively imputes to the product whose quality changed the price movement of similar goods whose quality did not change. Let us imagine that an old-fashioned cotton sheet selling for $5.00 is replaced by a polyester permanent press sheet selling for $8.00 which lasts twice as long. The CPI linking procedure pays no attention to increased durability, but simply replaces the observed price increase by the actual price increase of other unchanged items in the same ''household linens category.''

3. Cost data. In some cases the BLS obtains the cost of the quality change directly from the manufacturer. First, staff members must determine whether a change claimed by the manufacturer to improve quality actually does so. The criterion for the judgment is whether the change improves the value of the product for the user. (Several years ago the BLS would not include a change by an auto manufacturer from a dial to digital clock on the grounds that this change did not increase the ''user value'' of the automobile.) The value of those quality changes that are not disallowed is based on the manufacturer's estimate of the extra cost involved in making the higher-quality item. This procedure is obviously subject to the flaw that the manufacturer may overstate the cost of the quality improvement in order to disguise a portion of actual price increases, particularly in a period in which government price controls or guidelines are attempting to hold a lid on prices. This source of error would tend to bias the CPI downward and cause it to register too little inflation.

The automobile is the only product which is given the full-blown cost-adjustment treatment. Every September several BLS officials travel to Detroit to consult with the major manufacturers in order to identify those specification changes on new models for which adjustments must be made. If a producer has introduced a new, heavier bumper, whether on its own initiative or to comply with federal safety regulations, the firm is asked to supply an estimate of the difference in the cost of producing the new bumper as compared to the old bumper. This difference in cost is then subtracted from the reported price increase of the new model automobile.

Because the BLS devotes so much more attention to automobiles than to other products, there is a chance that the recorded differences between the inflation rates registered by autos and other products may reflect differing quality-adjustment procedures rather than a true difference in price behavior. For instance, between 1972 and 1978 the measured price of automobiles went up 27 percent, but the price indexes for other types of moving mechanical equipment like tractors and construction machinery (part of the Producers' Price Index compiled by the BLS) increased by about 80 percent.

PRODUCT PRICE CYCLES AND INCREASED PERFORMANCE

The typical product, whether automobiles in the 1920's, TV sets in the 1950's, or electronic calculators in the 1970's, experiences after its invention an initial period of declining price, as its manufacturers spread the fixed cost of its development over more and more units sold. Then, as a product becomes ''mature,'' there is less opportunity for efficiency gains to cancel out increased wages and other costs, so prices begin to rise. Three aspects of CPI procedures cause it to understate quality improvements and to overstate price change. First, the use of obsolete weights from decade-old expenditure surveys tends to place too little weight on modern products where price increases are relatively slow—this ''consumer substitution'' problem was examined above. Second, new models and products are typically introduced into the index much later than the date when their sales volume becomes important. And finally, the linking procedure, by far the most common quality-adjustment technique used by the BLS, tends both to treat new products as if they were mature products and to ignore performance improvements.

The long intervals between CPI revisions, and the officially sanctioned tendency for data collectors to cling to existing models

until they disappear from the marketplace, imply that items with declining prices are typically absent from the index. Albert Rees, who in 1960 performed a fascinating comparison of BLS item indexes with price data for the same products from mail-order catalogues, recalls with amusement a visit with a store owner to identify the particular model cooking pot that was then being priced by a BLS field representative. ''Oh, you mean this old model up here on the top shelf. We never sell these any more,'' answered the store owner, ''but that BLS field representative keeps asking us for its price.''

More important are the new products that enter the CPI late in the product price cycle. The United States became a motorized society in the 1920's and 1930's, when there was an enormous improvement in the performance of automobiles along with a decline in their price—but the automobile was not included in the CPI until 1940. Penicillin entered the CPI in 1951, after it had already experienced a 99 percent decline from its initial price. The pocket calculator entered the CPI in 1978, after it had declined in price about 90 percent from early 1970–71 models and about 98 percent from the price of a comparable electromechanical desk calculator of the 1960's.

The linking procedure misses quality improvements for two reasons. First, as in the cotton sheet example, the price change is taken to be identical to other items in the sample product group that remain unchanged in quality. But these are likely to be mature products experiencing price increases, whereas the item that is improved in quality is more likely to be in the early stage of its product cycle. Perhaps more important, the CPI ignores changes in performance that tend to accompany model changes. In the cotton sheet example, the new sheet lasts twice as long. Since consumers presumably are buying years of service from long-lasting items like sheets, the CPI treatment ignores the lower price of a ''sheet-year,'' since the service life in the example is assumed to double while the price only increases by 60 percent. (It is a sign of the times that many goods like sheets and draperies are officially classified as ''nondurable'' yet actually last longer than many ''durable'' goods.)

The most striking fact about the treatment of quality change in the CPI is that it is inconsistent with its own stated objective, which is to adjust for changes in quality when they improve the value of a product to the user. In the sheet example and in many others there is no attempt to measure the change in product performance. Consumers value sheet-years, motor-oil-miles, and tire-miles, rather than sheets, quarts of motor oil, and tires independent of their durability. F. Lee Moore has calculated that between 1935 and 1978 the price of tires per mile of tire-life declined by 9 percent, in contrast to an increase in the CPI tire index of 140 percent. Over the same period, the price of motor oil per mile declined by 52 percent as compared to an increase in the CPI of 234 percent.[7] There are other examples of improved performance that are missed by the CPI's attention to ''price per item'' instead of ''price per service desired by the user.'' Among these are the increased service life of light bulbs, spark plugs, and appliances.

Our previous discussion of the user cost of housing can be applied more broadly to any good which lasts a significant length of time. Consumers care about the total annual operating costs of automobiles and appliances having a given level of performance, not purchase price alone. Auto manufacturers have diverted development efforts from the old concentration on styling and tailfins to a new obsession with increased fuel efficiency. Yet there is no procedure in the CPI to adjust for improvements in automobile fuel efficiency.[8] A lab at M.I.T. several years ago studied the repair records of appliances and found that the frequency of refrigerator repairs had dropped by a factor of two, and TV repairs by a factor of four, between the mid 1950's and early 1970's.

In a study that makes al lowances for improved electricity efficiency and other characteristics, I have estimated that the quality-adjusted prices of refrigerators, washing machines, and air conditioners declined at about twice the rate registered by the CPI between 1950 and the mid 1960's.

Performance improvements are not just limited to goods, but also extend to services. That vanishing breed, the domestic household worker, now accomplishes more per hour with modern appliances and fabrics than her 1925 counterpart, yet her ''price'' is a straight hourly wage. The apparently outrageous increases in hospital room charges exhibited in Table II disguise improvements in the quality of medical care provided to the typical patient, and today's guest at a Holiday Inn or other medium-priced hotel enjoys telephone and television service that was unavailable to his luxury-hotel counterpart of 50 years ago. An airline passenger mile is a more comfortable, faster, and safer, commodity than it was in 1955, and yet the CPI prices a homogeneous passenger mile. There is no doubt that train service has deteriorated, but this is of minor importance in an index that keeps its weight up to date.

Of all products in the U.S. economy, the one displaying the faster rate of price decline throughout the entire postwar era has been the electronic computer. Yet the U.S. government does not compile a price index for computers, so that the output and productivity gains achieved by companies like IBM and the office machinery industry as a whole are not captured by aggregate indexes of output and productivity. This does not involve the CPI directly, because until recently few computers were sold directly to consumers. Government officials are quick to admit that IBM's output and productivity achievements are missed in official data in the year the computers are manufactured, but they claim that the higher efficiency made possible by computers is accurately captured when they are used in subsequent years in the production of consumer goods. This position is partly true, since the use of computers to replace workers in consumer-goods factories has contributed to measured productivity advances.

Yet for a wide variety of consumer services the CPI is not capturing the improvements that the computer has provided. On many airlines computers make possible pre-reserved seats and one-stop check-in, and airline managements were willing to invest in computerized equipment in the belief that consumers should value the extra services provided. Yet the CPI does not value the extra services, treats an airline passenger-mile as an unchanged commodity, and leaves the impression in our national data that the investment in the extra computer has produced nothing. The same point applies to 24-hour money machines provided on street corners by banks, and other financial services. It is doubtful that the world-wide convenience made possible by major credit cards would have occurred without the computer, yet the CPI ignores the saving of time and fees by consumers who no longer have to purchase so many travelers checks and letters of credit.

Even the much-criticized U.S. government has been a source of an unmeasured improvement in our standard of living. For 25 years we paid an increased gasoline excise tax, treated by the CPI as an increase in the price of gasoline, in order to finance construction of the interstate highway system. Automobile travel is now faster and safer, but this government activity is treated as having only costs, with no benefits.

The interstate highway example is interesting because it conflicts with a controversial decision that treats anti-pollution and safety devices on automobiles in the CPI as an increase in quality rather than an increase in price. Government environmental and safety legislation is treated as having wisely balanced the cost of the devices against the benefits received by the nation as a whole in reduced pollution and greater safety, in contrast to the interstate highway case where benefits are ignored. If government regulatory efforts, like most economic activities, are subject to increasing costs and diminishing benefits as more and more of the pollution is eliminated, then the CPI treatment may have been conservative a decade ago, in the early stages of regulation, but overly generous recently. The growing consensus that many recent government regulations do not provide benefits to balance their costs would imply that, at least for this one reason, the Consumer Price Index understates inflation.

As we plunge further into the murky depths of index-making, at some point we leave the realm of the statistician and enter the realm of the philosopher. Where do we draw the line between a new model of an old product and an entirely new product? The CPI states that the price of admission to movies increased 330 percent between 1948 and 1978. Yet the invention of television allowed the price of two hours of movie-like entertainment to decline substantially, even if we cancel out the agony of commercials against the saving in baby sitters, parking fees, and transportation expenses. A long list of such broadly conceived substitutions could be complied—permanent press clothing for commercial laundries, phone for mail, appliance for domestic servants.

### A BETTER INDEX

The CPI is a severely flawed index, as shown both by our comparison with the PCE deflator and our examination of the pervasive nature of unmeasured quality change. Yet it is striking that the BLS spent $50 million during 1972–77 to revise the CPI without curing any of its major defects. In a six-month overlap period in early 1978, the expensively revised ''new CPI'' registered an increase that differed from the ''old CPI'' by only 0.1 percentage point.

It seems clear in retrospect that the BLS spent its revision money on the wrong things, improving the number of outlets covered or the number of consumers surveyed rather than investing money in more rent data on single-family homes or on performance data for newly introduced models and products. What the CPI needs, in addition to the use of more up-to-date weights and a rental equivalence approach to the measurement of home ownership costs, is a vastly improved effort to measure the improved performance and efficiency of consumer goods and services, as well as the occasional decline in product quality. Much can be done with existing performance and efficiency data available from the published test reports of Consumers Union and other organizations, and in selective cases the BLS could

[7] F. Lee Moore, ''Index Mischief: Price versus Cost,'' *Electric Perspectives*, 1978, no. 5, pp. 8–27.

[8] In the case of automobiles the BLS has measured the price change on new downsized models as equal to models that are unchanged in size. This is the correct procedure if the fuel savings on the new models just balance the consumer value of the loss in comfort and performance, but not otherwise.

institute its own testing program or contract for tests from private organizations.

It is now 20 years since a committee headed by George Stigler recommended many of the same improvements in the CPI. It is discouraging that so little has been done by so many for so long. BLS officials tend to reject suggestions for a more imaginative approach to quality measurement as too ''subjective,'' when what is needed is a more frequent application of simple common sense. In the now-classic words of Martin Bronfenbrenner, addressed to the Stigler Committee in 1960, ''it is better to be imprecisely right than precisely wrong.'' And in an era in which each change in the CPI sets off a wave of redistributional adjustments, that observation is precisely right.

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## UNDERSTANDING THE CONSUMER PRICE INDEX: ANSWERS TO SOME QUESTIONS

### PREFACE

The continually growing uses and users of the Consumer Price Index (CPI) have generated an increasing number of questions about the CPI. Although the Bureau of Labor Statistics (BLS) has provided extensive material to the public describing the CPI since its 1987 revision, much of this material has been quite technical. BLS has developed this pamphlet, therefore, to (1) answer frequently asked questions about the CPI, (2) familiarize users of the CPI with some of the most important of the new procedures introduced with the 1987 CPI Revision, and (3) help users of the CPI better understand and use it.

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### WHAT IS THE CPI?

The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by urban consumers for a fixed market basket of consumer goods and services from A to Z. The CPI provides a way for consumers to compare what the market basket of goods and services costs this month with what the same market basket cost a month or a year ago.

### HOW IS THE CPI USED?

The Consumer Price Index affects nearly all Americans because of the many ways it is used. Three major uses are:

As an economic indicator: The CPI is the most widely used measure of inflation and is sometimes viewed as an indicator of the effectiveness of government economic policy. It provides information about price changes in the Nation's economy to government, business, labor, and other private citizens and is used by them as a guide to making economic decisions. In addition, the President, Congress, and the Federal Reserve Board use trends in the CPI to aid in formulating fiscal and monetary policies.

As a deflator of other economic series: The CPI and its components are used to adjust other economic series for price changes and to translate these series into inflation-free dollars. Examples of series adjusted by the CPI include retail sales, hourly and weekly earnings, and components of the national income and product accounts.

An interesting example of this is the use of the CPI as a deflator of the value of the consumer's dollar to find its purchasing power. The purchasing power of the consumer's dollar measures the change in the quantity of goods and services a dollar will buy at different dates. In other words, as prices increase, the purchasing power of the consumer's dollar declines.

As a means of adjusting dollar values: As inflation erodes consumers' purchasing power, the CPI is often used to adjust consumers' income payments, for example, Social Security; to adjust income eligibility levels for government assistance; and to automatically provide cost-off-living wage adjustments to millions of American workers.

The CPI affects the income of almost 70 million persons as a result of statutory action: 43.1 million Social Security beneficiaries, about 22.6 million food stamp recipients, and about 3.9 million military and Federal Civil Service retirees and survivors. Changes in the CPI also affect the cost of lunches for 24.2 million children who eat lunch at school, while collective bargaining agreements that tie wages to the CPI cover about 2.8 million workers.

Another example of how dollar values may be adjusted is the use of the CPI to adjust the Federal income tax structure. These adjustments prevent inflation-induced increases in tax rates, an effect called ''bracket creep.''

### IS THE CPI A COST-OF-LIVING INDEX?

No, although it frequently and mistakenly is called a cost-of-living index. The CPI is an index of price change only. It does not reflect the changes in buying or consumption patterns that consumers probably would make to adjust to relative price changes. For example, if the price of beef increases more rapidly than other meats, shoppers may shift their purchases away from beef to pork, poultry, or fish. If the charges for household energy increase more rapidly than for other items, households may buy more insulation and consume less fuel. The CPI does not reflect this substitution among items as a cost-of-living index would. Rather, the CPI assumes the purchase of the same market basket, in the same fixed proportion (or weight) month after month. About every 10 years the market basket is thoroughly updated to allow for the introduction of new products and services and to reflect more current spending patterns. (See question 6.) In addition, the CPI does not reflect taxes that are not directly associated with the purchase of specific goods and services. In other words, the CPI excludes taxes such as income and Social Security taxes.

It is important to note that local area CPI's cannot be used to compare levels of living costs or prices between areas. (See answer to question 17: ''Can the CPI's for individual areas be used to compare living costs among the areas?'')

### WHOSE BUYING HABITS DOES THE CPI REFLECT?

The CPI reflects spending patterns for each of two population groups: All urban Consumers (CPI–U) and Urban Wage Earners and Clerical Workers (CPI–W). The CPI–U represents about 80 percent of the total U.S. population. It is based on the expenditures reported by almost all urban residents, including professional employees, the self-employed, the poor, the unemployed, and retired persons as well as urban wage earners and clerical workers. Not included in the index are the spending patterns of persons living outside urban areas, farm families, persons in the Armed Forces, and those in institutions (such as prisons and mental hospitals).

The CPI–W is based on the expenditures of urban households that meet additional requirements: More than one-half of the household's income must come from clerical or wage occupations and at least one of the household's earners must have been employed for at least 37 weeks during the previous 12 months. The CPI–W's population represents about 32 percent of the total U.S. population and is a subset, or part, of the CPI–U's populations.

### DOES THE CPI MEASURE MY EXPERIENCE WITH PRICE CHANGE?

Not necessarily. It is important to understand that BLS bases the market baskets and pricing procedures for the CPI–U and CPI–W on the experience of the relevant average household, not on any specific family or individual. It is unlikely that your experience will correspond precisely with either the national indexes or those for specific cities or regions.

For example, if you or your family spend a larger than average share of your budget on medical expenses, and medical care costs are increasing more rapidly than other items in the CPI market basket, your personal rate of inflation (or experience with price change) may exceed the CPI. Conversely, if you heat your home with solar energy, and fuel prices are rising more rapidly than other items, you may experience less inflation than the general population.

This phenomenon explains why people sometimes question the accuracy of the published indexes. A national average reflects all the ups and downs of millions of individual price experiences. It seldom mirrors a particular consumer's experience.

### HOW IS THE CPI MARKET BASKET CHOSEN?

The CPI market basket is developed from detailed expenditure information provided by families and individuals on what they actually bought. For the current CPI, this information was collected from the Consumer Expenditure Survey over the 3 years 1982, 1983, and 1984. In each of the 3 years, about 4,800 families, from around the country, provided information on their spending habits in a series of quarterly interviews. To collect information on frequently purchased items, such as food and personal care products, another 4,800 families in each of the 3 years kept diaries listing everything they bought during a 2-week period.

Altogether, about 29,000 individuals and families provided expenditure information for use in determining the importance, or weight, of each item in the index structure.

Due to time constraints, we used data from only the first 2 years of the Consumer Expenditure Survey to select the items to be priced. In addition, we update the sample of stores and service outlets in roughly 20 percent of the urban areas priced for the CPI each year. New items are introduced with these new samples.

### WHAT GOODS AND SERVICES DOES THE CPI COVER?

The CPI represents all goods and services purchased for consumption by urban households. We have classified all expenditure items into over 200 categories, arranged into 7 major groups. Major groups and examples of categories in each are as follows:

Food and beverages (cookies, cereals, cheese, coffee, chicken, beer and ale, restaurant meals); housing (residential rent, homeowners' costs, fuel oil, soaps and detergents, televisions, local telephone service); apparel and its upkeep (men's shirts, women's dresses, jewelry); transportation (airline fares, new and used cars, gasoline, car insurance); medical care (prescription drugs, eye care, physicians' services, hospital rooms); entertainment (newspapers, toys, musical instruments, admissions); and other goods and services (haircuts, college tuition, bank fees).

In addition, the CPI includes various user fees such as water and sewerage charges, auto registration fees, vehicle tolls, and so forth. Taxes that are directly associated with the prices or specific goods and services (such as sales and excise taxes) are also included. But, the CPI excludes taxes not directly associated with the purchase of

consumer goods and services (such as income and Social Security taxes).

The CPI does not include investment items (such as stocks, bonds, real estate, and life insurance). These items relate to savings and not day-to-day living expenses.

For each of the over 200 item categories, the Bureau has chosen samples of several hundred specific items within selected business establishments, using scientific statistical procedures, to represent the thousands of varieties available in the marketplace. For example, in a given supermarket, the Bureau may choose a plastic bag of golden delicious apples, U.S. extra fancy grade, weighing 4.4 pounds to represent the ''Apples'' category.

HOW ARE CPI PRICES COLLECTED AND REVIEWED?

Each month, Bureau of Labor Statistics (BLS) field representatives visit or call thousands of retail stores, service establishments, rental units, and doctors' offices, all over the United States to obtain price information on thousands of items in the CPI market basket. For the entire month they record the prices of about 90,000 items. These 90,000 prices represent a scientifically-selected sample of the prices of goods and services sold to urban consumers throughout the country.

During each call or visit, the field representative collects price data on a specific good or service that was precisely defined during an earlier visit. If the selected item is available, the field representative records its price. If the selected item is no longer available or if there have been changes in the quality or quantity (for example, eggs sold in packages of 8 when previously they had been sold by the dozen) of the good or service since the last time prices had been collected, the field representative selects a new item or records the quality change in the current item.

The recorded information is sent to the national office of BLS where commodity specialists who have detailed knowledge about the particular goods or services priced, review the data. The specialists check the data for accuracy and consistency and make any necessary corrections or adjustments. These can range from an adjustment for a change in the size or quantity of a packaged item to more complex adjustments based upon statistical analysis of the value of an item's features or quality. Thus, the commodity specialists strive to keep changes in the quality of items from affecting the CPI's measurement of price change.

HOW IS THE CPI CALCULATED?

The CPI is a product of a series of interrelated samples. First, using data from the 1980 Census of Population, BLS selects the urban areas from which prices are to be collected and chooses the housing units within each area that are eligible for use in the shelter component of the CPI. The Census of Population also provides the data which allows the assigning of the number of consumers represented by each area priced for the CPI. Next, another sample of about 24,000 families serves as the basis for a Point-of-Purchase survey that identifies the places where households purchase various types of goods and services.

Data from the Consumer Expenditure Survey conducted from 1982 through 1984, involving a national sample of almost 29,000 families, provided detailed information on their spending habits. This enabled BLS to construct the CPI market basket of goods and services and to assign each item in the market basket a weight or importance based on total family expenditures. The final stage in the sampling process is the selection of the specific detailed item to be priced in each outlet. This is done using a method called ''disaggregation.'' For example, BLS field representatives may be directed to price ''fresh whole milk.'' Through the disaggregation process, the field representative selects the specific kind of fresh whole milk that will be priced over time in the outlet. By this process, each kind of whole milk is assigned a probability, or weight, based on the quantity of it the store sells. If, for example, Vitamin D, homogenized milk in half-gallon containers makes up 70 percent of the sales of fresh whole milk, and the same milk in quart containers accounts for 10 percent of all whole milk sales, then the half-gallon container will be seven times more likely to be chosen than the quart container. After probabilities are assigned, one kind of milk is chosen by an objective selection process based on the theory of random sampling. The particular kind of milk that is selected by disaggregation will continue to be priced each month in the outlet.

To sum up, the price movement measurement (see question 8) is weighted by the importance of the item in the spending patterns of the appropriate population group. The combination of all these factors gives a weighted measurement of price change for all the items in all the outlets, in all the areas priced for the CPI.

HOW DO I READ OR INTERPRET AN INDEX?

An index is a tool that simplifies the measurement of movements in a numerical series. Most of the specific CPI indexes have a 1982–84 reference base. That is, we set the average index level (representing the average price level)—for the 36-month period covering the years 1982, 1983, and 1984—equal to 100. We measure changes in relation to that figure. An index of 110, for example, means there has been a 10-percent increase in price since the base period; similarly an index of 90 means a 10-percent decrease. Movements of the index from one date to another can be expressed as changes in index points (simply, the difference between index levels), but it is more useful to express the movements as percent changes. This is because index points are affected by the level of the index in relation to its base period, while percent changes are not.

In the following table, item A increased by half as many index points as item B. Yet, because of the different starting figures, both had the same percent change; that is, prices advanced at the same rate. On the other hand, items B and C show the same change in index points, but the percent change is much greater for item C because of its lower starting value.

We usually update reference base periods every 10 years or so to make it easier for people to relate changes in the CPI to other economic and cultural changes. We chose the 1982–84 period because it coincided with the time period of the CPI's expenditure weights.

| | Item A | Item B | Item C |
|---|---|---|---|
| Year I | 112.5 | 225.0 | 110.0 |
| Year II | 121.5 | 243.0 | 128.0 |
| Change in index points | 9.0 | 18.0 | 18.0 |
| Percent change | (1) | (2) | (3) |

[1] Item A: 9.0/112.5100=8.0
[2] Item B: 18.0/225.0100=8.0
[3] Item C: 18.0/110.0100=16.4

IS THE CPI THE BEST MEASURE OF INFLATION?

Inflation is the widespread and persistent increase in costs and prices over the Nation's entire price and cost structure, with expectations that the increase will continue to occur in the future.

Various techniques have been devised to measure different aspects of inflation. The CPI measures inflation as experienced by consumers in their day-to-day living expenses; the Producer Price Index (PPI) captures it at earlier stages of the production and marketing process; the Employment Cost Index (ECI) measures it in the labor market; the BLS' International Price Program measures it for imports and exports; and the Gross Domestic Product Deflator (GDP-Deflator) measures combine the experience with inflation of governments (Federal, State and local), businesses, and consumers. Finally, there are more specialized measures, such as measures of interest rates and measures of consumers' and business executives' expectations.

The ''best'' measure of inflation for a given application depends on the intended use of the data. The CPI is generally the best measure for adjusting payments to consumers when the intent is to allow them to purchase, at today's prices, the same market basket of consumer goods and services that they could purchase in an earlier reference period. It is also the best measure to use to translate retail sales and hourly or weekly earnings into real or inflation-free dollars.

WHICH INDEX IS THE ''OFFICIAL CPI'' REPORTED IN THE MEDIA?

Each month, BLS releases thousands of detailed CPI numbers to the press. However the press generally focuses on the broadest, most comprehensive CPI. This is known as ''the Consumer Price Index for All Urban Consumers (CPI–U) for the U.S. City Average for all Items, 1982–84 = 100.'' Often, the media will report some or all of the following:

a. the index level (for example, July 1992 = 140.5)

b. the 12-month percent change (for example, July 1991 to July 1992 = 3.2 percent).

c. the 1-month percent change on a seasonally adjusted basis (for example, from June 1992 to July 1992 = 0.1 percent).

d. the annual rate of percent change so far this year (for example, from December 1991 to July 1992 if the rate of increase over the first 7 months of the year continued for the full year, after the removal of seasonal influences, the rise would be 2.9 percent).

e. the annual rate based on the latest seasonally adjusted 1-month change. For example, if the June 1992 to July 1992 rate continued for a full 12 months, the rise, compounded, would be 1.7 percent.

WHAT INDEX SHOULD I USE FOR ESCALATION?

The decision to employ an escalation mechanism, as well as the choice of the most suitable index, is up to the user. When drafting the terms of an escalation provision for use in a contract to adjust future payments, both legal and statistical questions can arise. While BLS cannot help in any matters relating to legal questions, it does provide basic technical and statistical assistance to users who are developing indexing procedures.

Some examples of technical or statistical guidelines from BLS follow:

BLS strongly recommends using indexes unadjusted for seasonal variation (i.e., not seasonally adjusted indexes) for escalation. (See answer to question 14 for a further explanation of seasonally adjusted indexes and why we do not recommend seasonally adjusted indexes for use in escalation.)

BLS recommends using national or regional indexes for escalation due to the volatility of the local indexes. (See answer to question 15 for an explanation of this point).

If you have further questions, the Bureau has prepared a detailed report, Using the Consumer Price Index for Escalation. For copies write or call the nearest BLS regional office listed at the end of this report, or call (202)—606–7000.

WHEN SHOULD I USE SEASONALLY ADJUSTED DATA?

By using seasonally adjusted data, economic analysts and the media find it easier

to see the underlying trend in short-term price change. It is often difficult to tell from raw (unadjusted) statistics whether developments between any 2 months reflect changing economic conditions or only normal seasonal patterns. Therefore, many economic series, including the CPI, are seasonally adjusted to remove the effect of seasonal influences on the changes, thereby revealing the underlying trend. Seasonal influences are those that normally occur at the same time and in about the same magnitude every year. They include price movements resulting from changing climatic conditions, production cycles, model changeovers, and holidays. We re-estimate or revise seasonally adjusted indexes annually.

The unadjusted data reflect the actual prices consumers pay. Therefore, unadjusted data are appropriate for escalation purposes.

WHAT AREA INDEXES ARE PUBLISHED, AND HOW OFTEN?

Besides monthly publication of the national (or U.S. City Average) CPI–U and CPI–W, monthly indexes are also published for the four regions—Northeast, North Central, South, and West. Monthly indexes are also published for urban areas classified by population size—all metropolitan areas over 1.2 million, mid-sized metropolitan areas, small metropolitan areas, and all nonmetropolitan urban areas. Indexes also are available within each region cross-classified by area size. For the Northeast and West, however, some of the population-size classes are not available. BLS also publishes indexes for 29 local areas. These local area indexes are byproducts of the national CPI program. Each local index has a much smaller sample size than the national or regional indexes and is, therefore, subject to substantially more sampling and other measurement error. As a result, local area indexes are more volatile than the national or regional indexes, even though their long-term trends are similar. Therefore, BLS strongly urges users to consider adopting the national average (or regional) CPI's for use in their escalator clauses. If used with caution, local area CPI data can be used to illustrate and explain the impact of local economic conditions on consumers' experience with price change. Local area data are available on the following schedule:

We publsh five major metropolitan areas monthly: Chicago-Gary-Lake County. IL–IN–WI; Los Angeles-Anaheim-Riverside, CA; New York-Northern NJ-Long Island, NY–NJ–CT; Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD; San Francisco-Oakland-San Jose. CA.

Data for an addition 10 metropolitan areas are published every other month [on an odd (January, March, etc.) or even (February, April, etc.) month schedule] for the following areas:

Baltimore, MD—odd.
Houston, TX—even.
Boston-Lawrence-Salem, MA–NH—odd.
Miami-Fort Lauderdale, FL—odd.
Cleveland-Akron-Lorain, OH—odd.
Pittsburgh-Beaver Valley, PA—even.
Dallas-Fort Worth, TX—even.
St. Louis-East St. Louis, MO–IL—odd.
Detroit-Ann Arbor, MI—even.
Washington, DC–MD–VA—odd.

(Note: The designation even or odd refers to the month during which the area's price change is measured. Due to the time needed for processing, data are released 2 to 3 weeks into the following month.)

Data are published for another group of 12 metropolitan areas on a semiannual basis. These indexes, which refer to the arithmetic average for the 6-month periods from January through June and July through December, are published with release of the CPI for July and January, respectively, in August and February for: Anchorage, AK, Kansas City, MO–KS, Atlanta, GA, Milwaukee, WI, Buffalo-Niagara Falls, NY, Minneapolis-St. Paul, MN–WI, Cincinnati-Hamilton, OH–KY–IN, Portland-Vancouver, OR–WA, Denver-Boulder, CO, San Diego, CA, Honolulu, HI, Seattle-Tacoma, WA.

Finally, BLS recently began publication of CPI's for two metropolitan areas on an annual basis. These indexes represent the arithmetic averages for the 12-month period from January through December of each year. They are published with the release of the CPI for January, i.e., in February. These areas are: New Orleans, LA; Tampa-St. Petersburg-Clearwater, FL.

WHAT AREA CPI SHOULD I USE IF THERE IS NO CPI FOR THE AREA I LIVE IN?

Although the BLS can provide some guidance on this question, users must make the final decision.

As noted in the answers to Questions 13 and 15, BLS strongly urges the use of national or at least regional CPI's for use in escalator clauses. These indexes are more stable and subject to less sampling and other measurement error than local area indexes. They are, therefore, more statistically reliable.

CAN THE CPI'S FOR INDIVIDUAL AREAS BE USED TO COMPARE LIVING COSTS AMONG THE AREAS?

No, an individual area index measures how much prices have changed in that particular area over a specific time period. It does not show whether prices or living costs are higher or lower in that area relative to another. In general, both the market basket and relative prices of goods and services in the base period vary substantially across areas.

The following illustration shows that while Area B has higher prices than Area A, the price change in Area A has been greater than in Area B. The CPI measures the rates of change in prices rather than the level of prices.

| | Base period | | Current period | |
|---|---|---|---|---|
| | Price | Index | Price | Index |
| Area A | $0.30 | 100 | $0.55 | 183 |
| Area B | 0.60 | 100 | 0.90 | 150 |

WHAT TYPES OF DATA ARE PUBLISHED?

These are many types of data published as outputs from the CPI program. The most popular are indexes and percent changes. Requested less often are relative importance data (or relative expenditure weights), base conversion factors (to convert from one CPI reference base to another), seasonal factors (the monthly factors used to convert unadjusted indexes into seasonally adjusted indexes), and average food and energy prices. Index and price change data are available for the U.S. City Average (or national average), for various geographic areas (regions and metropolitan areas), for size classes of urban areas, and for cross-classifications of regions and size classes. Indexes for various groupings of items are available for all geographic areas and size classes.

There are individual indexes available for over 200 items (e.g., apples, men's shirts, airline fares), and over 120 different combinations of items (e.g., fruits and vegetables, food at home, food and beverages, and All items), at the national or U.S. City Average level. BLS classifies consumer items into seven major groups: food and beverages, housing, apparel and upkeep, transportation, medical care, entertainment, and other goods and services. Some indexes are available as far back as 1913.

Each month, indexes are published along with short-term percent changes, the latest 12-month change and, at the national item and group level, unadjusted and (where appropriate) seasonally adjusted percent changes (and seasonal factors), together with annualized rates of change. These annualized rates indicate what the rate of change would be for a 12-month period, if a price change measured for a shorter period continued for a full 12-months.

The answer to question 15 provides information about the areas and size classes for which indexes are published. For areas, we publish less detailed groupings of items than we do for the national level. The following table illustrates this point:

ALL ITEMS

| Baltimore, MD | U.S. city average |
|---|---|
| Food and beverages | Food and beverages. |
| Food | Food. |
| Food at home | Food at home. |
| Cereals and bakery products | Cereals and bakery products. |
| | Cereals and cereal products. |
| | Flour and prepared flour mixes. |
| | Cereal. |
| | Rice, pasta, and corn meal. |
| | Bakery products. |
| | White bread. |
| | Fresh other bread, biscuits, rolls, and muffins. |
| | Cookies, fresh cake and cupcakes. |
| | Other bakery products. |

Annual average indexes and percent changes for these groupings are published at the national and local levels.

Semiannual average indexes and percent changes for some of these groupings are also published.

Each month, we publish average price data for some food items items (for the U.S. and 4 regions) and for some energy items (for the U.S., 4 regions, 4 size-classes, 13 cross-classifications of regions and size-classes, and for 15 metropolitan areas).

WHAT ARE SOME LIMITATIONS OF THE INDEX?

The CPI is subject to both limitations in application and limitations in measurement.

Limitations of application

The CPI may not be applicable to all population groups. For example, it is designed to measure the experience with average price change of the U.S. urban population and, thus, may not accurately reflect the experience of rural residents. Also, the CPI does not provide data separately for the rate of inflation experienced by subgroups of the population, such as the elderly or the poor.

As noted in the answer to question 17, the CPI cannot be used to measure differences in price levels or living costs between one place and another; it measures only time-to-time changes in each place. A higher index for one area does not necessarily mean that prices are higher there than in another area with a lower index, it merely means that they have risen faster since their common base period.

The CPI cannot be used as a measure of total change in living costs, because changes in these costs are affected by such factors as changes in consumers' market baskets, social and environmental changes, and changes in income taxes, which the CPI does not include.

Limitations in measurement

Limitations in measurement can be grouped into two basic types, sampling errors and non-sampling errors.

Sampling errors: Since the CPI measures price change based on only a sample of items, the published indexes differ somewhat from what the results would be if actual records of all retail purchases by everyone in the index population could be used to compile the index. These estimating or sampling errors are limitations on the precise accuracy of the index, not mistakes in index calculation. The accuracy could be increased by using much larger samples, but the cost

would be multiplied. Most of those who have examined the index have found it to be sufficiently accurate for most of the practical uses made of it. The CPI program has developed measurements of sampling error.

Nonsampling errors: These errors occur from a variety of sources. Unlike sampling errors, they can cause persistent bias in the index measurement. They are caused by problems of price data collection, logistical lags in conducting surveys, difficulties in defining basic concepts and their operational implementation, and difficulties in handling the problems of quality change. Nonsampling errors can be far more hazardous to the accuracy of a price index than sampling error, per se. BLS expands much effort to minimize these errors. Highly trained personnel are relied on to insure comparability of quality of items compared from period to period (see answer to question 8.); collection procedures are extensively documented and recurring audits are conducted. The CPI program has started a program of continuous evaluation to identify needed improvements and has introduced improvements as their benefits were proven and as our budget permitted.

WILL THE CPI BE UPDATED OR REVISED IN THE FUTURE?

Yes. The CPI will need revisions as long as there are significant changes in consumer buying habits or shifts in population distribution or demographics. The Bureau, by developing annual Consumer Expenditure Surveys and Point-of-Purchase Surveys, has the flexibility to monitor changing buying habits in a timely and cost-efficient manner. In addition, the censuses conducted by the Department of Commerce provide information that permits us to adapt to shifts in the population distribution and other demographic factors at 10-year intervals.

As a matter of policy, BLS is continually researching improved statistical methods. Thus, even between major revisions, we are making further improvements to the CPI. For example, changes in children's day care and nursery school expenses, until recently, had been represented by changes in State and local minimum wages. The development of an adequate sample of day care providers and nursery school reporters enabled us to obtain prices for day care and nursery school services directly.

HOW CAN I GET CPI INFORMATION?

BLS furnishes CPI data to the public in a variety of methods and formats.

The Electronic News Release: This is the quickest. It is reachable electronically immediately at release time (which is approximately 2 weeks after the reference month) through the BLS News Release Service. A fee is charged for this service. Write to the Office of Publications and Special Studies, Bureau of Labor Statistics, 2 Massachusetts Avenue, NE, Washington, DC 20212–0001, or call (202) 606–5888.

Telephone: A wide range of summary CPI data are provided on a 24-hour recorded message, including key CPI numbers plus the next release date. Call (202) 606–STAT. Another recorded message, of less than 3 minutes, provides information about the U.S. and Washington All Items CPI's and the next release date. Call (202) 606–6994. Technical information is available, between 8:15 and 4:45 Eastern time, Monday through Friday, at (202) 606–7000. BLS Regional Offices also provide CPI information by telephone.

Mailgram: This arrives overnight. It is provided through the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22151. It costs $190 per year in the contiguous United States. It provides selected U.S. City Average CPI data.

Machine-readable form: A single magnetic tape which contains all current and historical CPI data is $95. Data diskettes are also available. These offer CPI–U and CPI–W indexes for the U.S. city average for 104 selected items, and All items indexes for 54 selected areas, for all months of the current year and the previous year. A single copy costs $38 and a 12-month subscription $290. These arrive about a week after the data are released. For information, write to the Office of Publications and Special Studies, Bureau of Labor Statistics, 2 Massachusetts Avenue, NE, Washington, DC 20212–0001 or call (202) 606–5886. Custom diskettes providing data requested by the user are also available. Call (202) 606–6968.

Free CPI Summary News Release: This 2-page release provides CPI–U and CPI–W indexes, 1-month and 12-month percent changes for 104 selected items for the U.S. city average, a brief analysis of recent CPI movement, and All items indexes for 36 selected areas and groupings of areas for available periods within the past 3 months, with their latest 12-month percent change. It arrives about 3 weeks after the release of the CPI. You can request that we add your name to this free mailing list by writing to the Office of Publications and Special Studies, Bureau of Labor Statistics, 2 Massachusetts Avenue, NE Washington, DC 20212–0001 or by calling (202) 606–STAT. BLS Regional Offices (see end of this brochure) also maintain free mailing lists for local and regional CPI information.

CPI Detailed Report: This is the Bureau's most comprehensive report on consumer prices. It is published monthly and costs $26 a year, $7 for a single copy. It can be ordered from: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. It includes text, statistical tables, graphs, and technical notes. Besides index data, the Detailed Report includes average prices for some food and energy items. It arrives 3–4 weeks after the release date.

Monthly Labor Review: The MLR provides selected CPI data included in a monthly summary of BLS data and occasional analytical articles and methodological descriptions too extensive for inclusion in the CPI Detailed Report. It can be ordered from: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. It costs $25 a year, $7 for a single copy.

Historical tables: These show all of the published indexes for each of the detailed CPI components listed in the CPI Detailed Report. They are available upon request. We impose fees for large requests. For information call (202) 606–7000.

Special publications: Various special publications are available upon request. Examples of these are: Relative Importance of Components in the Consumer Price Index, Using the CPI for Escalation, fact sheets like ''Rebasing the Consumer Price Index'' and associated conversion factors, and assorted checklists which describe the items eligible for pricing. For information call (202) 606–7000.

## TOWARD A MORE ACCURATE MEASURE OF THE COST OF LIVING

(Interim report to the Senate Finance Committee from the Advisory Commission To Study the Consumer Price Index, September 15, 1995)

SEPTEMBER 15, 1995.

Hon. WILLIAM V. ROTH, Jr., *Chairman,*
Hon. DANIEL P. MOYNIHAN, *Ranking Minority Member,*
*Committee on Finance, U.S. Senate, 211 Dirksen Senate Office Building, Washington, DC.*

DEAR SENATORS ROTH AND MOYNIHAN: The Advisory Commission to Study the Consumer Price Index herewith submits its Interim Report in accordance with its charter based on Senate Resolution 73, Section 11b.

Sincerely,

MICHAEL J. BOSKIN, *Chairman.*
ELLEN DULBERGER, *Member.*
ZVI GRILICHES, *Member.*
ROBERT J. GORDON, *Member.*
DALE JORGENSON, *Member.*

EXECUTIVE SUMMARY

1. The American economy is flexible and dynamic. New products are being introduced all the time and existing ones improved, while others leave the market. The relative prices of different goods and services changes frequently, in response to change in consumer tastes and income, and technological and other factors affecting cost. This makes constructing an accurate cost of living index more difficult than in a static economy.

2. Estimating a cost of living index requires assumptions, methodology, data gathering and index number construction. Biases can come from any of these areas.

3. The strength of the CPI is in the underlying simplicity of its concept: pricing a fixed (but representative) market basket of goods and services over time. Its weakness follows from the same conception: the ''fixed basket'' becomes less and less representative over time as consumers respond to price changes and new choices.

4. There are five categories of potential bias in using changes in the CPI as a measure of the change in the cost of living. 1) Substitution bias occurs because a fixed market basket fails to reflect the fact that consumers substitute relatively less for more expensive goods when relative prices change. 2) Outlet substitution bias occurs when shifts to lower price outlets are not properly handled. 3) Quality change bias occurs when improvements in the quality of products, such as greater energy efficiency or less need for repair, are measured inaccurately or not at all. 4) New product bias occurs when new products are not included in the market basket, or included only with a long lag. 5) Formula bias occurs when the method of aggregating from the many thousands of elementary products for which price quotations are obtained to a modest number of groups of goods is inappropriate. The report discusses and estimates the size of each of the potential sources of bias.

5. While the CPI is the best measure currently available, it is not a true cost of living index (this has been recognized by the Bureau of Labor Statistics for many years). Despite important BLS updates and improvements in the CPI, changes in the CPI have substantially overstated the actual rate of price inflation, by about 1.5% per annum recently. It is likely that a large bias also occurred looking back over at least the last couple of decades, perhaps longer, but we make no attempt to estimate its size.

6. Changes in the CPI will overstate changes in the true cost of living for the next few years. The Commission's interim best estimate of the size of the upward bias looking forward is 1.0% per year. The range of plausible values is 0.7% to 2.0%. The range of uncertainty is not symmetric. It is more likely that changes in the CPI have a larger than a smaller bias.

7. The upward bias programs into the federal budget an annual automatic real increase in indexed benefits and real tax cut.

8. CBO estimates that if the change in the CPI overstated the change in the cost of living by an average of 1% per year over the

next decade, this bias would contribute almost $140 billion to the deficit in 2005 and $634 billion to the national debt by then. The bias alone would be the fourth largest federal program, after social security, health care and defense.

9. Some have suggested that different groups in the population are likely to have faster or slower growth in their cost of living than recorded by changes in the CPI. We find no compelling evidence of this to date, in fact just the opposite, but further exploration of this issue is desirable.

10. In our final report we expect to have a more complete analysis and evaluation together with specific recommendations for procedures to improve and/or complement the CPI.

## I. INTRODUCTION [1]

Accurate measures of changes in the cost of living are among the most useful and important data necessary to evaluate economic performance. The change in the cost of living between two periods, for example 1975 and 1995, tells us how much income people would have needed in 1975, given the prices of goods and services available in that year, to be at least as well off as they are in 1995 given their income and the prices of goods and services available then. For example, if a family with a $45,000 income in 1995 would have needed $15,000 in 1975, the cost of living has tripled in the interim.

If the American economy was quite static, with very few new products introduced, very little quality improvement in existing products, little change in consumers' tastes, and very small and infrequent change in the relative prices of goods and services, measuring changes in the cost of living would be conceptually quite easy and its implementation a matter of technical detail and appropriate execution. Fortunately for the overwhelming majority of Americans, our economy is far more dynamic and flexible than that. New products are being introduced all the time and existing ones improved, while others leave the market. The relative prices of different goods and services change frequently, in response to changes in consumer taste and income, and technological and other factors affecting costs. Consumers in America have the benefit of a vast and growing array of goods and services from which to choose, unlike consumers in some other countries.

But because the economy is complex and dynamic is no reason to bemoan the greater difficulty in constructing an accurate cost of living index. Major improvements can and should be made to the various official statistics that are currently used as proxies for changes in the cost of living, such as the well-known Consumer Price Index (CPI).

The Consumer Price Index measures the cost of purchasing a fixed market basket of goods and services. Based on surveys of households from some base period, the index sets weights (expenditure shares) for different goods and services. The weights reflect average or representative shares for the groups surveyed.[2] Keeping these weights fixed through time, the CPI is then calculated by attempting to measure changes from one month to the next in prices of the same, or quite closely related, goods and services.

But through time consumption baskets change, in part because of changes in the relative prices of goods and services, and therefore the weights from the base period no longer reflect what consumers are actually purchasing. This failure to adjust for the changes in consumer behavior in response to relative price changes is called substitution bias. It is a necessary result of keeping the market basket fixed. Because the market basket is updated only every decade or so, as we get further away from the base period, there is more opportunity for relative prices to diverge from what they were in the base period, and for consumption baskets to change substantially.

Just as there are changes in what consumers purchase, there are also trends and changes in where purchases are made. In recent years, there has been a transformation of retailing. Superstores, discount stores, and the like now comprise a large and growing fraction of sales relative to a decade or two ago. As important as keeping up with the basket of goods that consumers actually purchase is keeping up with the outlets where they actually purchase them, so that the prices paid are accurately recorded. The current methodology suffers from an outlet substitution bias, which insufficiently takes into account the shift to discount outlets.

Many of the products sold today are dramatic improvements over their counterparts from years ago. They may be more durable and subject to less need for repair, more energy efficient; lighter; safer; etc. Sometimes, at least initially, a better quality product replacing its counterpart may cost more. Separating out how much of the price increase is due to quality change rather than actual inflation in the price of a standardized product is far from simple, but is necessary to obtain an accurate measure of the true increase in the cost of living. To the extent quality change is measured inaccurately or not at all, there is a quality change bias in the CPI.

The same is true with the introduction of new products, which have substantial value in and of themselves—not many of us would like to surrender our microwave ovens, radial tires, and VCR's—as well as the value of greater choice and opportunities opened up by the new products. To the extent new products are not included in the market basket, or included only with a long lag, there is a new product bias in the CPI.

Finally, in a dynamic, complex economy like the contemporary United States, there are literally many thousands of goods and services consumed. Price data are collected at a considerable level of disaggregation and how the price changes are aggregated into an overall index involves quite technical issues that can lead to a formula bias in the CPI.

Even if not federal program on either the outlay or revenue side of the budget was indexed, it would still be desirable to improve the quality of measures of the cost of living from the standpoint of providing citizens a better and more accurate estimate of what was actually going on in the economy, a way to compare current performance to our historical performance or to that of other countries. For example, the most commonly used measure of the standard of living is real income or output per person. To measure changes in real income requires the separation of nominal income changes from price changes. Obviously, that requires an accurate measure of price changes.

But numerous federal, state and local government programs and tax features are ''indexed'' for changes in the cost of living by the changes in the Consumer Price Index. The CPI is also used to index a large number of private sector contracts, including wages in collective bargaining agreements and rents, to name obvious examples that affect millions of Americans. Currently, slightly under one-third of total federal outlays, mostly in retirement programs, are directly indexed to changes in consumer prices. Several features of the individual income tax, including the tax brackets, are indexed; the individual income tax accounts for a little under half of federal revenues.

Congress indexed these outlay programs and tax rules in order to help insulate or protect the affected individuals from bearing the brunt of increases in the cost of living. Yet the Bureau of Labor Statistics, the agency responsible for compiling and presenting the Consumer Price Index, has explicitly stated for years that the CPI is not a cost of living index, presumably for some of the reasons mentioned above. If the Consumer Price Index as currently produced, and as likely to be produced over the next few years, is not an appropriate cost of living index for the task Congress had in mind, then it is desirable to consider alternative measures.

The consequences of changes in the Consumer Price Index overstating changes in the cost of living can be dramatic. For example, if use of the CPI is expected to overstate the increase in the cost of living by one percentage point per year over the next seven years, the national debt would be almost $300 billion greater in 2002 than if a corresponding correction were made in the indexing of outlays and revenues.

This interim report proceeds as follows: Section II discusses the historical and prospective budgetary implications of changes in the CPI overstating changes in the cost of living. Section III details why the CPI is not a true cost of living. Section III details why the CPI is not a true cost of living index and discusses several sources of bias. Section IV describes in greater detail the bias from quality change and new products. Section V introduces the issue of separate price indexes for different groups. The Conclusion summarizes the interim findings of the Commission.

## II. INDEXING THE FEDERAL BUDGET

The issue proposed for fiscal policy makers by an upward bias in the CPI has been stated with admirable clarity by the Congressional Budget Office (1994): The budgetary effect of any overestimate of changes in the cost of living highlights the possibility of a shift in the distribution of wealth. If the CPI has an upward bias, some federal programs would overcompensate for the effect of price changes on living standards, and wealth would be transferred from younger and future generations to current recipients of indexed federal programs—an effect that legislators may not have intended.[3]

Social Security is by far the most important of the federal outlays that are indexed to the CPI. However, Supplemental Security Income, Military Retirement, and Civil Service Retirement are significant programs that are similarly indexed. Other federal retirement programs, Railroad Retirement, veterans' compensation and pensions, and the Federal Employees' Compensation Act also contain provisions for indexing. The Economic Recovery Tax Act of 1981 indexed individual income tax brackets and the personal exemption to the CPI.

How important have the budgetary consequences of upward bias in the CPI been historically? Obviously, a precise answer to this question would require extended study, taking into account the timing of the bias, the parallel development of indexing provisions in specific federal outlays and revenues, and interest on the accumulation of debt that has resulted. An indication of the potential size of these effects can be inferred from one important historical example of one clearly identified source of bias. A careful study of this type, which focuses on the most important federal program affected by indexing, namely, social security benefits, has been conducted by the Office of Economic Policy (OEP) of the Department of the Treasury.

On February 25, 1983, the Bureau of Labor Statistics (BLS) introduced an important technical modification in the Consumer Price Index for All Urban Consumers (CPI–

Footnotes at end of article.

U). This altered the treatment of housing costs by shifting the costs for homeowners to a rental equivalent basis. The new treatment of housing costs was incorporated into the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), used to index social security benefits, in 1985.

The rental equivalent measure of housing costs was a conceptual improvement and has been retained in subsequent official publications. However, housing costs in preceding years employed a ''homeownership'' measure ''. . . based on house prices, mortgage interest rates, property taxes and insurance, and maintenance costs.''[4] The treatment of housing costs prior to 1983 was not modified in publishing the revised CPI–U, so that the new treatment of housing introduced a discrepancy in the conceptual basis for the CPI–U before and after 1983. Similarly, housing cots in the CPI–W prior to 1985 have not been modified.

BLS developed an ''experimental'' price index, CPI–U X1, based on a rental equivalent treatment of housing extending back to 1967. This provides the basis for the OEP assessment of bias in the CPI–W. The bias for 1975, the first year that social security was indexed to the CPI–W, was 1.1 percent. This bias mounted over subsequent years, reaching 6.5 percent by 1982 and then declining to 4.7 percent in 1984.[5]

Overpayments of social security benefits resulting from the bias in the CPI–W mounted through 1983, reaching a total of $7.1 billion or 7.1 percent of benefits paid in that year. These overpayments have resulted in a lower balance in the OASI trust fund and a larger federal deficit and debt. OEP estimates interest costs associated with these deficits at the rate of interest paid or projected to be paid on the OASI trust fund. Beginning in 1985 interest costs predominate in the total. In the current fiscal year the total cost is $16.7 billion, of which $12.6 billion is interest. The cumulative effect of just this one source of bias in the CPI–W via this one program on the federal debt amounts to $213.2 billion, as of 1995.

In summary, the BLS made two decisions in revising the treatment of housing costs in the CPI–W in 1985. The first decision was to change the treatment of housing costs to a rental equivalent basis beginning in January 1985. The second was not to revise the treatment of housing costs for 1984 and earlier years. As a consequence of these two decisions the level of the CPI–W is 4.7 percent above the CPI–U X1, a measure of the cost of living based on the same primary data sources and similar methodology, but with a consistent treatment of housing costs.

The increases in federal outlays resulting from the bias in the CPI–W cannot be justified as cost of living adjustments. These increases are the consequence of an inappropriate treatment of housing costs before 1985 and have resulted in large transfers to beneficiaries of the OASI program that are devoid of any economic rationale. The overpayments have continued up to the present, but are declining in importance. However, the resulting decline in the OASI trust fund continues to mount due to rising interest costs and now contributes more than two hundred billion dollars to the federal debt!

Of course, nobody would suggest retroactively undoing the overindexing due to this or any other source of bias. The point of this discussion is to demonstrate how important it is to correct biases in the CPI (in either direction) as quickly and fully as possible before their consequences mount, indeed compound.

What would be the effect of an upward bias in the CPI on future deficits? More than half of federal spending of $1.5 trillion is now attributable to entitlements and mandatory spending programs. In January 1995 the annual Congressional Budget Office (CBO) outlook for the economy and the federal budget showed that this proportion is projected to rise to almost two-thirds of federal spending during fiscal year 1998. Cost-of-living adjustments at a projected rate of 3.0 percent will contribute $43 billion to total spending on mandatory programs in that year and $80 billion in fiscal year 2000.[6] This is 6.8 percent of projected spending on mandatory programs in fiscal year 2000.

Testimony presented by the CBO to the Committee on Finance shows the impact of a hypothetical correction (reduction) of 0.5 percent in cost of living adjustments for fiscal years 1996–2000.[7] Federal outlays would decline by $13.3 billion in fiscal year 2000, while revenues would rise by $9.6 billion. The decline in debt service resulting from reduced deficits in fiscal years 1996–2000 would be $3.3 billion, yielding a total contribution to deficit reduction of $26.2 billion in fiscal year 2000.[8] This is more than ten percent of the deficit projected by CBO in that year.

The CBO has provided the Commission with projections of the impact of hypothetical corrections (reductions) of 0.5 and 1.0 percent in cost of living adjustments for fiscal years 1996–2005. With a reduction of 0.5 percent the total contribution to deficit reduction rises to $71.9 billion in 2005. Of this amount, an increase in revenue accounts for $21.9 billion and reductions in outlays, including debt service, amounts to $32.7 billion (of which debt service is $17.3 billion). The total reduction is almost seventeen percent of the projected deficit in 2005. The cumulative reduction in debt held by the public in 2005 is $319.6 billion or about 2.7 percent of the GDP projected for that year.

CBO projections for the impact of a hypothetical correction (reduction) in cost of living adjustments of 1.0 percent are, of course, even more dramatic. The total change in the deficit in the year 2005 is $139.1 billion. Federal revenues would be increased by $40.8 billion and federal outlays reduced by $98.3 billion, of the reduction in outlays $34.4 billion can be attributed to lower debt service and $63.9 billion to lower outlays on indexed programs. (See Appendix Figure A–1 for detail not reproducible in Record). The cumulative reduction in outstanding federal debt by 2005 is $634.3 billion. (See Appendix Figure A–2 for detail not reproducible in Record). This is almost 9.4 percent of the debt projected for that year and almost 5.5 percent of the GDP!

Stated differently, if the change in the CPI overstated the change in the cost of living by an average of 1% per year over this period, this bias alone would contribute almost $140 billion to the deficit in the year 2005. That is one-third the projected baseline deficit (which assumes no policy changes such as the current balanced budget proposals). More remarkably, the upward bias by itself would constitute the fourth largest federal outlay program, behind only social security, health care and defense!

In summary, an upward bias in the CPI would result in substantial overpayments to the beneficiaries of federal entitlements and mandatory spending programs. In addition, such a bias would reduce federal revenues by overindexing the individual income tax. In short, the upward bias programs into the federal budget every year an automatic, real increase in indexed benefits and a real tax cut. Correction of biases in the CPI, while designed to more accurately adjust benefits and taxes for true changes in the cost of living, would also contribute importantly to reductions in future federal budget deficits and the national debt. These reductions can be attributed to higher revenues, lower outlays, and less debt service. Lower outlays-cuts in indexed federal spending programs and reduced interest payments-account for over two-thirds of the long-run deficit reduction, while higher revenues account for the rest.

## III. THE CONSUMER PRICE INDEX AND A COST OF LIVING INDEX: MEASUREMENT ISSUES

A cost of living index is a comparison of the minimum expenditure required to achieve the same level of well-being (also known as welfare, utility, standard-of-living) across two different sets of prices. Most often it is thought of as a comparison between two points of time. As with any practical application of theory to index number production, estimating a cost of living index requires assumptions, a methodology, data gathering processes and index number construction.

There are two sets of potential biases in the CPI: biases relative to an ''ideal'' cost of living index and biases which arise within its own terms of reference. The strength of the CPI is in the underlying simplicity of its concept: pricing a fixed (but representative) market basket of goods and services over time. Its weakness follows from the same conception: the ''fixed basket'' becomes less and less representative over time as consumers respond to price changes and new choices.

Consumers respond to price changes by substituting away from products that have become more expensive and toward goods whose prices have declined relatively. As the world changes, they are faced with new choices in shopping outlets, varieties, and entirely new goods and services, and respond to these as well. These changes make the previous ''fixed basket'' increasingly irrelevant.

In trying to keep true to its concept in a rapidly changing world, the current CPI procedures encounter difficulties. Biases result when they ignore some of these changes such as the appearance of discounters, and also when they try to do something about them such as when items are rotated out of the sample and replaced with new items. Attempting to capture the changes in a way that tries to mimic the pricing of a ''fixed basket'' within a rather patchwork framework just cannot be done without introducing other problems into the resulting index. These different biases overlap and have been discussed under a number of headings: substitution bias; formula bias; outlet substitution bias; quality change; and new product bias.

The ''pure'' substitution bias is the easiest to illustrate. Consider a very stylized example, where we would like to compare an initial ''base'' period 1 and a subsequent period 2. For simplicity, consider a hypothetical situation where there are only two commodities: beef and chicken. In period 1, the prices per pound of beef and chicken are equal, at $1, and so are the quantities consumed, at 1 lb. Total expenditure is therefore $2. In period 2, beef is twice as expensive as chicken ($1.60 vs. $0.80 per pound), and much more chicken (2 lb.) than beef (0.8 lb.) is consumed, as the consumer substitutes the relatively less expensive chicken for beef. Total expenditure in period 2 is $2.88. The relevant data are presented in Table 1. How can we compare the two situations? Actually, there are several methods, each asking slightly different questions and therefore, not surprisingly, giving different answers.[9]

TABLE 1.—HYPOTHETICAL EXAMPLE OF SUBSTITUTION BIAS

| | Price in period 1 | Quantity in period 1 | Price in period 2 | Quantity in period 2 | Price relatives | | Relative weights | |
|---|---|---|---|---|---|---|---|---|
| | | | | | P2/P1 | P1/P2 | 1 | 2 |
| Beef | 1 | 1 | 1.6 | 0.8 | 1.6 | 0.63 | 0.5 | 0.43 |
| Chicken | 1 | 1 | 0.8 | 2.0 | 0.8 | 1.25 | 0.5 | 0.57 |

The simplest comparison is to ask ''How much more must I spend in my current situation (period 2) to purchase the same quantities that I purchased initially (in period 1)?'' [10] This is the question asked by the CPI. The price index for period 2 relative to period 1 uses the initial period 1 basket of consumption as the weights in the computation. To buy 1 lb. of beef and 1 lb. of chicken in period 2 costs $2.40. The price index for period 2 relative to period 1 is 1.20 (2.40/2.00), that is a 20% increase.

Intuitively, it is easy to understand why such a computation imparts an upward (substitution) bias to the measure of the change in the true cost of living. It assumes the consumer does not substitute (cheaper) chicken for beef. In the real world, as in the hypothetical example, consumers change their spending patterns in response to changes in relative prices and, hence, partially insulate themselves from price movements.

An alternative approach would be to ask the question ''How much more am I spending in my current situation (period 2) than I would have spent for the same goods and services at the prices that prevailed initially (in period 1)?'' [11] This price index compares expenditures in period 2 ($2.88) with what it would cost to buy the current (period 2) market basket at the initial prices ($0.80 for the beef plus $2.00 for the chicken equals $2.80). This price index is 1.03, that is only a 3% increase. This approach understates the rise in the true cost of living as it overstates substitution.

The idea of a cost of living index is not to keep the consumption basket fixed, but to allow for the substitution that follows relative price changes. The question answered by a true cost of living index is instead ''How much would we need to increase (or decrease) the initial (period 1) expenditure in order to keep the consumer just as well off in period 2?'' Such a question cannot be answered without knowing the consumer's preferences in more detail, but a very good approximation may be obtained by interpolating between the two answers (that arise from the different base periods). There are alternative ways of doing so, each involving a different mathematical formula. A commonly accepted approach is to use the geometric mean (the square root of the product) of the two answers.[12] In our example, this comes to 1.11, an 11% increase. By comparison, the CPI-type fixed base index contains an upward bias of 0.09 (1.20–1.11); thus, almost half of the increase in the CPI-type calculation is substitution bias.

How large are such substitution biases in the real world? That depends on how out of date the base period weights used in constructing the index are and on how much relative prices have changed in a consistent and permanent direction. If relative prices diverge over time and do not just fluctuate, there is a permanent bias in the standard fixed base formula. Since we have been experiencing various consistent price trends, the further one gets away from the base period (for which the weights are approximately correct), the larger the bias.

Most of the computations done for large groupings of commodities (relatively aggregated commodity levels) show small biases in the growth rates of the CPI, rising from about 0.15 percent per year in the first five years after new expenditure weights are introduced, to about 0.30 percent per year in the subsequent five years. These estimates are based on research covering the period 1982–91 and updated to 1993.[13] [14] The bias increases as average consumption patterns drift further away from what they were in the base period. Therefore, this bias may be expected to increase further in the next few years, perhaps to 0.40 percent per year, until the newly revised CPI is released in 1998. At that point, the weights will be shifted to reflect average consumer expenditures in 1993–5, (and will already be four years out of date!). Although the substitution bias will then decline for awhile, it will grow subsequently as prices and consumptions patterns drift away again from those in the new base period unless the BLS changes its procedures and moves toward some different index number formula with shifting weights.

These estimates may be low. They are based on computations using rather high level groupings (200 commodity subindexes) of the many underlying varieties and models of specific products and services and may miss some of the large substitutions that occur at the more detailed level. Indeed, one may interpret as additional evidence on this point, the results of a simulation experiment by BLS researchers which applied different index number formulae at the item, or ''elemental,'' level, for price changes in 1991–2 and yielded an estimate of the bias equal to 0.50 percent.[15]

Recognizing the continuously changing assortment of commodities in the market, the BLS improved its price measurement procedures in 1978. The improved procedure chooses items to be priced based on a probability sample and rotates these items on a staggered, five year cycle. The idea was laudable, but embedding it in a conceptually ''fixed-weight,'' ''fixed-basket'' index created unanticipated problems which have become known as ''formula'' bias.

In essence, the problem arises as the procedure exaggerates (gives too much importance to) the effect of short run variability of prices (such as items on sale). This bias was discovered and evaluated by BLS researchers and appears to be most important in seasonal items such as fruit and vegetables, but has apparently also affected the residential housing component of the index.[16] [17] The overall bias from this source has been estimated to be on the order of 0.50 percent per year. However, now that this formula bias is understood, procedures are being developed which will largely eliminate it when implemented.

While the formula bias in the CPI can, should and hopefully will be eliminated in the future, the problems of outlet and variety substitution are unlikely to diminish soon. Just as consumers change the goods they purchase in response to changes in relative prices as in the beef and chicken example, so do they change the location of where they make their purchases. The opening of a new discount store outlet may give consumers the opportunity to purchase a given good at a lower price than before. At present, the CPI procedures ignore such reductions that occur when consumers change outlets. However, if consumers cared only about obtaining goods at the lowest price, then we would observe all goods sold at the same price at all outlets. Instead, we observe low prices at discount stores and warehouse clubs at the same time as medium prices at supermarkets and higher prices at convenience stores. Evidently, consumers care not only about prices, but the level of services such as availability of clerks, wrapping services, and the distance between home and alternative outlets.

Current procedures in the CPI ignore price changes when consumers switch outlets. This incorporates into the CPI the implicit assumption that price differentials among outlets entirely reflect the differences in service quality. This approach would be legitimate if the economy stood still with a stable set of outlets providing alternative levels of service quality. However, there has been a continuous increase in the market share of discount stores as more efficient technologies of distribution allow low price outlets to expand while older, higher priced outlets have contracted and in some cases gone out of business. This shift in market share indicated that many consumers respond to price differentials and do not consider them to be fully offset by difference in service quality. Completely ignoring all differences in service quality by incorporating all such price reductions into the CPI would err in the opposite direction. Further research is required to disentangle true changes in prices from changes in service quality. This problem is analogous to the need to disentangle the changes in prices from changes in product quality.

Quality change and new goods present the most difficult problems for measurement. They include capturing the introduction of new products in a timely manner; making direct quality comparisons of new products with existing ones; making direct quality comparisons of new products with other products against which they compete (in other classification groupings such as a new drug and the surgical treatment it replaces); and capturing the combined impact of quality and substitution as these new products displace others within and across their classification grouping.

A full treatment of these issues reinforces the problem of focusing on the ''average'' or ''representative'' consumer. Different consumers have different tastes and time costs, and hence value the appearance of new outlets and new products differentially, with some (the majority) becoming better off with supermarkets and others losing out as the corner grocery store disappears. The CPI is not equipped to account for special characteristics of different consumers or groups of consumers.[18] [19] The following sections explore some of these problems.

There are still other issues that would in principle apply to obtaining a true cost of living index (COLI). Consider two examples: the negative effects of higher crime rates and the concommitant purchases of security devices and higher insurance premiums and the positive effects of improvements in information technology that permit a parent to work at home when a child is ill. Surely these would enter a calculation of ''the minimum expenditure necessary to be at least as well off.'' The Commission notes these considerations but is not prepared to quantify them at this time.

## IV. QUALITY CHANGE

The difficulty created by quality change in existing products, and by the introduction of

new products, is highlighted by returning to the definition of a cost of living index—a comparison between two time periods of the minimum expenditure required to achieve the same level of well-being. What does the ''same level'' mean when entirely new products are introduced that were unavailable in the first time period?

A pervasive phenomenon called the ''product cycle'' is critical in assessing the issue of new product bias in the CPI and applies as well to new models of existing products. A typical new product is introduced at a relatively high price with sales at a low volume. Soon improvements in manufacturing techniques and increasing sales allow prices to be reduced and quality to be improved. For instance, the VCR was introduced in the late 1970s at a price of $1,000 and with clumsy electromechanical controls; by the mid 1980s the price had fallen to $200 and the controls were electronic, with extensive preprogramming capabilities. Later on in the product cycle, the product will mature and eventually will increase in price more rapidly than the average product of its class. The sequence is easily visualized as a ''U''-shaped curve—the price of any given product relative to the consumer market basket starts high, then goes down, is flat for a while, and then goes back up. To the extent that the CPI over-weights mature products and underweights new products, it will tend to have an upward bias.

Our discussion of quality change and new product bias begins with a review of the methods used by the CPI to handle quality changes in existing products and then turns to problems posed by new products. The BLS has four different methods to cope with a model change for an existing product.

The ''direct comparison'' method treats all of the observed price change between the old model and the new model as a change in price and none as a change in quality. There is no necessary bias, because quality can decrease as well as increase. But in practice goods tend to undergo steady improvement, and often a better model is introduced with no change in price, causing the quality change to be missed entirely.

The ''deletion'' method makes no comparison at all between the prices of the old and new model. Instead, the weight attributable to this product is applied to the average price change of other products in the same commodity classification. To the extent that the deletion method is used, the CPI consists disproportionately of commodities of constant quality which may be further along in the product cycle.

The ''linking'' method can be used if the new and old model are sold simultaneously. In this case the price differential between the two models at the time of introduction of the new model can be used as an estimate of the value of the quality differential between the two models. Unfortunately, new models usually replace old models entirely, and the link prices are not observed. Also, a quality improvement in the new model can occur even if it costs less or the same as the old model, as in the case of the VCR where the price fell continuously while programming capability and reproduction quality improved.

The ''cost estimation'' method attempts to establish the cost of the extra attributes of the new model. Problems in practice with the costing method have been its infrequency of use, and the fact that it has been applied disproportionately in the case of automobiles relative to other products. This raises the possibility that there is a spurious upward ''drift'' in the price of other products relative to automobiles due to an uneven application of the costing method.

This list of method reveals at least two potential sources of upward bias, the use of the direct comparison method that does not address the quality issue at all, and the use of the deletion method that bases price change on models that are unchanged in quality and may be further along in the product cycle. A greater difficulty is that the CPI makes no attempt to create systematic estimates of the value of quality improvements which increase consumer welfare without raising the price of products. For instance, many consumer electronic products and household appliances have experienced a reduction in the incidence of repairs and in electricity use, and few if any of these improvements have been taken into account by the CPI.

The CPI uses only rarely an alternative methodology called the ''hedonic regression method'' for estimating the value of quality change. The hedonic approach can be viewed as an alternative method to manufacturers' cost estimates in making quality change adjustments. It assumes that the price of a product observed at a given time is a function of its quality characteristics, and it estimates the imputed prices of such characteristics by regressing the prices of different models of the product on their differing embodied quantities of characteristics. Thus the hedonic approach is less a new method than an alternative to cost estimates to be used when practical factors make it more suitable than the conventional method.

By their very nature hedonic indexes require large amounts of data. Given the thousands of separate products that are produced in any modern industrial society, the need to collect a full cross-section of data on each product presents an insurmountable obstacle to the full-blown adoption of the hedonic technique. Further, it is impossible to construct a hedonic index in the timely fashion required by the CPI, with its orientation to producing within a few weeks an estimate of month-to-month price changes that can never be revised. Accordingly, most hedonic studies have been retrospective and can be used to gauge the accuracy of individual components of the CPI rather than being used in the actual month-to-month construction of the CPI. This is one important reason to consider broadening the concept of the CPI to include both the current index dedicated to timely measures of month-to-month price changes, and a second supplementary index produced with a greater time lag, and subject to periodic revision, dedicated to accurate measurement of price changes over years and decades.

We turn now to the issue of new product bias. There is no debate regarding the reality of the product cycle, and nobody debates the fact that the CPI introduces products late, thus missing much of the price decline that typically happens in the first phase of the product cycle. For example, the microwave oven was introduced into the CPI in 1978 and the VCR and personal computer in 1987, years after they were first sold in the marketplace.

A second aspect of new product bias results from a narrow definition of a commodity. When a new product is finally introduced into the CPI, no comparison is made of the price and quality of the new product with the price and quality of an old product that performed the same function. For instance, people flock to rent videos, but the declining price of seeing a movie at home, as compared to going out to a theater, is not taken into account in the CPI. Similarly, the CPI missed the replacement of electric typewriters by electronic typewriters and then PCs with word-processing and spell-checking capability, or CD–ROM encyclopedias that cost far less than old-fashioned bound-book versions and eliminate many trips to the library. Inevitably, however, many new products embody genuinely new characteristics that have no previous counterpart. How does one value electronic mail that provides a new set of bonds and communication between parents and their children who are off at college?

This discussion of new products leads inevitably to deeper questions about changes in the standard of living of the average American. Positive changes made possible by consumer electronics need to be weighed against increasing crime rates that have forced some families to divert expenditures to burglar systems and security guards. The industrial revolution caused widespread air and water pollution, while numerous factors since the mid-1960s have caused a major decline in the presence of many types of contaminants in the air and water.[20]

How large is the bias in the CPI introduced by inadequate treatment of quality change, and by the problems created by new products? Estimates of bias vary widely by product, and there are examples of both positive and negative bias. For instance, one study found an upward bias in the CPI index of TV sets of six percent per year, of which almost half was due to the failure of the CPI to place a value on reduced repair incidence and electricity use. Most other studies of consumer durable have found an upward bias in the CPI, except in the case of new automobiles for the period since the late 1960s. As stated above, the automobile is a complex product in which many small improvements have been made over the years. Evaluating the negative quality change in the shift to smaller cars as against the substantial improvements in fuel economy (which are worth different amounts in different periods, depending on gasoline prices) is a complex task. However, there seems to be little doubt that the CPI index for used autos has been upward biased, as few if any adjustments for quality change were made to this index during much of the postwar period, and the price index for used autos drifts upward relative to new autos by an implausible amount.

Studies have found a downward bias in the CPI in two important areas. Prior to 1988, the CPI index for rental housing (which since 1983 has also been used for owner-occupied housing) did not take into account the deterioration in housing stock quality as a result of aging and depreciation. Clothing is another problematic area, where the difficult task of separating taste or fashion changes from quality changes, as well as a strong seasonal pattern in clothing prices, may have created a substantial downward bias in apparel prices.

Thus we find that studies point to substantial upward bias for some products, mainly consumer durables, but countervailing downward bias for several important categories, namely home rent and apparel. Further, the sources of bias shift over time. Since 1987 the BLS has made an attempt to adjust the prices of used cars for quality change, reducing or eliminating that previous source of upward bias. Going in the opposite direction, since 1988 the BLS has eliminated the downward bias due to the failure to take account of aging and depreciation in rental housing.

Nevertheless, it is likely that there is a substantial upward bias in the CPI, however hard it may be to measure, and much of this is likely to come from new products. Whatever invention we take—whether the automobile that allowed limitless flexibility in the time and destination of rapid transportation, or the jet plane and communications satellite that tied together people in far-flung nations, or the television and VCR that allowed almost any motion picture to enter the home, or the PC with CD–ROM that

promises ultimately to bring the Library of Congress into every home—these new developments have made human life better on a large scale.

In the concluding section of the interim report, we put forth estimates for the main categories of CPI bias, stated in the form of a ''point estimate'' and a range of uncertainty. In the category of quality change bias (excluding new product bias), we have chosen a relatively conservative point estimate of 0.2 percent per year. Existing studies of consumer durables, weighted by the share of consumer durables in total consumption, point to a bias of at least 0.3 percent per year. Our choice of 0.3 balances the effect of a possible downward bias in apparel against the likelihood that substantial quality change is missed in many areas of nondurable goods and services. Because we are more uncertain in the direction of a higher upward bias, our range of uncertainty for quality change is asymmetric, going from 0.2 to 0.6.

The most difficult question of all is to place a point estimate on new product bias. We have approached this question by carrying out the following thought experiment. Take the market basket of goods and services available in 1970 and labeled with 1970 prices. Take the market basket available in 1995 and labeled with today's prices. Ask the consumer, how much more income would you require to be as satisfied with the 1995 basket and prices as with the 1970 basket and prices? The CPI says 4 times as much income would be necessary, because the CPI has quadrupled since 1970. But that 1970 market basket has no VCRs, microwave ovens, or modern anti-ulcer drugs; its color TV sets break down all the time; and it refrigerators use a lot of electricity. Consumers forced to answer this question are going to miss many benefits of modern life and are not going to say that four times as much income would be necessary—maybe 3 times, maybe 3.5 times, but not 4 times. That is the ultimate test of new product bias in the CPI.

To translate this approach into an annual rate of change, an answer of ''3.5 times'' would imply an upward bias of 0.54 percent a year.[21] The commission has chosen to take a lower, more conservative point estimate of a new product bias of 0.3 percent per year, but to extend the range of uncertainly from 0.2 to 0.7 percent per year. We will attempt in our final report to assemble new evidence on this issue and to narrow the range of uncertainty.

## V. SEPARATE PRICE INDEXES?

In principle, if not practice, a separate cost of living index could be developed for each and every household based upon their actual consumption basket and prices paid. As noted above, the aggregate indexes use data reflecting representative consumers. Some have suggested that different groups in the population are likely to have faster or slower growth in their cost of living than recorded by changes in the CPI. We find no compelling evidence of this to date, and in fact two studies suggest that disaggregating by population group, for example by region or by age, would have little effect on measured changes in the cost of living.[22] Further, work on this subject remains to be done.

Beyond the different consumption baskets, it is important to understand our analysis of the sources of bias are applied to representative or average consumers. Some consumers will substitute more than others, and the substitution bias may be larger for some, smaller for others. Likewise, some are more likely to take advantage of discount outlets; others less so. Perhaps more importantly, the benefits of quality change and the introduction of new products may diffuse unevenly throughout the population. Some will quickly gain the benefits of cellular telephones, for example, while others may wait many years or decades or never use them. This is yet another reason why we have been very cautious in our point estimates for these particular sources of bias.

## VI. CONCLUSION

While the CPI is the best measure currently available, it is not a true cost of living index. It suffers, as do all price indices, from a variety of conceptual and practical problems as the vehicle for measuring changes in the cost of living. Despite important BLS updates and improvements in the Consumer Price Index, it is likely that changes in the CPI have substantially overstated the actual rate of price inflation. Moreover, revisions have not been carried out in a way that can provide an internally consistent series on the cost of living over an extended span of time. More importantly, changes in the Consumer Price Index are likely to continue to overstate the change in the true cost of living for the next few years. This overstatement will have important unintended consequences, including overindexing government outlays and tax rules and increasing the federal deficit and debt. If the intent of such indexing is to insulate recipients and taxpayers from changes in the cost of living, use of the Consumer Price Index has in the past, and will in the future, overcompensate (on average) for changes in the true cost of living.

Table 2 presents the Commission's evaluation of the biases in using changes in the Consumer Price Index as a measure of changes in the cost of living for the recent historical past (the last few years). It presents point estimates, and plausible ranges of values, for each of the five sources of potential bias as well as the overall bias. Our best judgment of the overstatement of the change in the cost of living embedded in changes in the CPI for this historical period is 1.5% per annum. It is likely that a large bias also occurred looking back over at least the last couple of decades, perhaps longer, but we make no attempt to estimate its size.

TABLE 2.—ESTIMATES OF RECENT HISTORICAL BIASES IN THE CPI

[Percent per annum]

| Source of bias | Estimate | Range |
|---|---|---|
| Substitution bias | 0.3 | 0.2–0.4 |
| Outlet bias | 0.2 | 0.1–0.3 |
| Formula bias | 0.5 | 0.3–0.7 |
| Quality change | 0.2 | 0.2–0.6 |
| New products | 0.3 | 0.2–0.7 |
| Total | 1.5 | 1.0–2.7 |

NB: Total bias assumed to be additive across types and independent of the level of inflation. See text.

A plausible range of values is 1.0% to 2.7% per annum. The point estimate of 1.5% includes 0.5% for formula bias, which is the technical problem in using methods that impart an upward bias in the movement from elementary or extremely disaggregated price quotations to broader commodity groups. The BLS is aware of this problem, and is moving to correct it. Hopefully, it will be eliminated quickly.

Excluding formula bias, the point estimate is 1.0% per annum, and the range is 0.7% to 2.0% per annum. Note that the range of uncertainty is not symmetric around our point estimate. It is far more likely that changes in the CPI have embedded a larger than a smaller bias. The range of potential upward bias is significantly larger because we have been conservative in our point estimates of the biases from the sources of quality change and new products. The conceptual issues involved in measuring these two sources of bias are even more difficult than the other sources, and the range of studies upon which to base such conclusions at this point is insufficient to support our ''best judgment'' as strongly as those for the other sources of bias. Hence, we have been especially cautious in these two areas.

Past is not necessarily prologue. What can we say about the likely sources of bias moving forward, as opposed to estimates of the biases looking back at recent history? We believe the substitution bias is likely to be as large or larger as in the recent past. It is likely that the substitution bias will drift up a little bit, perhaps to 0.4 %, until 1998 when the CPI will incorporate the new expenditure weights from the 1993–95 expenditure survey. Note that at that time the expenditure weights will still be four years out of date and thus much substitution may have already occurred. However, at that time it is likely that the substitution bias will decrease considerably, to no more than 0.2%. As time moves on, it will likely drift up again. So, even though the base year will be updated in 1998, it is likely that for several years the substitution bias will continue to be large then shrink for a short period before gradually drifting back up again by the turn of the century. Thus, a substitution bias on the order of 0.3% is likely to be a good approximation on average for the next decade, although not year by year.

Until and if procedures are changed, we expect the outlet substitution bias to be approximately 0.2% per year. As noted above, we believe the BLS has discovered, and is developing procedures to eliminate, the formula bias. Our estimate for the future of 0.0% assumes that the BLS will quickly and completely remove the formula bias. To the extent that methods are changed slowly or incompletely, a sizable formula bias will remain. Thus, again, the 0.0% is perhaps conservative, especially for the very short-run. Finally, our estimates for quality change and new products of 0.2% and 0.3%, which, as discussed above, we believe to be quite conservative, are likely to apply in the future as well.

TABLE 3.—ESTIMATES OF LIKELY FUTURE BIAS IN THE CPI

[Percent per annum]

| Source of bias | Estimate | Range |
|---|---|---|
| Substitution bias | 0.3 | 0.2–0.4 |
| Outlet bias | 0.2 | 0.1–0.3 |
| Formula bias | 0.0 | ..... |
| Quality change | 0.2 | 0.2–0.6 |
| New products | 0.3 | 0.2–0.7 |
| Total | 1.0 | 0.7–2.0 |

Assumes BLS quickly and completely fixes the problem. Will continue to be substantial until this occurs.

This brings our estimate of the upward bias of changes in the CPI as a measure of the change in the cost of living to 1.0% per year. However, the certainty that the Commission ascribes to alternative estimates clearly is greater the lower the estimate within the plausible range. For example, while 1.0% is our interim best estimate and likely to be conservative, we are even more certain that the lower end of our plausible range does not overstate the upward bias in the CPI.

These separate biases are approximately additive and likely to be independent of modest swings in the true inflation rate. Thus, a bias of 1% implies that when changes in the CPI show inflation rising from 3% to 5%, it is likely actually to be rising from 2% to 4%. Note the bias primarily affects the level, not the change, in the inflation rate. At very high rates of inflation, the bias may increase (one might assume greater outlet

and commodity substitution), but we currently have no evidence regarding this issue.

Figure 2 shows the compounding effect over time of such a bias on the index. While 1.0% may seem to be a small amount in any given year, cumulatively year after year it adds up to a sizable difference. [Figure 2 not reproducible in RECORD]

An additional word of caution is in order. This Commission has thus far relied primarily on studies already produced prior to the convening of the Commission, with a small amount of additional work that we have been able to commission in the two months since our inception. Thus, our judgments reported above are not much advanced beyond what was available in the three rounds of Senate Finance Committee Hearings earlier this year. Given the short time available to this Commission, there are many issues which we have not yet been able to explore adequately. While we expect the interim conclusions to hold up under further examination, they will also be subject to amendment as we proceed with our investigation.

In our final report we expect to have a more complete analysis and evaluation and will certainly have specific recommendations for procedures to improve and/or complement the CPI. It may be possible to implement some of these suggestions quickly, others may take considerable time and additional resources.

MEMBERS OF THE ADVISORY COMMISSION TO STUDY THE CONSUMER PRICE INDEX

Michael J. Boskin, Ph.D., Chairman, Tully M. Friedman Professor of Economics and Senior Fellow, Hoover Institution, Stanford University, Stanford, California.

Ellen R. Dulberger, Ph.D., Program Director IBM Global I/T Services Strategy and Economic Analysis, White Plains, New York.

Robert J. Gordon, Ph.D., Chairman, Department of Economics; and Stanley G. Harris, Professor in the Social Sciences, Northwestern University, Evanston, Illinois.

Zvi Griliches, Ph.D., Paul M. Warburg, Professor of Economics, Harvard University, Cambridge, Massachusetts.

Dale Jorgenson, Ph.D., Chairman, Department of Economics, and Frederic Eaton Abbe, Professor of Economics, Harvard University, Cambridge, Massachusetts.

FOOTNOTES

[1] We would like to thank the staffs of the Bureau of Labor Statistics, Congressional Research Staff and the Congressional Budget Office for valuable assistance and cooperation in the early stages of the Commission's work.

[2] The two most commonly used measures are the CPI–U and CPI–W. The former is for all urban consumers, roughly 80% of the population; the latter is for urban wage and clerical workers, about 32% of the population. Note that the expenditure shares may be quite different than the average for any particular household, and also on average for subgroups of the population. Also, the prices paid for some products may differ for some households from the prices actually sampled. In principle, if not practice, a separate cost of living index could be developed for each and every household based on their actual consumption basket and prices paid. The overall index is used to approximate this with the data reflecting representative consumers. Whether this is itself sufficiently misleading as to warrant separate price indexes for different population subgroups is discussed below.

[3] Congressional Budget Office (1994), ''Is the Growth of the CPI a Biased Measure of Changes in the Cost of Living?'' CBO Papers, Washington. Congress of the United States, October, p. 32.

[4] Robert Gillingham and Walter Lane, ''Changing the Treatment of Shelter Costs for Homeowners in the CPI,'' Monthly Labor Review, June 1982, p. 9.

[5] James Duggan, Robert Gillingham, and John Greenlees, ''Housing Bias in the CPI and its Effect on the Budget Deficit and the Social Security Trust Fund,'' Office of Economic Policy, U.S. Department of the Treasury, June 30, 1995, page 6.

[6] Congressional Budget Office, ''The Economic and Budget Outlook: Fiscal Years 1996–2000,'' Report to the Senate and House Committees on the Budget, Washington, Congress of the United States, January 1995, Table 2–8, p. 43.

[7] June O'Neill (1995), ''Prepared Statement,'' Consumer Price Index, Hearings before the Committee on Finance, U.S. Senate, 194th Congress, First Session, Washington, U.S.G.P.O., Table 1, p. 146.

[8] All CBO budget estimates are relative to CBO's January 1995 baseline and do not include the small adjust assumed in the out-years of the budget resolution.

[9] Each method has come to be named for its inventor. See below.

[10] This index is called the Laspeyres index.

[11] This index is called the Paasche index.

[12] This index is called the Fisher, or Fisher Ideal, index.

[13] A.M. Aizcorbe and P.C. Jackman, ''The Commodity Substitution Effect in CPI Data, 1982–91.'' Monthly Labor Review, U.S. Bureau of Labor Statistics, pp. 25–33 (December 1993).

[14] Updated by BLS for the Commission.

[15] B.R. Moulton, ''Basic components of the CPI: Estimation of Price Changes.'' Monthly Labor Review, U.S. Bureau of Labor Statistics, pp. 13–24 (December 1993).

[16] M. Reinsdorf, ''The Effect of Outlet Price Differentials in the U.S. Consumer Price Index,'' in Price Measurements and Their Uses, M.F. Foss, M.E. Manser and A.H. Young (eds), NBER Studies in Income and Wealth, Vol. 57, pp. 227–254 (1993).

[17] B.R. Moulton, ''Basic components of the CPI: Estimation of Price Changes,'' Monthly Labor Review, U.S. Bureau of Labor Statistics, pp. 13–24 (December 1993).

[18] Dale W. Jorgenson and Daniel T. Slesnick. ''Individual and Social Cost-of-Living Indexes.'' Price Level Measurement, W.E. Diewert and C. Montmarquette (eds.), Ottawa, Statistic Canada, pp. 241–336 (1983).

[19] F.M. Fisher and Zvi Griliches, ''Aggregate Price Indices, New Goods, and Generics,'' Quarterly Journal of Econometrics (1995).

[20] The CPI implicitly values the improvement in air quality made possible by mandated anti-pollution devices in automobiles, since it treats the cost of mandated anti-pollution and safety devices as an improvement in quality rather than an increase in price. However, the CPI is inconsistent, since a portion of the higher cost of electricity, steel, and other products is also due to environmental regulation, and the benefits of higher air and water quality made possible by regulation of products other than automobiles is not taken into account.

[21] An index that rises from 1.0 to 4.0 over 25 years exhibits a compound growth rate of 5.55 percent per year. An index that rises from 1.0 to 3.5 over 25 years exhibits a compound growth rate of 5.01 percent per year. The difference is 0.54 percent per year.

[22] See M. Boskin and M. Hurd, ''Indexing Social Security Benefits: A Separate Price Index for the Elderly,'' Public Finance Quarterly, Volume 13, Number 4, pp. 436–449 (October 1985); Dale W. Jorgenson and Daniel T. Slesnick, ''Individual and Social Cost-of-Living Indexes,'' Price Level Measurement, W.E. Diewert and C. Montmarquette (eds.), Ottawa, Statistics Canada, pp. 241–336 (1983). However, very preliminary unpublished work suggests that for the period 1982–91 the larger fraction of expenditures on out-of-pocket healthcare by the elderly combined with the more rapid rise in healthcare prices than overall prices for this period might lead to a slightly faster rise in a price index for the elderly. The rate of healthcare price inflation has slowed substantially of late, so it is unlikely this result will be reproduced for the mid-1990s.

[23] The bias is currently running at 1.5% per annum or more, in our best judgment. We do not estimate it year by year for this period but believe this estimate is close on average for the period. Figure 1 is for illustrative purposes only.

CHANGE IN DEFICIT IF ADJUSTMENT MADE FOR CPI OVERSTATEMENT (1 PERCENTAGE POINT LESS)

[In billions of dollars]

| | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|---|---|---|---|---|---|---|---|---|---|---|
| Change in Revenues[a] | −1.8 | −5.5 | −9.8 | −13.1 | −17.7 | −23.0 | −27.1 | −31.8 | −36.2 | −40.8 |
| Change in Outlays:. | | | | | | | | | | |
| Social Security/RR Retire | −2.6 | −6.2 | −10.1 | −14.1 | −18.4 | −22.8 | −27.4 | −29.2 | −37.8 | −43.6 |
| SSI | −0.2 | −0.5 | −0.8 | −1.2 | −1.9 | −2.1 | −2.9 | −3.6 | −4.3 | −5.1 |
| Civil Service Retirement | −0.2 | −0.7 | −1.1 | −1.5 | −1.9 | −2.4 | −2.9 | −3.4 | −3.9 | −4.5 |
| Military Retirement | [d] | −0.3 | −0.6 | −1.2 | −1.6 | −2.0 | −2.4 | −2.9 | −3.4 | −3.9 |
| Vets Comp & Pensions | −0.1 | −0.3 | −0.5 | −0.6 | −0.9 | −1.3 | −1.6 | −2.1 | −2.5 | −3.1 |
| EITC[a] | ([d]) | −0.5 | −1.1 | −1.8 | −2.4 | −3.1 | −3.9 | −4.7 | −5.4 | −6.2 |
| Other[b] | ([d]) | ([d]) | −0.1 | −0.1 | −0.1 | −0.1 | −0.1 | −0.1 | −0.1 | −0.1 |
| Offsets[c] | ([d]) | 0.1 | 0.2 | 0.4 | 0.7 | 1.0 | 1.4 | 1.8 | 2.3 | 2.7 |
| Total Outlay Change | −3.1 | −8.4 | −14.1 | −20.2 | −26.5 | −32.7 | −39.8 | −44.1 | −55.2 | −63.9 |
| Debt Service | −0.2 | −0.8 | −2.0 | −4.0 | −6.7 | −10.2 | −14.7 | −20.1 | −26.6 | −34.4 |
| Change in Deficit | −5.0 | −14.7 | −25.9 | −37.3 | −50.9 | −65.9 | −81.6 | −96.0 | −117.9 | −139.1 |

([a]) Estimates for 1996–2000 prepared by the Joint Committee on Taxation. CBO, based on the JCT model, has extrapolated projections for 2001–2005.
([b]) FECA, foreign service retirement, PHS retirement, and Coast Guard retirement.
([c]) Includes Medicare, Medicaid, and Food Stamp offsets to cuts in the Social Security COLA.
([d]) Less than $50 million.

Notes: CBO estimates that the CPI has probably grown faster than the cost of living by between 0.2 and 0.8 of a percentage point in recent years. For purposes of these calculations, though, CBO has assumed an adjustment of a full percentage point. Revenue increases are shown with a negative sign because they reduce the deficit.
Source: Congressional Budget Office.

[Memorandum as of September 28, 1995]

From: Harry C. Ballantyne

Subject: Estimated Long-Range Effects of Alternative Reductions in Automatic Benefit Increases—Information

The following table shows our estimates of the long-range effects of modifying the present-law calculation of all future automatic benefit increases by reducing each increase by one percentage point (or alternatively one-half of one percentage point) from the present-law increase, which is equal to the percentage increase in the CPI–W. The estimates are based on the assumption that the reduction would first be reflected in the next automatic benefit increase, for December 1995, or, alternatively, that the reduction would first be reflected in the automatic benefit increase for December 1996. The estimates are based on the intermediate assumptions in the 1995 Trustees Report and are shown for the combined OASI and DI Trust Funds.

| | Present law | Reduction of 1% effective December— | | Reduction of 0.5% effective December— | |
|---|---|---|---|---|---|
| | | 1995 | 1996 | 1995 | 1996 |
| Change in actuarial balance over next 75 years (percent) | ..... | 1.44 | 1.41 | 0.74 | 0.73 |
| Actuarial balance (percent) | −2.17 | −0.74 | −0.76 | −1.43 | −1.44 |
| Year of exhaustion | 2030 | 2049 | 2048 | 2036 | 2036 |
| First year in which outgo exceeds tax income | 2013 | 2018 | 2018 | 2015 | 2015 |
| Maximum trust fund ratio (percent) | 269 | 408 | 397 | 332 | 327 |
| Year Maximum ratio is reached | 2011 | 2015 | 2015 | 2014 | 2014 |

HARRY C. BALLANTYNE,
*Chief Actuary.*

## SOCIAL SECURITY TRUST FUNDS

Mr. CONRAD. Mr. President, earlier today Senator DOMENICI inserted in the RECORD a column by Charles Krauthammer that displays a fundamental misunderstanding of the operation of the Social Security trust funds and attacks my position on this issue. I ask unanimous consent that the response written by Senator DORGAN and me, which ran in the Washington Post on March 16, 1995, to correct the many factual and logical errors in Mr. Krauthammer's argument, also be published at an appropriate place in the RECORD.

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

[From the Washington Post, Mar. 16, 1995]

UNFAIR LOOTING

(By Byron L. Dorgan and Kent Conrad)

Charles Krauthammer's uninformed defense of an indefensible practice [''Social Security Trust Fund Whopper,'' oped, March 10] demonstrates that it is possible to be a celebrated pundit yet know nothing of the subject about which one is writing.

In attacking us for our position on the balanced-budget amendment, Krauthammer misses the mark by a country mile on two very important points. First, he insists incorrectly that ''Social Security is a pay-as-you-go system'' that ''produces a cash surplus'' because ''so many boomers are working today.'' Second, he ignores the fact that Social Security revenues were never meant to pay for expenses incurred in the federal operating budget. Missing both fundamental points undermines the credibility of Krauthammer's conclusions.

Here are the facts:

First, Social Security is not a pay-as-you-go system. If it were, Social Security benefits would exactly equal taxes, and there would be no surpluses. But there are. This year alone Social Security is running a $69 billion surplus.

Apparently, Krauthammer completely missed the 1983 Social Security Reform Act, which removed the system from a pay-as-you-go basis. In 1983 Congress recognized that in order to prepare for the future retirement needs of the baby boom generation, we should raise more money from payroll taxes now than is needed for current Social Security benefits. We did that because when the baby boomers retire, there will not be enough working Americans to cover Social Security benefits on a pay-as-you-go basis. We will need accumulated surpluses to pay these benefits.

Second, Social Security revenue is collected from the paychecks of working men and women in the form of a dedicated Social Security tax, deposited in a trust fund and invested in government securities. This regressive, burdensome tax (almost 73 percent of Americans who pay taxes pay more in social insurance taxes than in income taxes) isn't like other taxes. It has a specific use—retirement—as part of the contract this nation made 60 years ago with working Americans.

Because this tax is dedicated solely for working Americans' future retirement, it shouldn't be used either for balancing the operating budget or masking the size of the budget deficit. Krauthammer not only irresponsibly condones the use of the Social Security surpluses to do these things, he thinks we should enshrine this procedure in our Constitution.

He apparently does so because he doesn't understand the difference between balancing an operating budget and using dishonest accounting gimmicks to hide operating losses. To illustrate the difference and how it works to loot the Social Security trust funds, let's use an example a little closer to home for Krauthammer.

Assume that Krauthammer is paid a lucrative salary by The Washington Post, which puts part of the salary into a company retirement plan. Then let's assume The Washington Post comes upon hard times and starts losing money each year.

Here's where honesty matters. The Post has two choices. It could face up to its problems and move to balance its budget. Or it could follow Krauthammer's prescription and disguise its shortfall by raiding the employees' retirement fund to make it appear that the operating budget is balanced. Of course, the retirement fund would have nothing but IOUs in it when it comes time for Krauthammer to retire. At that point, even Krauthammer might recognize the fallacy of looting trust funds to pay operating expenses.

Absurd? Sure. But the flawed Republican balanced-budget amendment plan would in the same way keep on looting Social Security trust funds to balance the federal operating budget. Instead, we should take the honest course and begin the work now to bring our federal operating budget into balance without raiding the Social Security trust funds.

Contrary to Krauthammer's assertion, the only fraudulent point about this issue was his uninformed column.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The hour of 2 o'clock having arrived, morning business is now closed.

## JERUSALEM EMBASSY RELOCATION IMPLEMENTATION ACT OF 1995

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of Senate bill 1322, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1322) to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I am one of the original cosponsors of this legislation and would like to begin the discussion of the legislation until the majority leader and the chairman of the Senate Foreign Relations Committee have an opportunity to come to the floor and make their opening statements in support of S. 1322.

This is historic legislation. It is important legislation, for a variety of reasons that affect everyone in this body and, frankly, most of the people in this country. It is a strong statement of foreign policy implications. It is a strong statement in support of our longstanding relationship with the State of Israel.

I want to begin by describing briefly what the legislation would do and what the rationale for the legislation is. The bill begins by making a series of findings which report on the history of the status of Jerusalem, leading up to some conclusions of policy by the U.S. Government. Let me state those conclusions of policy first.

The bill provides that:

It is the policy of the United States that—

Jerusalem should remain an undivided city in which the rights of every ethnic religious group are protected;

Jerusalem should be recognized as the capital of the State of Israel; and

the United States Embassy in Israel should be relocated to Jerusalem no later than May 31, 1999.

The bill then goes on to provide a mechanism for the President to establish, to relocate the U.S. Embassy in Jerusalem, and that that process would be completed by May 31, 1999. The bill originally provided for a beginning date in 1996, but out of deference to concerns expressed by the State Department and the President and others, that particular provision was taken out of the bill, primarily because, of course, the key is the date that the Embassy is opened, not the date that we begin construction on a new Embassy or the conversion of the existing consulate into a new Embassy.

Let me now turn to the findings that are stated in this legislation and then discuss a little bit of the history of this particular matter:

Each sovereign nation, under international law and custom, may designate its own capital.

And that is the first finding that we make.

Since 1950, the city of Jerusalem has been the capital of the State of Israel.

The second finding.

[It is] the seat of Israel's President, Parliament, and Supreme Court, and the site of numerous government ministries and social and cultural institutions.

That is our third finding.

In No. 4 we make the point that:

The city of Jerusalem is the spiritual center of Judaism, and is also considered a holy city by the members of other religious faiths.

(5) From 1948–1967, Jerusalem was a divided city and Israeli citizens of all faiths as well as Jewish citizens of all states were denied access to holy sites in the area controlled [then] by Jordan.

The sixth finding of this legislation is that:

In 1967, the city of Jerusalem was reunited during the conflict known as the Six Day War.

Since 1967, Jerusalem has been a united city administered by Israel, and persons of all religious faiths have been guaranteed full access to holy sites within the city.

We make a point in finding No. 8 that:

This year marks the 28th consecutive year that Jerusalem has been administered as a unified city in which the rights of all faiths have been respected and protected.

We further find:

In 1990 the Congress unanimously adopted Senate Concurrent Resolution 106, which declares that the Congress, [and I am quoting from the resolution now] ''strongly believes that Jerusalem must remain an undivided city in which the rights of every ethnic religious group are protected.''

In finding No. 10 we make the point that:

In 1992, the United States Senate and House of Representatives unanimously adopted Senate Concurrent Resolution 113 of the One Hundred Second Congress to commemorate the 25th anniversary of the reunification of Jerusalem, and reaffirming congressional sentiment that Jerusalem must remain an undivided city.

Finding No. 11 is that:

The September 13, 1993, Declaration of Principles on Interim Self-Government Arrangements lays out a timetable for the resolution of ''final status'' issues, including Jerusalem.

No. 12 is that:

The agreement on the Gaza Strip and the Jericho Area was signed May 4, 1994, beginning the five-year transitional period laid out in the Declaration of Principles.

And further, in point No. 13, that:

In March of 1995, 93 members of the United States Senate signed a letter to the Secretary of State Warren Christopher encouraging ''planning to begin now'' for relocation of the United States Embassy to the city of Jerusalem.

The United States maintains its embassy in the functioning capital of every country in the world except in the case of our democratic friend and strategic ally, the State of Israel.

That is the 14th finding of this legislation.

The 15th finding is to note that:

The United States conducts official meetings and other business in the city of Jerusalem in de facto recognition of its status as the capital of Israel.

Finally and importantly we note that:

In 1996, the State of Israel will celebrate the 3,000th anniversary of the Jewish presence in Jerusalem since King David's entry.

And, therefore, as a result of these findings, as I say, we declare it to be the policy of the United States that:

Jerusalem should remain an undivided city,

[2] Jerusalem should be recognized as the capital of the State of Israel; and

[3] the United States Embassy in Israel should be relocated to Jerusalem no later than May 31, 1999.

As the mechanism for ensuring that this policy is adhered to, and that the Embassy is in fact opened on that date or before then, the Congress ensures that:

Not more than 50 percent of the funds appropriated to the Department of State for fiscal year 1999 for ''Acquisition and Maintenance of Buildings Abroad'' may be obligated until the Secretary of State determines and reports to the Congress that the United States Embassy in Jerusalem has officially opened.

So, Mr. President, that is the essence of this legislation. As I said, I think it represents an important milestone in the relationship between the United States and Israel, one of the strongest friends of the United States, but a State which has its capital in the city of Jerusalem and the United States Embassy in Tel Aviv. This legislation remedies that and ensures that the new Embassy will open by May 31, 1999, in Jerusalem.

Let me go into a little bit more of the history of this, in order to, I think, assure everyone of the reasons why this is so important and why we need to do it now. The United States Government has refused official recognition of Israeli sovereignty in Jerusalem for various reasons since Israel's inception, at first in line with the never implemented 1947 U.N. General Assembly partition recommendation for western Palestine. U.S. policy supported a special international status, corpus separatum, as it was called, for the city of Jerusalem. The impractical notion actually appealed to neither the Jews nor the Arabs, and in 1948, the Arab Legion conquered east Jerusalem, including the old city, as part of the general Arab military offensive to prevent Israel from coming into being. Israel retained control over west Jerusalem.

When east Jerusalem was under Arab rule, many Jews were prohibited from visiting their holy places and the synagogues in the old city were razed and Jewish burial places were desecrated.

In 1967, as Egypt and Syria moved again toward war with Israel, the Israel Government urged King Hussein of Jordan to sit out the fighting and promised the territories he controlled would be left alone if he did so. The King failed to heed the warning. He attacked Israel and, as we all know, in the ensuing fighting he lost east Jerusalem and the West Bank.

Israel, under the Labor Party leadership at the time, declared that Jerusalem will remain undivided forever, as Israel's capital, and all people will have free access to their holy places.

Since 1967, the policy and practice of the U.S. Government regarding Jerusalem has, unfortunately, been somewhat inconsistent.

United States officials have often explained our Government's unwillingness to recognize Israeli sovereignty over any of Jerusalem on the grounds that the city status should be resolved through Arab-Israeli negotiations, or at that particular moment in time it was difficult, if not a good thing to do, in view of the relationships existing between the parties at those times.

On the other hand, our Government has repeatedly said that we do not favor redivision of the city. Yet, the State Department makes a point of prohibiting United States officials from visiting east Jerusalem under Israeli auspices. In other words, for purposes of official visits of Jerusalem, the United States Government distinguishes between east and west Jerusalem. But as proposals have been made over the years to move the United States Embassy to west Jersualem—I note west Jerusalem and not east Jerusalem—the State Department refused on the grounds that we do not distinguish between east and west Jerusalem, and do not recognize anyone's sovereign claims to any of Jerusalem.

The only thing consistent about United States policy on Jerusalem, unfortunately, is its antagonism to Israel's claim there. In my view, this policy is unprincipled, notwithstanding the fact that on many occasions it was urged in support of positions on which we were supporting the Government of Israel. But I still believe, and I think one of the reasons for this legislation is, that the policy has not been viewed as principled, but rather entirely too pragmatic depending upon the circumstances of the time, and that view, in my personal opinion, is unworthy of the United States, and, frankly, as I will explain later, I believe unhelpful to the cause of peace.

Notwithstanding the several peace agreements that Israel has signed with its neighbors, Arab enemies of the Jewish state continue to insist that Israel is not legitimate, that it has no right to exist on what they deem to be Arab land. The international community, acting through the League of Nations and in the United Nations, based its acknowledgement of Jewish people's national rights in Palestine on the historical connection of the Jewish people with Palestine.

Though the long war against Zionism and Israel is now checked on the military level, it continues on the battlefield of ideas. That is why the actions of the United States with regard to a very tangible matter, the location of our Embassy, is so very, very important. It matters what position the United States takes in this battleground of ideas. And in this particular war, Israel's enemies have worked to not legitimize Israel, to deny the significance of the historical connection that I referred to before between the Jews and Zion, and to foster hope that someday Israel, perhaps then abandoned by its friends and exhausted by the unremitting hostility and violence of its foes, can be made to disappear, first as the Christian Crusaders of the Middle Ages wore worn down and ultimately expelled from the Holy Land.

The belief that Israel's friends are unreliable and Israel's resolve is weak is a major impediment to true Arab-Israeli peace. Unrealistic expectations on the part of Arab parties about Jerusalem make peace harder to achieve.

The Jerusalem Embassy relocation bill aims to close the question of United States support for Israel's rights in its own capital. I want to restate the point, Mr. President, because it is the critical reason why this legislation is brought before the U.S. Senate and the House of Representatives at this time. This bill, the Jerusalem Embassy relocation bill, aims to close the question of United States support for Israel's rights in its own capital. It aims at the heart of the legitimacy issue, for Jerusalem is the essence of the historical connection of the Jewish people with Palestine. The interest of peace, in my view, is not served by anyone thinking that Israel can be divided from the United States over the Jerusalem issue. It is an error to suppose the United States is more effective diplomatically when we pose as a neutral, honest broker between the Israelis and the Arabs seeking peace in the region.

U.S. influence does not derive from any claim of neutrality on our part in this particular conflict, although it is important that Arabs interested in peace understand the important bona fides of the United States in this question of peace. Rather, U.S. influence, I submit, derives from our status as a great power, the intensity of our worthy convictions, and our loyalty to our friends. And, if all three of those circumstances are well understood by all of the parties, it will be much easier for a true and lasting peace to be achieved, a peace which is so fragile that it can be jeopardized by the question of whether the United States should relocate its Embassy to west Jerusalem, a peace which is bound to fail on other grounds and, therefore, a peace not worth having. We want a lasting peace. The Israelis want a lasting peace. And I know that Arabs of good will want a lasting peace. And a lasting peace is based upon a bedrock of good faith and principles that are not inconsistent between the peacemaking parties.

If there are fundamental—fundamental—differences between the peacemaking parties, then the peace becomes too fragile to be sustained. And after thousands of years of conflict in this region, Mr. President, the people of this region deserve to have the opportunity to live in peace with each other as friends and under circumstances in which there is not always the cloud of uncertainty and even war and when there is not the cloud of danger in the streets which exists as it does today.

The many, many people of this body and the House of Representatives which support this legislation do so because we believe it will send a principled and constructive signal to all of the parties in the Arab-Israeli negotiations and establish the United States position in support of the State of Israel in clear and unmistakable terms.

Mr. President, before I turn the podium over, I want to acknowledge a couple of other points of view and some people who have been very instrumental in bringing this legislation forward.

The majority leader, Senator DOLE, has made stirring speeches in support of this legislation and believes in his heart that it is the best way to proceed in order to make the kind of statement that I spoke of a moment ago. And he is joined by all of the original cosponsors with that idea in mind.

There are other Members of this body who have worked very hard to develop the language that would be most satisfactory to the Members of this body as well as to the President and to his Cabinet. Senator LIEBERMAN from Connecticut is one of the people who has worked very long and hard to bring these ideas together and to try to achieve a very broad consensus so that when this legislation passes, it is with a broad bipartisan degree of support and, hopefully, the support of the administration as well.

Senator DIANNE FEINSTEIN, who is here, the Senator from California, and Senator LAUTENBERG from New Jersey have been engaged in meetings. They have to some degree a somewhat different point of view as to how this legislation will work out in terms of the negotiations that are currently pending between the Israelis and the Arabs in the region. But it is their desire, no less than mine and the other cosponsors, that we work toward the day when we can achieve the situation that this bill would achieve—namely, the relocation of the Embassy in Jerusalem.

So let there be no doubt that, though some Members of this body may have somewhat different views as to how best to achieve this objective, we are united in the objective, and we are determined to reach a point where the legislation can move forward with a strong bipartisan degree of consensus and eventually the support of the administration.

Mr. President, with that opening statement and with the desire that when Senator DOLE or Senator HELMS are able to come to the floor to make their opening statements in support of the bill, I would be happy to relinquish the floor at this time to someone on the other side who would wish to make a statement.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, first, let me stand and say that I support this legislation and intend to vote for it. I think it is very worthy legislation. I recognize the role that has been played by the Senator from Arizona, by Senator DOLE, by Senator FEINSTEIN, by Senator LIEBERMAN, by Senator LAUTENBERG, and some others. I think this is the right thing to do, and I will be voting for it.

Mr. President, two additional items. The comments made previously by the Senator from Arizona discussed votes that had been cast by Senator CONRAD any myself in previous budget issues. I shall not respond to them in this discussion. I will at some point later. But they are not at all related to the issue which we are discussing on the floor of the Senate. To change the subject of the debate, when it is the equivalent of getting lost and then claiming where you ended up was where you intended to be, is interesting but not, in my judgment, very useful.

So I will discuss that at some later point this afternoon when I take the floor.

I would want to say this, however. I intend to submit an amendment to the desk in a moment. It is a sense-of-the-Senate amendment on a subject unrelated to the central part of this bill, and I do it because it is the only opportunity I have to offer it prior to the reconciliation bill coming to the floor. I will agree to a very short time limit, 10 minutes, 5 on each side, or 10 on each side. I do want to get a vote. But it is my intention to offer it. It can be set aside as far as I am concerned and I will agree to a very brief time limit.

So, Mr. President, again, because circumstances prevented me in recent days from offering this sense-of-the-Senate amendment and because this is the only circumstance in which one can be offered, I would say to those who are worried about this holding up the bill, I do not intend to do that at all. I will agree to 5 minutes on each side, and we will no doubt have some votes at some point and I hope the Senate would express itself on this.

As the Presiding Officer and other Members know, we are very limited in our ability to address a number of issues that are very important in this Chamber. Often we are required to do so in this manner, a sense-of-the-Senate resolution on a piece of legislation that is unrelated. But I do not intend in any way to hold this piece of legislation up. I will agree to the shortest of all time agreements if the majority wishes, 5 or 10 minutes on each side.

AMENDMENT NO. 2940

(Purpose: To express the sense of the Senate on tax cuts and Medicare)

Mr. DORGAN. Mr. President, I send the amendment to the desk and ask it be read.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 2940.

Mr. DORGAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, add the following new section:

**SEC. . SENSE OF THE SENATE ON BUDGET PRIORITIES.**

(a) FINDINGS.—The Senate finds that—

(1) the concurrent resolution on the budget for fiscal year 1996 (H. Con. Res. 67) calls for $245 billion in tax reductions and $270 billion in rejected spending reductions from Medicare;

(2) reducing projected Medicare spending by $270 billion could substantially increase out-of-pocket health care costs for senior citizens, reduce the quality of care available to Medicare beneficiaries and threaten the financial health of some health care providers, especially in rural areas;

(3) seventy-five percent of Medicare beneficiaries have annual incomes of less than $25,000;

(4) most of the tax cuts in the tax bill passed by the House of Representatives (H.R. 1215) go to families making over $100,000 per year, according to the Office of Tax Analysis of the United States Department of the Treasury.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Senate should approve no tax legislation which reduces taxes for those making over $250,000 per year; and

(2) the savings from limiting any tax reductions in this way should be used to reduce any cuts in projected Medicare spending.

Mr. KYL. 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.

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

Mr. KYL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The clerk continued with the call of the roll.

Mrs. FEINSTEIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. FEINSTEIN. I ask unanimous consent that I be permitted to speak only on S. 1322.

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

Mr. KYL. Excuse me, Mr. President, reserving the right to object, under the terms the Senator from California has outlined, namely that she will speak only on the Jerusalem resolution, after which another quorum call would be called for.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from California.

Mrs. FEINSTEIN. I thank the Senator. I thank the Chair.

Mr. President, I rise to speak about the legislation before the Senate, S. 1322, a bill that essentially expresses the sense-of-Congress that Jerusalem should remain undivided and be the capital of Israel, and that it should be the site of the location of the United States Embassy at a date certain, namely May 1999.

Mr. President, many people have participated in this discussion. And I know Senator LAUTENBERG, with whom I have been working, wishes to speak. I want to thank the majority leader for working with those of us that have concerns on this legislation. I know that there are discussions ongoing.

Senators LAUTENBERG, LIEBERMAN, LEVIN, and I just had a discussion. And I believe Senator LIEBERMAN is going to talk with Senator KYL and Senator DOLE on what our conclusions are.

For the purposes of these comments, I would like to make some general comments about the intentions of this legislation. Let me state what I believe some basic truths to be.

The first basic truth is that the United States of America has an absolute right to place its Embassy in a capital city, any capital city. Clearly, Jerusalem is the capital of Israel. We need no one's permission to do so, and we need no piece of legislation to do so. This issue has been one that has percolated for a long, long time with a great deal of impatience on the part of many people who say, ''Why hasn't the Embassy been relocated to Jerusalem prior to this time?''

Having said that, we have another basic truth, and that is that Israel can survive long-term as a Jewish democratic state only if there is peace, if that peace is recognized and bought into by Israel's neighbors, and that there are safe and secure borders. Therefore, the peace process now ongoing is key and critical to the long-term survival of the State of Israel.

Jerusalem is many things to many people. All one has to do is spend some time there to see the Mount of Olives, the concept of the promised land, the Garden of Gethsemane, the home of more than 40 Christian denominations, the home of the Moslem religion, the home of the Armenian Patriarch, the Western Wall, a magical and mystical place, a source of religion throughout the world.

The only democracy in the Middle East rests within the State of Israel; and yet it has been the site of hatred, war, and conflict dating from the Crusades and even back before that time. So it is a difficult and complicated subject. However, I want to say this, that I, like most Americans, believe that the U.S. Embassy should be located in Jerusalem. But as this bill was originally presented, there were concerns about the bill.

Originally, the bill that was introduced had 62 Senators on it. This bill has 69 Senators. So there is a very strong bulwark of support for the bill.

Some concerns remain even about the new text of the bill. Chief among these concerns for all of us is what the Chief Executive of this Nation will do. Many of us believe that whatever the politics surrounding this bill, we can all agree that to have a divisive vote on an issue around which there has always been consensus and to go through the unpleasantness of a veto confrontation, even with a successful override vote, would not be to anyone's benefit. Most of all, going through that process would be to the detriment of Jerusalem and Israel, as doubts about the U.S. commitment on this issue would certainly emerge.

So for all those for whom Jerusalem is important and vital, I cannot imagine a more devastating outcome to the first legislation ever sent to a President mandating moving the U.S. Embassy to Jerusalem than to have this legislation vetoed. For that reason, I think it is imperative that we try to address the concerns that exist about the bill. And we have tried to do that in conversations that have taken place on Friday and taken place today as well.

One of the administration's concerns is that the bill in its current form does not provide a degree of flexibility in the end date by which an Embassy must be established in Jerusalem. We are hopeful that waiver language can be agreed upon by all the parties concerned that would allow the President under certain key conditions, best defined as national security interests, to suspend any necessary provisions of this bill related to the timetable if there was a determination that it was in the national security interest to do so.

I suspect we can all agree that the President should, whenever possible, be granted this kind of flexibility. As a matter of fact, it is within his own constitutional responsibility to be able to do so.

One of my concerns, for example, is that the move of our Embassy could overlap with key events unfolding in the Middle East peace process. In the opinion of this Senator, and perhaps some others would agree, the conclusion of a comprehensive peace between Israel and its neighbors is in the national security interests of the United States.

The bill, in its current form, would require the new Embassy to be opened by May 31, 1999, regardless of what is happening in the peace process. May 1999 is, of course, also the deadline Israel and the Palestinians have set for themselves to complete final status talks and also the transition period. But we all know that despite good will on both sides and a series of important agreements, Israel and the Palestinians have missed virtually every deadline they have set during the course of the peace process.

First, the agreement on withdrawal from Gaza and Jericho, scheduled to be signed in December 1993 and implemented by April 1994, was signed and implemented in May 1994.

Second, Palestinian elections were supposed to take place in July 1994. They have not. Now the commitment is that they would take place prior to Ramadan, hopefully in January 1996, a year and a half later.

Third, for weeks leading up to the recent agreement on Israeli redeployment in the West Bank, the negotiators set numerous deadlines for themselves that went unmet.

With all of this background, can we accurately predict that a peace process will definitely conclude on May 4, 1999, as scheduled? Of course not. It is a difficult, fluid process, but it is working. The President should have the ability and the flexibility to postpone actions

that might have an impact on the negotiations if they were taken at a sensitive moment in the talks. The waiver, we hope, will be forthcoming as a product of these discussions and would provide, we believe, that kind of flexibility.

Another purpose of a waiver amendment is to address the administration's constitutional concerns about this bill. The State Department has made it clear that they will recommend against the signature of a bill that they deem interferes with the constitutional prerogatives to conduct foreign policy. They have also indicated their strong objection to a specific date for location or establishment of the Embassy in Jerusalem.

Specifically, the President interprets this bill to infringe upon his constitutional prerogatives by forcing him to establish an Embassy by a specific date, at a specific location. But by providing a sufficient waiver, renewable, if need be, the President has the opportunity to temporarily delay implementation of section 3(b), the timetable under this bill, should he find that it harms the peace process, to the extent of violating what we hope will be in the waiver, national security interests.

There is no question that Congress and the executive branch frequently have differing interpretations of the constitutionality of particular statutes. I do not expect all of my colleagues to agree with every aspect of the President's interpretation. Indeed, there are aspects of his interpretation with which I disagree.

But, in the interest of allowing the administration's views to speak for themselves, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a legal analysis of the earlier version, S. 770, prepared by the Justice Department, and a June 20, 1995 letter from the Secretary of State to the majority leader.

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

(See exhibit 1.)

Mrs. FEINSTEIN. I thank the Chair. Nevertheless, despite our differing interpretations, we must face facts, and the fact is that the State Department has determined that the President should veto the bill in its current form.

As I said before, the damage that would result to Jerusalem, first and foremost, and to our common cause of moving the Embassy there from passing a bill that could get vetoed cold be irreparable. So I am hopeful that this bill will not be vetoed.

Mr. President, with a sufficient waiver, we can pass a bill that mandates the moving of the United States Embassy to Jerusalem, but allows the President to waive the timing of the establishment of the Embassy in Jerusalem if national security interests are involved.

This would be first-time legislation, the first time a bill on this issue has been passed, and I think that is extraordinarily important.

I must say, I have never conceived of this issue as a litmus test of one's support for Israel. I find deeply committed friends of Israel holding a wide variety of views on the question of when and how to move the United States Embassy to Jerusalem, and on these bills.

As for the debate in Congress, let us establish a basic understanding that all participants in this debate agree on one fundamental truth: that united Jerusalem is and will remain as the capital of Israel.

So Jerusalem's status as Israel's capital has never been in question here. The debate is, instead, focused on a side debate to the central issue, the placement of the Embassy, and I, like my colleagues, believe there is basic agreement in this body, and I share the view of my colleagues, that the United States Embassy in Israel does, indeed, belong in Jerusalem. It is elementary that a sovereign nation, as I have pointed out, has that right to place an Embassy at the site of a nation's capital with whom it enjoys diplomatic relations.

So this should not in all logic, in all reason, in all sovereign power be privy to negotiations having to do with peace and security between the Palestine Liberation Organization and the State of Israel, or between the State of Jordan and the State of Israel, or between any of the Arab neighbors and the State of Israel. However, there is one important point, and I think this is where we need to be very careful that we are not provocative.

There was a letter sent to Secretary of State Christopher sponsored by the two distinguished Senators from New York, Senator MOYNIHAN and Senator D'AMATO, last March. I joined with 92 of my colleagues in signing this letter in which we said, and I quote:

> We believe that the United States embassy belongs in Jerusalem. It would be most appropriate for planning to begin now to ensure such a move no later than the agreements on permanent status take effect and the transition period is ended which, according to the Declaration of Principles, is scheduled for May 1999.

This letter, I believe, reflected a true consensus on this issue in the Senate and, to a great extent, in the community affected. In a letter to the Jewish Press on April 7, 1995, Senator MOYNIHAN explained why the letter was written, and I quote:

> Senator D'Amato and I chose to write a letter rather than to introduce legislation because we wanted to secure maximum public support for the proposition that united Jerusalem is the capital of Israel and the appropriate home of our embassy.

So when legislation was introduced on this issue in May, however, the consensus cracked and then, as we know, with the earlier bill, 62 Senators signed on.

There was one point in that earlier bill that very deeply concerned me, and that was the provision that the commencement of construction on the Embassy site in West Jerusalem would begin in 1996, and I felt that that could truly be provocative, be disturbing to the peace process at this very difficult time, particularly in view of the fact that Palestinian elections for the first time have not yet taken place and are about to take place. And we now know that the date agreed to is prior to Ramadan or in January of next year. Therefore, to mandate the beginning of construction in 1996 could be, I think, unintentionally, but very realistically, provocative and something that we would not want to do.

The leader, in his wisdom, and I am grateful and thankful for this, and Senator KYL agreed, did remove that section and, hence, that laid the basis for the new legislation which is before us today, entitled Senate bill 1322. So my major concern has really been addressed, and I am very pleased and grateful for that. The concern expressed then that the original bill might precipitate a difficult situation I think has been remedied.

There was also a lack of consensus at that time in statements that were issued by a number of major American Jewish organizations who felt that the objectives of the legislation were good but hoped that everybody would come together and agree on a piece of legislation that would not be provocative to the peace process but could establish the intent with the clarity of law, in this body and the House, for the first time in the history of debate over this issue.

I believe that if we can agree on waiver language that does not limit the constitutional authority of the President, that we will have given the bill the necessary features to meet a variety of needs. For the first time, we will have mandated in law the move of the U.S. Embassy to Jerusalem, an important achievement, and a variety of preparations for that move spelled out in the timing of report language.

We will have also provided the President with the flexibility to postpone the actual move if events in the Middle East peace process or other U.S. National security interests warrant it, and I believe this is a responsible way for the Congress to legislate in this area.

I think that, as we vote on this bill, we should be aware that some of the leading Middle East experts in the administration do worry, still, about its impact on the peace process—not in 1999, but today. I think this Government is so privileged to have one of the most skillful and determined young negotiators I have met, in the person of Dennis Ross. His perspicacity, his energy, his undying commitment to this process has really been helpful in America playing the role of the honest broker, in sitting down with the two sides, and in being responsible for bringing the chairman of the Palestine Liberation Organization, the Prime Minister and Foreign Minister of the State of Israel, the President of Egypt, the King of Jordan, and a host of other dignitaries from the European Union,

together recently at the White House to witness what was an unbelievable signing. I, for one, during many times in the past decades thought we would never see that day. But, Mr. President, we did see that day, and a lot of it is due to the skill and dedication of Dennis Ross. I think that has to be said.

Mr. Ross has warned that passing this legislation could now complicate the already-difficult implementation of the recent agreement on redeployment in the West Bank. He is also concerned that Jerusalem could become a central issue in the upcoming Palestinian election now scheduled for January, which would likely play to the radical faction and put Chairman Arafat in a very difficult position. Martin Indyk, our Ambassador to Israel, at his confirmation hearing in the Foreign Relations Committee, at which I was present, has echoed many of these concerns.

Mr. President, I raise these issues simply because I believe we should be aware of what people in the administration—in an administration that has been extremely supportive of Israel—are thinking about this legislation. This administration has achieved something that has never in the history of the area been achieved, and that is an agreement which may guarantee safe and secure borders and peace between the small, tiny State of Israel and the Arab nations that surround it. And its importance cannot be overlooked in that regard.

So I am looking for a way that we can indicate the rights of the sovereign nation by saying that we should place our Embassy in Jerusalem, that it should be the policy of the Congress that Jerusalem is the capital and that Jerusalem should remain undivided, without presenting a provocation in what I think is the most important process for peace ongoing, certainly, in the history of the Middle East.

I am hopeful that the negotiations now ongoing will be able to provide that form of waiver. I think it is vital—a waiver that does not in any way compromise the President's constitutional authority. So at this time I would like to yield the floor, and I will have more to say when those negotiations are completed.

At this time, I yield the floor.

EXHIBIT 1

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGAL COUNSEL,
*Washington, DC, May 16, 1995.*

Memorandum for Abner J. Mikva, Counsel to the President.

From: Walter Dellinger, Assistant Attorney General.

Re Bill to relocate United States Embassy from Tel Aviv to Jerusalem.

This is to provide you with our views on S. 770, a bill introduced by Senator Dole and others, ''[t]o provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.'' The provisions of this bill that render the Executive Branch's ability to obligate appropriated funds conditional upon the construction and opening of the United States Embassy to Israel in Jerusalem invade exclusive Presidential authorities in the field of foreign affairs and are unconstitutional.

The bill states that

[i]t is the policy of the United States that—

(1) Jerusalem should be recognized as the capital of the State of Israel;

(2) groundbreaking for construction of the United States Embassy in Jerusalem should begin no later than December 31, 1996; and

(3) the United States Embassy should be officially open in Jerusalem no later than May 31, 1999.

Section 3(a).

The bill requires that not more than 50% of the funds appropriated to the State Department for FY 1997 for ''Acquisition and Maintenance of Building Abroad'' may be obligated until the Secretary of State determines and reports to Congress that construction has begun on the site of the United States Embassy in Jerusalem. Section 3(b). Further, not more than 50% of the funds appropriated to the State Department for FY 1999 for ''Acquisition and Maintenance of Buildings Abroad'' may be obligated until the Secretary determines and reports to Congress that the United States Embassy in Jerusalem has officially opened. Section 3(c).

Of the funds appropriated for FY 1995 for the State Department and related agencies, not less than $5,000,000 ''shall be made available until expended'' for costs associated with relocating the United States Embassy in Israel to Jerusalem. Section 4. Of the funds authorized to be appropriated in FY 1996 and FY 1997 for the State Department for ''Acquisition and Maintenance of Buildings Abroad, ''not less than $25,000,000 (in FY 1996) and $75,000,000 (in FY 1997) ''shall be made available until expended'' for costs associated with, respectively, the relocation of the United States Embassy to Jerusalem, and the construction and relocation of the Embassy. Section 5.

The Secretary is required to report to Congress not later than 30 days after enactment ''detailing the Department of State's plan to implement this Act.'' Section 6. Beginning on January 1, 1996, and every six months thereafter, the Secretary is to report to Congress ''on the progress made toward opening the United States Embassy in Jerusalem.'' Section 7.

It is well settled that the Constitution vests the President with the exclusive authority to conduct the Nation's diplomatic relations with other States. This authority flows, in large part, from the President's position as Chief Executive, U.S. Const. art, II, §1, cl. 1, and as Commander in Chief, *id.* art. II, §2, cl. 1. It also derives from the President's more specific powers to ''make Treaties,'' *id.* art. II, §2, cl. 2; to ''appoint Ambassadors . . . and Consuls,'' *id.*; and to ''receive Ambassadors and other public Ministers,'' *id.*, art. II, §3. The Supreme Court has repeatedly recognized the President's authority with respect to the conduct of diplomatic relations. *See, e.g., Department of Navy* v. *Egan* 484 U.S. 518, 529 (1988) (the Supreme Court has ''recognized 'the generally accepted view that foreign policy was the province and responsibility of the Executive''') (quoting *Haig* v. *Agee*, 453 U.S. 280, 293–94 (1981)), *Alfred Dunhill of London, Inc.* v. *Republic of Cuba*, 425 U.S. 682, 705–06 n. 18 (1976) (''the conduct of [foreign policy] is committed primarily to the Executive Branch''); *United States* v. *Louisiana*, 363 U.S. 1, 35 (1960) (President is ''the constitutional representative of the United States in its dealings with foreign nations''). *See also Ward* v. *Shannon*, 943 F.2d 157, 160 (1st Cir. 1991) (Breyer, J.) (''the Constitution makes the Executive Branch . . . primarily responsible'' for the exercise of ''the foreign affairs power''), *cert. denied*, 112 S. Ct. 1558 (1992); *Sanchez-Espinoza* v. *Reagan*, 770 F.2d 202, 210 (D.C. Cir. 1985) (Scalia, J.) (''broad leeway'' is ''traditionally accorded the Executive in matters of foreign affairs''). Accordingly, we have affirmed that the Constitution ''authorize[s] the President to determine the form and manner in which the United States will maintain relations with foreign nations.'' *Issues Raised by Section 129 of Pub. L. No. 102–138 and Section 503 of Pub. L. No. 102–140*, 16 Op. O.L.C. 18, 21 (1992) (preliminary print).

Furthermore, the President's recognition power is exclusive. *See Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 410 (1964) (''[p]olitical recognition is exclusively a function of the Executive''); *see also Restatement (Third) of the Foreign Relations Law of the United States* §204 (1987) (''the President has exclusive authority to recognize or not to recognize a foreign state or government, and to maintain or not to maintain diplomatic relations with a foreign government''). It is well established, furthermore, that this power is not limited to the bare act of according diplomatic recognition to a particular government, but encompasses as well the authority to take such actions as are necessary to make the power of recognition an effective tool of United States foreign policy. *United States* v. *Pink*, 315 U.S. 203, 229 (1942) (The authority to recognize governments ''is not limited to a determination of the government to be recognized. It includes the power to determine the policy which is to govern the question of recognition.'').

The proposed bill would severely impair the President's constitutional authority to determine the form and manner of the Nation's diplomatic relations. The bill seeks to effectuate the policy objectives that ''Jerusalem should be recognized as the capital of the State of Israel'' and that ''the United States Embassy should be officially open in Jerusalem no later than May 31, 1999.'' ''To those ends, it would prohibit the Executive Branch from obligating more than a fixed percentage of the funds appropriated to the State Department for ''Acquisition and Maintenance of Buildings Abroad'' in FY 1997 until the Secretary determines and reports to Congress that construction has begun on the site of the United States Embassy in Jerusalem. It would also prohibit the Executive Branch from obligating more than a fixed percentage of the funds appropriated for the same purpose for FY 1999 until the Secretary determines and reports to Congress that the United States Embassy in Jerusalem has ''officially opened.''

By thus conditioning the Executive Branch's ability to obligate appropriated funds, the bill seeks to compel the President to build and to open a United States Embassy to Israel at a site of extraordinary international concern and sensitivity. We believe that Congress cannot constitutionally constrain the President in such a manner.

In general, because the venue at which diplomatic relations occur is itself often diplomatically significant, Congress may not impose on the President its own foreign policy judgments as to the particular sites at which the United States' diplomatic relations are to take place. More specifically, Congress cannot trammel the President's constitutional authority to conduct the Nation's foreign affairs and to recognize foreign governments by directing the relocation of an embassy. This is particularly true where, as here, the location of the embassy is not only of great significance in establishing the United States' relationship with a single country, but may well also determine our relations with an entire region of the world. Finally, to the extent that S. 770 is intended to affect recognition policy with respect to Jerusalem, it is inconsistent with the exclusivity of the President's recognition power.

Our conclusions are not novel. With respect to the Foreign Relations Authorization Act, FY 1994 & 1995, which included provisions purporting to require the establishment of an office in Lhasa, Tibet, the President stated that he would ''implement them to the extent consistent with [his] constitutional responsibilities.'' Statement by the President at 2 (Apr. 30, 1994). The Reagan Administration objected in 1984 to a bill to compel the relocation of the United States Embassy from Tel Aviv to Jerusalem, on the grounds that the decision was ''so closely connected with the President's exclusive constitutional power in responsibility to recognize, and to conduct ongoing relations with, foreign governments as to, in our view, be beyond the proper scope of legislative action.'' Letter to Dante B. Fascell, Chairman, Committee on Foreign Affairs, United States House of Representatives, from George P. Shultz, Secretary of State, at 2 (Feb. 13, 1984). Again, in 1987, President Reagan stated that he would construe certain provisions of the Foreign Relations Authorization Act, FY 1988 & 1989, including those that forbade ''the closing of any consulates,'' in a manner that would avoid unconstitutional interference with the President's authority with respect to diplomacy. *Pub. Papers of the Presidents: Ronald Reagan* 1542 (1987). Indeed, as long ago as 1876, President Grant declared in a signing statement that he would construe legislation in such a way as to avoid ''implying a right in the legislative branch to direct the closing or discontinuing of any of the diplomatic or consular offices of the Government,'' because if Congress sought to do so, it would ''invade the constitutional rights of the Executive.'' 7 James D. Richardson (ed.) *Messages and Papers of the Presidents* 377–78 (1898).

Finally, it does not matter in this instance that Congress has sought to achieve its objectives through the exercise of its spending power, because the condition it would impose on obligating appropriations is unconstitutional. *See United States* v. *Butler*, 297 U.S. 1, 74 (1936); *Issues Raised by Section 129 of Pub. L. No. 102–138 and Section 503 of Pub. L. No. 102–140*, 16 Op. O.L.C. AT 30–31 (''As we have said on several prior occasions, Congress may not use its power over appropriation of public funds 'to attach conditions to Executive Branch appropriations requiring the President to relinquish his constitutional discretion in foreign affairs.''') (citation omitted).

For the above reasons, we believe that the bill's provisions conditioning appropriated funds on the building and opening of a United States Embassy in Jerusalem are unconstitutional.

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THE SECRETARY OF STATE,
*Washington, DC, June 20, 1995.*

Hon. ROBERT DOLE,
*Majority Leader,*
*U.S. Senate, Washington, DC.*

DEAR MR. LEADER: I am writing to express my opposition to S. 770, which would compel the Administration to move its Embassy to Jerusalem. Given the sensitivity of the subject, it is important that there be no misunderstanding on where we stand.

There is no issue related to the Arab-Israeli negotiations that is more sensitive than Jerusalem. It is precisely for this reason that any effort by Congress to bring it to the forefront is ill-advised and potentially very damaging to the success of the peace process.

I do not say this lightly. Nor do I say it without recognizing the depth of feeling that exists in the Congress about moving the U.S. Embassy to Jerusalem. Both the President and I am very much aware of this sentiment and the reasons for it. The President expressed himself on this issue during the 1992 campaign and he stands by that position. But he also said at that time, and on a number of occasions since then, that he would not take any step that would disrupt the negotiating process and the promotion of Middle East peace. And S. 770 would unmistakably have that consequence.

The President's commitment to promoting peace in the Middle East has been one of his key priorities in foreign policy. It is a commitment all of his predecessors have had since the time of Israel's founding. The President and I know how important the achievement of peace with security is to Israel and to our national interests. We have worked very closely with Israel's leaders to pursue our common interests. The U.S.-Israeli bilateral relationship has never been stronger and the President and I are particularly proud of that fact.

Our support for Israel will remain strong and steadfast, and we will work actively to help Israel achieve peace with her neighbors. Given the extraordinary progress of the last two years, that objective appears, for perhaps the first time in history, to be within reach. Having just returned from the Middle East, I am even more persuaded of the opportunities for progress which can ultimately produce a real peace. We must not take steps that make it more difficult to achieve that historic end.

Yet, there are few other issues that are more likely to undermine negotiations and complicate the chances for peace than premature focus on Jerusalem. The issues on the table are complex enough without pushing to the fore perhaps the most sensitive and emotional issue for Arabs and Israelis, Muslims and Christians alike. The enemies of peace would use the Jerusalem issue to inflame passions further and attack those who want to see the negotiations succeed. Jerusalem is a powerful symbol of the hopes and aspirations of all sides. As such it has the potential to divide, to polarize, and to divert attention from the critical issues now being negotiated.

Palestinians and Israelis both understood this reality when they agreed in the Declaration of Principles that Jerusalem would be covered in the permanent status negotiations. They recognized that deferring this highly sensitive issue as essential if progress were to be made. The negotiations on permanent status are slated to begin as early as May 1996.

Safeguarding the negotiations is more vital than ever. This process is now entering an especially delicate period. Israelis and Palestinians have set a July 1 date for an agreement on the second phase of the Oslo accords, including an agreement on elections for a Palestinian Council. Israeli and Syrian Chiefs of Staff are scheduled to begin discussion on security issues on June 27. Few actions would be more explosive and harmful to these efforts than for the United States—as the key sponsor of this process—to be pushing the Jerusalem issue forward. In fact, we recently vetoed a Resolution in the United Nations Security Council which pushed Jerusalem to the fore precisely for this reason. Israeli Prime Minister Rabin recently suspended land expropriations in Jerusalem, effectively reducing the focus on the Jerusalem issue. The last thing we should want is for the U.S. at this very moment to put the focus back on Jerusalem.

My opposition to this legislation is also strongly rooted on constitutional grounds. The Justice Department's Office of Legal Counsel has issued an opinion to the White House Counsel concluding that the bill would unconstitutionally invade exclusive Presidential authorities in the field of foreign affairs. Because the bill would seek to compel the President to build and open an embassy at a particular site for foreign policy reasons, it is incompatible with the separation of powers under the Constitution. This is the same position taken by this and previous Administrations on comparable legislative efforts to dictate the location of diplomatic and consular facilities. Accordingly, I would be remiss if I did not counsel the President to protect against the unconstitutional infringement on the prerogatives of his office.

In light of this, unless the policy and constitutional concerns noted above are satisfactorily addressed, I will recommend that the President veto S. 770 if it is presented to him. I wish it were otherwise, but for the sake of Middle East peace and the President's constitutional responsibility in foreign policy, I will have no choice but to do so.

Sincerely,

WARREN CHRISTOPHER.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I, too, would like to ask unanimous consent to have printed in the RECORD at the conclusion of my remarks an editorial from the New York Times of May 29, 1995, along with a brief with respect to the constitutional prerogatives of the President and the Congress, relating to matters of this kind.

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

(See exhibit 1.)

Mr. KYL. Mr. President, let me make a couple of very brief comments before I take my place in the chair. I respect the views presented by the Senator from California. I will make additional comments with respect to the issue of the waiver as follows:

One of the problems that we have had with this issue, generally, and one of the reasons why Senator MOYNIHAN brought his letter to the Senate, and why all of us have been pursuing legislation now to actually bring a close to the issue and make it clear that we will move our Embassy to Jerusalem, is that the United States has always found a reason not to do it. At the time, those seemed like valid positions. Obviously, we would not want a waiver to provide a mechanism for continued lip service to the concept without actually moving toward the actual relocation of the Embassy. That is why there has been some question about how waiver language should be inserted into the bill.

Also, there is some oddity, I think, in the matter that locating our Embassy in a country's capital would actually be deemed to be contrary to the national security interest of the United States. It seems to me that one has to stretch it a little bit to find that to be the case. Yet, I know there are those who believe that, even at this point in time, that is exactly the case. I think it is important that if there is to be some kind of waiver, it not be a waiver that the President can exercise because he has a policy dispute with the Congress on when and under what circumstances the Embassy should be moved. Such a waiver should be exercised by the President only because he finds that the national security interests of the United States require that.

And the security of the United States is not necessarily the same as peace in the Middle East, which is not necessarily the same as a controversy between Arabs and Israelis over the status of peace discussions. So simply because it makes some Arabs anxious or angry, or gives them a political issue, is not, I think, a reason why such a waiver would ever be exercised.

I also think it is important that the whole world understand one point very clearly—and I think, on this, we are united—that when we talk about the final status of Jerusalem, which is subject to negotiation between the parties there, no one should suffer under any illusion that the United States feels itself bound not to locate our Embassy in West Jerusalem pending the outcome of those negotiations. The State of Israel's rights with respect to west Jerusalem, and our obligations and entitlements to put our Embassy in west Jerusalem, are in no way dependent on those final negotiations which do not go to the political status of west Jerusalem insofar as the Israelis are concerned.

To the point of the constitutional concerns alluded to by the Senator from California, there are differing opinions on this. I am a very strong advocate of the power of the President in this regard. I do not come lightly to the point of view that Congress has a prerogative in this case to require the relocation of the Embassy. I think it is good that the RECORD contain both the arguments in support of the Presidential and congressional power in that regard. I am delighted to see them both included in the RECORD at the conclusion of this debate.

I think it is important that the understanding be with all parties that whatever kind of waiver language may or may not be included in this bill, it is a temporary waiver only. We are not talking about the ability of the President to simply continue year after year after year, saying, gee, I am really with you on this, but I think I find a reason why we do not want to do it right now. That is the intent of any waiver. I know that is not what the Senator from California was saying.

Should there by any waiver language included, I want it to be crystal clear on the record that nobody is talking about a waiver which, however open-ended it may or may not be, would allow a President, every 6 months, to simply say that because he has a different point of view than Congress on this, he is going to refuse to implement what the Congress has directed him to do, finding that there is somehow a national security interest of the United States involved.

Mr. President, I conclude by making this point. I think the importance of this issue is illustrated by the fact that we have had difficulty in arriving at the exact language because everybody is concerned about what the impact of it will be. Those are very legitimate concerns. I am going to conclude by addressing myself to those concerns. This is not a tangential issue. It is symbolic in one respect, but sometimes symbolism is extraordinarily important. In this case it is, regardless of how you come down on this issue. If you are an Arab, for example, one can argue that this would make you very anxious and concerned. Therefore, the symbolism of it is very important. There are those, in fact, who believe that it would be so distressing to certain Arabs if the United States exercises its legitimate right to put our Embassy where we want to, particularly since it is the capital of the host country, and that should not be considered to be a policy matter with respect to our position in these negotiations. But the fact of the matter is that some people will see it as that. Nobody should be allowed to use—in a political campaign or in the conduct of terrorism, or in negotiations—the fact that a country like the United States exercises its right to put its Embassy in the capital of the host country. That is not a legitimate concern.

So while I understand the politics of it, that is different from the legitimacy of the issue.

The final point is this: Some people have said, well, even though it is an irrational and illegitimate argument, people will make it. As a result, it could bring a halt to the peace negotiations even. People might stop talking peace. There may be more demonstrations over this, even though it is not a legitimate position to be taken.

I will respond to that in this fashion because it goes to the heart of the debate. No one knows for sure. That is a very legitimate concern among those of us who are very, very supportive of the peace process and want it to succeed. Certainly, the people in the region feel that much more even than any of us in this body can.

I think it is also important to reflect upon the history of U.S. foreign policy and to note that every time the United States has been firm, fair, resolute, principled, consistent in its investigation of friendships and positions in the world, the world has been better off for that firm, principled expression.

It did not always suit nervous nellies during the cold war, that Presidents like President Reagan made firm statements about our commitments, calling the Soviet Union what at that time it was and many Russians since have confirmed. Sure, in many respects it was an evil empire. It made people very nervous when President Reagan said it. Many people say had the United States not taken firm positions, had President Reagan not spoken so clearly, that evil empire would still exist today.

Had we not made it crystal clear to the Chinese that they could not invade Quemoy and Matsu Islands back in the 1960's, they might have done so. Had we made it clearer to Hitler that he would not get away with an attack on Poland, perhaps he would not have done so.

Mr. President, our history is replete with examples of situations in which history has shown that the world frequently was thrown into conflict in which great human suffering and loss resulted because leaders at the time were not firm enough and clear enough in the expression of the principles that stood behind their country's positions.

In this case, I think a firm, clear statement of something as simple as the United States exercising its right to put its Embassy in the capital of a country as we have with every other country in the world except Jerusalem, I think to the extent that the United States makes that statement very clearly, we advance the ultimate cause of fundamental peace, a peace that is lasting. To that extent, I think it is important that we do that prior to the time that those negotiations are to be concluded.

I think that deals generally with the waiver issue however that issue is ultimately resolved.

I see that Senator LEVIN is here, who I know has a very strong interest in the matter, as well as Senator HELMS, the chairman of the Senate Foreign Affairs Committee.

I relinquish the majority position to Senator HELMS and Senator LEVIN, if he would like to speak, although I want to make a point, if I may, that the unanimous consent to lift the preceding quorum call by the Senator from California was premised upon the point that it was limited to the discussion of this issue and that it could not be used to relate to an amendment offered by the Senator from North Dakota, Senator DORGAN.

Subject to that agreement, I am happy to yield the floor.

EXHIBIT 1

[From the New York Times, May 29, 1995]

TO PROMOTE PEACE, MOVE THE EMBASSY

(By Douglas J. Feith)

WASHINGTON.—There is something more than Presidential politics behind the bills in Congress to relocate the United States Embassy in Israel from Tel Aviv to Jerusalem. It is sensible policy.

If American support for Israel's sovereignty in Jerusalem remains an open question, will this help promote peace? No. Alternatively, are Israel's Arab interlocutors likelier to make the philosophical adjustments and political concessions necessary for peace if they know that America's support for Israel on Jerusalem is a closed question?

This view—endorsed by the key Republican sponsors of the bills, Senators Bob Dole and Jon Kyl and the Speaker of the House Newt Gingrich—has logic, though not the Clinton Administration, on its side.

Since the beginning of the 20th century, the Arab-Jewish conflict over Palestine has been a fight over legitimacy. The Zionists have asserted that the Jews have the right to a state in at least part of Palestine. Arab anti-Zionists have argued that all of Palestine on both sides of the Jordan River is Arab land and that the Jews have no right to a state there.

In the conflict, periods of violence have alternated with periods of quiet, though hostility has persisted throughout. Quiet is a type of peace, but in recent years diplomacy

has aimed at a higher type—peace that is formal and de jure.

But Israel's experiences with Egypt and the Palestine Liberation Organization demonstrate that formal accords do not necessarily reflect or produce the highest form of peace—that is, peace based on an absence of hostility.

True peace is possible only if Israel's Arab neighbors change their hearts and minds on the fundamental issue of Israel's legitimacy. What might facilitate that change? When Israel appeared vulnerable, it did not achieve peace, or even peace talks.

Only after being forced to acknowledge the strength of Israel's position—its military power, its enduring ties to the United States, and, since the end of the cold war, our unchallenged global predominance—did some Arab powers abandon rejectionist positions and start negotiating.

If Israel's antagonists bow to unpleasant realities and lower unrealistic expectations, the peace process may produce not merely signing ceremonies but real peace.

Inasmuch as the essence of the Arab-Israeli conflict is legitimacy, the essence of the legitimacy issue is Israel's right to sovereignty in Jerusalem. If Israelis do not have the right to sovereignty there, they can hardly justify sovereignty anywhere.

Jerusalem has been central to Jewish nationhood for 3,000 years. The Jews' national movement, after all, is Zionism, Zion being Jerusalem. The Arabs understand this, too, which is why the importance of Jerusalem in Arab politics, diplomacy, philosophy and literature increased as the struggle against Zionism intensified.

By relocating our embassy to Jerusalem, we would end our anomalous policy of refusing to recognize Israel's sovereignty in its own capital. We would proclaim that Israel's legitimacy in Zion is not an open question for us. This would signal that we expect all parties to the conflict—not just Israel—to pursue peace on the basis of realism.

In the ongoing Arab-Israeli negotiations, moving the embassy would not prejudice any issue that is actually open. This is why even dovish voices, like that of Deputy Foreign Minister Yossi Beilin, have categorically endorsed the bill. The Government of Prime Minister Yitzhak Rabin says it will in time negotiate Jerusalem issues, but not Israeli sovereignty. In this it deserves our support.

Across the political spectrum in Israel and among Jews worldwide, there is a profound commitment to retaining Jerusalem forever as the undivided capital. The cause of peace will be served by whatever helps persuade Yasir Arafat that he will not get American support or Israeli consent to divide Jerusalem and establish part of it as the capital of a new Arab state.

The necessary adjustment in expectations on the Arab side would be difficult and even painful. Passionate cries—and worse—would ensue, but in the end the process would be constructive.

Like all American pro-Israel initiatives, the bill to move the embassy is being deprecated in certain quarters as a cynical play for political points with American Jews. Such criticism is itself deeply cynical.

Every Congressional initiative pleases some constituencies and displeases others. Each is supported by some politicians for substantive by some politicians for substantive reasons, some for political reasons and many for both types of reasons.

But support for Israel as a fellow democracy and strategic ally has been sustained by a long line of Democratic and Republican administrations and Congresses. It reflects the nation's strong sympathy for Israel as evinced in public opinion polls decade after decade since 1948.

The automatic assumption that a pro-Israel initiative is nothing more than pandering is unfair and at odds with America's national interest as most Americans see it.

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SHAW, PITTMAN,
POTTS & TROWBRIDGE,
JUNE 27, 1995.

To: American Israel Public Affairs Committee

From: Gerald Charnoff, Charles J. Cooper, and Michael A. Carvin

Re S. 770; Bill to Relocate U.S. Embassy to Jerusalem

I. INTRODUCTION

This memorandum is in response to your request for an analysis of the constitutionality of the ''Jerusalem Embassy Relocation Implementation Act of 1995,'' hereinafter S. 770, a measure introduced by Senator Dole in the first session of the 104th Congress. Maintaining that Jerusalem should be recognized by the U.S. as the capital of Israel, the bill, in a Statement of Policy, states that groundbreaking for the U.S. embassy in Jerusalem ''should begin'' by 31 December 1996 and that the embassy ''should be officially open'' by 31 May 1999. S. 770, 104th Cong., 1st Sess. §3(a). The measure further establishes that no more than 50% of the funds appropriated to the Department of State in fiscal year 1997 for ''Acquisition & Maintenance of Buildings Abroad'' may be obligated until the Secretary of State certifies that construction has begun on the U.S. embassy in Jerusalem. Id. §3(b). Similarly, not more than 50% of the funds appropriated in the same account for fiscal year 1999 may be obligated prior to certification by the Secretary of State that the Jerusalem embassy has officially opened. Id., §3(c). Additional provisions, contained in sections four and five of the measure, earmark certain funds for the relocation effort.''[1]

The Office of Legal Counsel of the Department of Justice has taken the position that the funding mechanism incorporated into S. 770 is an unconstitutional infringement on the President's powers. See Bill to Relocate the United States Embassy from Tel Aviv to Jerusalem, Op. Off. Legal Counsel (May 16, 1995) (''The proposed bill would severely impair the President's constitutional authority to determine the form and manner of the Nation's diplomatic relations.'') (hereinafter ''OLC Op.'').

II. ANALYSIS

The Office of Legal Counsel (''OLC'') Opinion argues that the President has primary responsibility for foreign affairs and that his specific power to recognize foreign governments to exclusive. OLC Op., p. 2–3. Accordingly, OLC concludes that ''Congress may not impose on the President its own foreign policy judgments as to the particular sites at which the United States' diplomatic relations are to take place.'' Id. at 3. OLC maintains that the imposition of fixed-percentage restrictions on the State Department's FY 1997 and FY 1999 acquisition and maintenance funds until specified steps are completed in the relocation effort constitutes an impermissible restriction on the President's discretion in foreign affairs. Although OLC does not in any way dispute Congress' plenary power over the purse, it maintains that Congress may not ''attach conditions to Executive Branch appropriations requiring the President to relinquish his constitutional discretion in foreign affairs.'' Id. at 4, quoting Issues Raised by Section 129 of Pub. L. No. 102–138 and Section 503 of Pub. L. No. 102–140, 16 Op. Off. Legal Counsel at 30–31 (1992) (emphasis added.). In support of this assertion, OLC places exclusive reliance on prior Executive Branch opinions which criticize congressional appropriations riders that directly required the President to take (or refrain from) a particular action by stating that no appropriated funds could be used for the congressionally proscribed action. Id. at 3–4. See also Issues Raised by Section 129 of Pub. L. No. 102–138 & Section 503 of Pub. L. No. 102–140, 16 Op. Off. of Legal Counsel 18, 19 (1992), citing Section 503 of Pub. L. No. 102–140, 105 Stat. at 820 (1991) (''[N]one of the funds provided in this Act shall be used by the Department of State to issue more than one official or diplomatic passport to any United States government employee. . . .''); Appropriations Limitation for Rules Vetoed by Congress, 4B Op. Off. of Legal Counsel 731, 731–32 (1980), citing H.R. 7484, §608, 96th Cong., 2nd Sess. (1980) (''None of the funds appropriated or otherwise made available to implement . . . any regulation which has been disapproved pursuant to a resolution of disapproval duly adopted. . . .'').

OLC's assertion concerning the primacy of the Chief Executive in foreign affairs is well-supported,[2] and its further assertion that Congress may not interfere with these foreign policy prerogatives even when exercising its spending power is also consistent with long-standing Executive Branch precedent, although Congress has taken a different view.[3] The issue has never been resolved judicially.[4] However, OLC's assertion that S. 770 ''requires'' or ''compels'' the President to move the Embassy to Jerusalem, and is thus subject to the same constitutional objections as appropriation riders containing such unconditional requirements, is belied by the plain language of the bill and is otherwise unsupported by law or Executive Branch opinions.

S. 770 does not purport to restrict the President's ability to maintain an Embassy in Tel Aviv or to otherwise interfere with the President's authority to use appropriated monies in any manner he believes best serves the Nation's foreign policy interests. Rather, the measure merely states that, absent compliance with an established timetable for relocation of the U.S. Embassy in Israel, Congress will invoke its spending power to reduce the aggregate funding level that can be obligated in certain related discretionary accounts. Instead of a prohibition on the ability of the President to use money to exercise his constitutional powers, S. 770 merely provides a fiscal incentive for the President to exercise his discretion in a certain manner, though leaving him capable of eschewing these incentives and acting in direct contravention of Congress' wishes. Thus, such a mechanism in no way restricts the ability of the President to use his foreign affairs power to employ appropriated money as he sees fit.

That being so, S. 770 is different in this critical respect from any other appropriation rider ever objected to by Executive Branch officials as an unconstitutional infringement on the President's foreign affairs power or other executive powers. In all such cases, the appropriations riders have directed a particular course of action or inaction by prohibiting certain uses of appropriated funds, even if the President desired to take such actions in fulfilling his constitutionally-assigned duties. Issues Raised by Section 129 of Pub. L. No. 102–138 & Section 503 of Pub. L. No. 102–140, supra, citing Section 503 of Pub. L. No. 102–140, 105 Stat. at 820 (1991) (''[N]one of the funds provided in this Act shall be used by the Department of State to issue more than one official or diplomatic passport to any United States government employee. . . . ''); Appropriations Limitation for Rules Vetoed by Congress, supra, citing H.R. 7584, §608, 96th Cong., 2nd Sess. (1980)

[1] Footnotes at end of letter.

(''None of the funds appropriated or otherwise made available shall be available to implement . . . any regulation which has been disapproved pursuant to a resolution of disapproval duly adopted. . . .'').

The Attorney General and OLC have reasoned that if Congress is without constitutional power to make decisions for the President in areas the Constitution commits to his discretion, it matters not whether that intrusion is embodied in appropriations or other legislation. In exercising its power of the purse, Congress has no greater authority to usurp the President's exclusive constitutional authority than when it acts pursuant to other enumerated powers. See, The Appropriations Power & the Necessary & Proper Clause, 68 Wash. U. L. Q. 623, 30 (1990) (''[W]hen we hear discussions about Congress' weighty role in . . . the foreign relations power, and Congress adverts to 'the power of the purse,' it does not make sense. Congress still has to point to a substantive power. The power of the purse . . . is only procedural.'') (remarks by the Honorable William Barr).

Here, in contrast, Congress imposes no restrictions on appropriated funds: such funds may continue to be used to maintain an Embassy in Tel Aviv should the President decide to leave the Embassy there. Accordingly, there is nothing in S. 770 ''requiring the President to relinquish his constitutional discretion in foreign affairs'' and thus OLC's reliance on Executive Branch condemnation of such appropriation riders is entirely misplaced. OLC Op., p. 4.

To be sure, if the President retains the status quo in Israel, the State Department will have less funds in two upcoming fiscal years than it would otherwise have, and so S. 770 is plainly designed to influence the President's decision on the Jerusalem Embassy. But this sort of ''horse trading'' is a basic staple of relations between the two political branches and hardly infringes the President's constitutional authority or powers. For example, the President has unfettered constitutional authority to nominate whomever he desires for, say, Surgeon General, and Congress does not unconstitutionally interfere with that presidential appointment authority by abolishing or reducing the funding for the Surgeon General's Office if certain nominees are proposed. Similarly, Congress may constitutionally pledge to reduce financial support for certain foreign interests or international organizations simply because it is displeased with the President's exercise of his responsibilities as foreign affairs spokesman or Commander-in-Chief. Since the use of these sorts of quid pro quos to influence the President's exercise of his constitutional duties does not unconstitutionally interfere with those duties, S. 770's establishment of such a device is similarly within Congress' constitutional authority.

By entrusting the President with the authority to definitively resolve certain questions, the Framers did not erect a prophylactic shield protecting the President against all attempts to influence the manner in which he resolves those issues. Accordingly, the Founders did not erect some special constitutional protection for the President which immunizes him from the give and take of inter-branch disagreements. Rather, they expected that a President of ''tolerable firmness'' would be able to resist congressional blandishments to pursue a course he deemed unwise, assuming such appropriations riders survived his veto in the first instance. Alexander Hamilton, ''The Federalist No. 73,'' at 445 (C. Rossiter ed. 1961).

For this reason, even those scholars who believe Congress ''ought not be able to regulate Presidential action by conditions on the appropriation of funds . . . if it could not regulate the action directly,'' Henkin, supra at 113, acknowledge that establishment of financial penalties or incentives to influence presidential action is permissible. Henkin, supra at 79. (''Since the President is always coming to Congress for money for innumerable purposes, domestic and foreign, Congress and Congressional committees can use appropriations and the appropriations process to bargain also about other elements of Presidential policy and foreign affairs.''). Indeed, the Attorney General has favorably opined on the constitutionality of an appropriation rider that imposed a markedly more onerous restriction on the President's exclusive Commander-in-Chief powers than S. 770 imposes on his foreign policy discretion. In 1909, Congress attached the following rider to the Navy's appropriation:

''[N]o part of the appropriations herein made for the Marine Corps shall be expended for the purpose for which said appropriations are made unless officers and enlisted men shall serve on board all battleships and armored cruisers, and also upon such other vessels of the navy as the President may direct, in detachments of not less than eight percentum of the strength of the enlisted men of the navy on said vessels.

''Naval Appropriations Act of 1909, 35 Stat. 753, 773, reprinted in Appropriations—Marine Corps—Service on Battleships,'' 27 Op. Att'y Gen. 259 (1909).

The Attorney General found this restriction constitutional because, ''Congress has power to create or not to create . . . a marine corps, make appropriation for its pay, [and] provide that such appropriation shall not be made available unless the marine corps be employed in some designated way . . .'' 27 Op. Att'y Gen. at 260.

So far as we can discern, neither OLC nor the Attorney General have subsequently disavowed or undermined the vitality of this Attorney General Opinion, although they opined at times that appropriation riders could not direct the President to take action within his constitutional sphere. Presumably, then, even Executive Branch officials have recognized a distinction between impermissible riders that mandate certain action or inaction and permissible ones which, like the Marine Corps appropriation, provide the President with at least a nominal choice between two courses of action, with financial ''penalties'' if he chooses the disfavored option. In the 1909 naval appropriation, the President's ''choice'' was between having marines constitute eight percent of battleship crews or having no funding for the Marine Corps at all. This complete defunding penalty for exercising the disfavored option is obviously far more draconian than the 50% reduction in construction funding occasioned by S. 770.

In short, there is an obvious and constitutionally significant difference between an appropriations law forbidding the President to take action which the Constitution leaves to his discretion and a law which merely sets out the negative financial consequences that will ensue if the President pursues a certain policy. This distinction between coercive laws and laws which offer financial incentives to exercise one's sovereign power in the preferred way has been well-recognized by the Supreme Court in directly analogous circumstances.

Most notably, in *South Dakota* v. *Dole,* 483 U.S. 203 (1987), the Supreme Court considered a congressional statute, known as Section 158, which directed the Secretary of Transportation to withold five percent of allocable highway funds from any state in which individuals under the age of 21 could legally purchase or possess alcohol. Like S. 770, the funding mechanism in *Dole* constituted a congressional attempt to provide indirect financial inducement to affect policy in an area presumably beyond Congress' power to legislate directly.

Despite earlier recognition that the ''Twenty-first Amendment grants States virtually complete control over whether to permit importation or sale of liquor and how to structure the liquor distribution system,''[5] the Court upheld this statutory incursion into state sovereignty, asserting that the ''encouragement to state action found in §158 is a valid use of the spending power.'' *Dole,* 483 U.S. at 212. Accordingly, even though the Constitution assigned to the states the responsibility for establishing drinking ages, and thus Congress presumably could not direct the states to set a minimum age, this funding restriction was permissible because ''Congress has acted indirectly under its spending power to encourage uniformity in the States' drinking ages.'' Id. at 206. Thus, such restrictions are permissible because the potential recipient of appropriated federal funds is free to reject Congress' financial inducement and exercise unfettered discretion in the relevant area, so long as the recipient is willing to endure the financial sacrifice that ensues. Id. at 211–212 (''Congress has offered . . . encouragement to the States to enact higher minimum drinking ages than they would otherwise choose. But the enactment of such laws remains the prerogative of the States not merely in theory but in fact.''). Similarly, in upholding federal appropriation riders requiring the regulation of State employees' political activities, the Supreme Court has ruled that even though Congress ''has no power to regulate local political activities as such of state officials,'' the federal government nevertheless ''does have power to fix the terms upon which its money allotments to states shall be disbursed.'' *Oklahoma* v. *Civil Service Comm'n,* 330 U.S. 127, 143 (1947). The Court found that the state's sovereignty remained intact because the state could adopt ''the 'simple expedient' of not yielding to what she urges is federal coercion.'' Id. at 143–144.

Thus, *Dole* would seem to directly establish that the sort of conditional funding provided by S. 770 is constitutionally permissible. In *Oklahoma* and *Dole,* the Tenth and Twenty-first Amendments provided the states with exclusive authority over their employees' political activities and citizens' legal drinking age, yet Congress did not unconstitutionally infringe these powers by offering financial incentives to adopt a particular policy. By the same token, the fact that the Constitution vests the President with exclusive recognition authority does not disable Congress from using its plenary spending power to seek to influence the exercise of that authority.

Like the drinking-age restriction in *Dole,* the funding mechanism in S. 770 merely attempts to induce recipients of federal funds to pursue policy ends advocated by Congress via clearly established conditions on future appropriations, while leaving that decisionmaker with the option of refusing such conditions. The President may exercise his discretion to retain the American embassy in Tel Aviv and accept the potential of reduced congressional funding in certain related discretionary accounts, or he can move the embassy. S. 770 does nothing to alter the fundamental fact that the decision as to where to locate the U.S. embassy in Israel ''remains the prerogative'' of the President ''not merely in theory but in fact.'' *Dole,* 483 U.S. at 211–12.[6]

To be sure, the President differs from state governments because, as noted, he cannot pursue any action requiring expenditures without congressional funding. Thus a blanket prohibition against using appropriated

funds does not leave him with any option to pursue the proscribed activity. Because of this distinction, a straightforward restriction against using any funds for an action otherwise within the President's constitutional power is an effective prohibition against taking such action and thus presents a different, and more difficult, constitutional question. As noted, however, that is not the situation here. The President has been offered a choice directly analogous to that offered the states in *Dole*—he may pursue the congressionally disfavored option and accept the financial consequences or acquiesce to the preferred option without any such sacrifice.

OLC has nonetheless previously sought to distinguish *Dole* on the grounds that the Supreme Court's decision in *Metropolitan Washington Airports Authority* v. *Citizens for the Abatement of Aircraft Noise*, 111 S. Ct. 2298 (1991) (hereinafter ''MWAA'') found *Dole* ''inapplicable'' to issues that ''involve separation-of-powers principles.'' Issues Raised by Section 129 of Pub. L. No. 102–138 and Section 503 of Pub. L. No 102–140, supra, at 31. This assertion is patently untrue. *MWAA* in no way suggests that, while Congress is free to use its spending power to influence the sovereign power of states guaranteed by the Tenth Amendment and the Constitution's basic structure, the sovereign powers of the President are somehow different and thus immune from such congressional blandishments. Contrary to OLC's misleading selective quotation, *MWAA* never said *Dole*'s rationale was ''inapplicable'' to cases involving ''separation-of-powers principles,'' it simply stated that *Dole*'s Nationale was ''inapplicable to the issue presented by this case.'' *MWAA*, 1111 S. Ct. at 2309 (emphasis added). *Dole*'s rationale was inapplicable not because the sovereign authority of the President is somehow different from that of the states, but because the infringement of executive powers in *MWAA* was obviously and significantly different from the funding appropriation conditions at issue in *Dole*.

The issue that divided the dissenting and majority opinions in *MWAA* was whether Congress was effectively responsible for creating the Board of Review, which was composed of Members of Congress and had veto power over the Airport Authority's important decisions. Id. at 2313 (White, J. dissenting). The dissent argued that no separation-of-powers issue was implicated by this Board of Review because the Commonwealth of Virginia (and the District of Columbia) had created that Board and no federalism principles prevented the states from so utilizing the talents of Members of Congress. Id. According to the dissent, the fact that Congress had coerced Virginia to make this decision was of no moment because this ''coercion'' was no different than Congress' use of the spending power to influence states in *Dole*. Id. at 2316–17.

In the section of the opinion relied upon by OLC, the majority refuted both prongs of the dissent's arguments:

''Here, unlike *Dole*, there is no question about federal power to operate the airports. The question is whether the maintenance of federal control over the airports by means of the Board of Review, which is allegedly a federal instrumentality, is invalid, not because it invades any state power, but because Congress' continued control violates the separation-of-powers principle, the aim of which is to protect not the States but ''the whole people from improvident laws.'' *Chadha*, at 951, 103 S. Ct. at 2784. Nothing in our opinion in *Dole* implied that a highway grant to a State could have been conditioned on the State's creating a ''Highway Board of Review'' composed of Members of Congress.''—*Id.* at 2309.

The first two sentences merely make the obvious point that since *MWAA* deals with a ''federal instrumentality'' and there was no question about the propriety of ''federal power to operate the airports,'' there is simply no issue of federal interference with state power.[7] Since there was no question of federal interference with, or bargaining for, state power, the only relevant question was who controlled the federal power—Congress or the Executive. In that regard, Congress had not ''bargained'' with the Executive by establishing financial conditions analogous to S. 770, but had directly commandeered control over the Airport Authority by establishing the Review Board.

The third sentence in the quoted passage simply says that *Dole* is inapplicable because the infringement in *MWAA* is different from the appropriation restriction in *Dole* and would be impermissible if applied to the states. This obviously belies the assertion that *Dole* was found inapplicable because different standards govern infringement on the President's powers than those which govern state intrusions. Specifically, *Dole* was distinguishable because, in *MWAA*, Congress did not provide money in return for Virginia exercising *its* sovereignty in a certain way. Rather, Virginia agreed to transfer its sovereignty over the Airport Authority to Congress. As the opinion's derisive citation to a ''Highway Board of Review'' makes clear, while the federal government may use its spending power to influence a state's exercise of its own sovereignty, Congress cannot use its spending power to induce the state to enhance congressional authority by creating congressionally-controlled federal instrumentalities. In short, Virginia was not trading away its own state power over airports; it had none. Rather, it was trading away the pre-existing Executive power over the airports to Congress. Since Virginia obviously had no Executive power to trade, Congress could not invoke *Dole* to justify its exercise of Executive power.

As this detailed review establishes, *MWAA* said that *Dole* was inapplicable because 1) there was no state power to bargain away, and 2) states cannot enhance congressional power in return for congressional dollars. Nothing in *MWAA* suggests that *Dole* was inapposite because the Executive, unlike states, in somehow disabled from agreeing to exercise his sovereign authority in a particular manner in return for increased congressional monies.

To the contrary, like the states, the Executive Branch, ''absent coercion . . . has both the incentive and the ability to protect its own rights and powers, and therefore may cede such rights and powers.'' *MWAA*, 111 S. Ct. at 2309. The fact that preserving the President's powers against congressional enactments is ultimately designed to protect the ''whole people from improvident laws'' does not suggest a different rule, since the federalism concerns implicated in *Dole* were also designed to preserve the people's liberty. See *U.S.* v. *Lopez*, 115 S. Ct. 1624, 1626–27 (1995) (''Just as the separation and independence of the coordinate branches of the Federal Government serves to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.''), quoting *Gregory* v. *Ashcroft*, 501 U.S. 452, 458 (1991); *New York* v. *U.S.*, 112 S. Ct. 2408, 2431 (1992) (''[t]he Constitution divides authority between federal and state governments for the protection of individuals.'') (emphasis added.)

To be sure, under *MWAA*, Congress could not condition appropriations on the President's agreement to establish an ''Israeli Embassy Board of Review,'' where congressional agents determine the location of the Embassy. The President cannot transfer his recognition powers to congressional decisionmakers and, as indicated, there is a plausible argument that Congress cannot directly supplant the President's decisionmaking authority on such matters, even though directives in appropriations bills. Like any other sovereign, however, the President may consider many factors in making his own decisions. Just as he may consider the reaction of foreign countries, he may also consider a negative congressional reaction. Accordingly, nothing precludes Congress from seeking to influence that decision through use of its own constitutional powers including the spending power.

Indeed, OLC's contrary position demeans the President's constitutional status and certainly cannot be advanced in the name of a strong Executive. The OLC Opinion suggests that the President, unlike the states, lacks the ability or the will to resist Congress' financial inducements. Particularly given the existence of his veto power, this view of the President's authority vis-a-vis Congress is obviously untenable and irreconcilable with the Framers' views. The Framers did not erect a prophylactic constitutional umbrella protecting the President from the persuasive power of Congress' financial inducements, they forged only a shield against congressional directives. OLC simply ignores this vital distinction and the Executive Branch and judicial precedent which support it.

Under these precedents and a proper understanding of the constitutional framework, S. 770 does not violate any separation-of-powers principle or infringe any constitutional authority of the President.

FOOTNOTES

[1] Section 4 of S. 770 merely reprograms $5 million in funds appropriated in the Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act of 1995. Pub. L. No. 103–317, 108 Stat. 1724, 60 (1994) (Title V contains appropriations specifically for the Department of State and related agencies.) Specifically, $5 million previously contained in the aggregate account for expenses of general administration is earmarked for costs incurred in activities associated with the relocation of the U.S. embassy in Israel: Id., §4 (''Of the funds appropriated for fiscal year 1995 for the Department of State and related agencies, not less than $5,000,000 shall be made available until expended for costs associated with relocating the United States Embassy in Israel. . . .'').

The $5 million authorization is to remain in effect without temporal restriction until such funds are expended. §4 Though the President is in no way obligated to spend the $5 million earmarked for the relocation effort, such funds cannot be used for any other purposes. General Accounting Office, ''Principles on Federal Appropriations Law'' 6–6 (2. ed., 1992) (In an appropriations bill providing $1,000 for ''[s]moking materials . . . of which not less than $100 shall be available for Cuban cigars . . . portions of the $100 not obligated for Cuban cigars may not be applied to the other objects of the appropriation.''); Earmarked Authorizations, 64 Comp. Gen. 388, 394 (1985) (asserting that where measure providing funding for the National Endowment for Democracy earmarks ''Not less than $13,800,000'' for projects of the Free Trade Union Institute, ''awards should not be made'' where there is no worthy programs, ''but the consequence of this [non-allocation] is not to free the unobligated earmarks for other projects.''). Similarly, Section 5 of the bill earmarks a specified amount of the funds authorized to be appropriated in the Department of State's general account for ''Acquisition and Maintenance of Buildings Abroad'' in fiscal years 1996 and 1997, requiring that such earmarked funds be spent on the embassy relocation effort. As in Section 4, the budget authority is not temporarily restricted and is to last ''until expended'' on the relocation effort. Given the identical requirement that ''not less than [the earmarked amount] . . . shall be made available'' in fiscal years 1996 and 1997 respectively, the President has discretion as to whether to use the money, but cannot use earmarked funds for other general purposes.

[2] See, e.g., *Alfred Dunhill of London, Inc.* v. *Republic of Cuba,* 425 U.S. 682, 705–06 n. 18 (1976) (''[T]he conduct of [diplomacy] is committed primarily to the Executive Branch.''); *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398, 410 (1964) (''Political recognition is exclusively a function of the Executive.''); *Unites States* v. *Pink,* 315 U.S. 203, 229 (1942) (Asserting that the executive's constitutional authority to recognize governments ''is not limited to a determination of the government to be recognized. It includes the power to determine the policy which is to govern the question of recognition.'').

[3] Congress has repeatedly used its control over appropriations to influence executive actions on foreign policy and has repeatedly opined that these conditions are constitutional. See, e.g., William C. Banks & Peter Raven-Hansen, ''National Security and the Power of the Purse'' 3–4 (1994); Louis Henkin, ''Foreign Affairs and the Constitution'' 114 (1972). (''Congress has insisted and Presidents have reluctantly accepted that in foreign affairs . . . spending is expressly entrusted to Congress and its judgment as to the general welfare of the United States, and it can designate the recipients of its largesse and impose conditions upon it.''); ''Report of the Committees Investigating the Iran-Contra Affair,'' S. Rept. No. 100–216, H. Rept. No. 100–433, 100th Cong., 1st Sess. 475 (1987) (''[W]e grant without argument that Congress may use its power over appropriations . . . to place significant limits on the methods a President may use to pursue objectives the Constitution put squarely within the executive's discretionary power.''). Department of Defense Appropriations Act for Fiscal Year 1985, Pub. L. No. 98–473, §8066, 98 Stat. 1837, 1935 (1984), reprinted in Banks, supra at 138. (''During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting . . . military or paramilitary operations in Nicaragua. . . .''); Arms Control Export Act of 1976, Pub. L. No. 94–329, §404, 90 Stat. 729, 757–58 (1976) (''[N]o assistance of any kind may be provided for the purpose, or which would have no effect, of promoting . . . the capacity of any nation, group, organization, movement, or individual to conduct military or paramilitary operations in Angola. . . .'').

[4] It is well-established that Congress may not use its spending power to coerce activity that itself violates a provision of the Constitution. See *United States* v. *Butler,* 297 U.S. 1, 69–70, 74 (1936): *United States* v. *Lovett,* 328 U.S. 303, 315–16 (1946) (striking a funding restriction as a bill of attainder in violation of the U.S. Constitution). Obviously, this doctrine has no application here since the Constitution does not prohibit moving the American Embassy in Israel to Jerusalem. However, OLC, as it has in the past, further maintains that the spending power cannot be used to force the President to take action that is perfectly constitutional, if the appropriation restricts the President's power to exercise his unfettered discretion in an area within his constitutional authority. There is no judicial precedent either way on OLC's extension of the ''independent constitutional bar'' principle in a separation-of-powers context. In the context of congressional funding conditions on state governments, the Supreme Court has unequivocally rejected an expanded notion of the independent constitutional bar:

''[T]he ''independent constitutional bar'' limitation on the spending bar is not, as petitioners suggest, a prohibition on the indirect achievement of objectives which Congress is not empowered to achieve directly. Instead, we think that the language in our earlier opinions stands for the unexceptionable proposition that the power may not be used to induce activities that would themselves be unconstitutional.''

*South Dakota* v. *Dole,* 483 U.S. 203, 210 (1987). See also *Oklahoma* v. *Civil Service Commission,* 330 U.S. 127 (1947). Of course, the President, unlike the states, has no access to funds other than those appropriated by Congress. Thus, unlike the situation with state governments, a prohibition precluding the President from spending any appropriated monies on a particular activity is a direct prohibition against pursuing that activity. This provides a plausible basis for distinguishing the statute involved in *Dole* from a direct appropriations restriction on the President's activities. As we discuss below, however, *Dole* provides direct support, where, as here, there is no prohibition against spending money on the President's desired activity.

[5] *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum,* 445 U.S. 97, 110 (1980) cited in *Dole,* 483 U.S. at 205.

[6] The Supreme Court has recognized that at some point, a financial inducement becomes so lucrative that ''pressure turns into compulsion'' and such incentive becomes unconstitutional coercion. *Dole,* 483 U.S. at 211. See also, *Steward Machine Co.* v. *Davis,* 301 U.S. 548, 590 (1937). However, the *Dole* Court dismissed any claim of coercion involved in the drinking age funding provision, stating that the ''relatively small percentage'' of highway funds involved in the cutoff were not coercive. 483 U.S. at 211. The Court further asserted that the mere fact that a conditional grant of money is successful in achieving compliance with congressional restrictions will not establish coercion. Id. seems clear that, given the minuscule amount of funding involved in S. 770, especially relative to the substantial highway fund allocations involved in *Dole,* the incentive mechanism at issue could not be deemed coercive. Should the President refuse to move the embassy, he would be barred from obligating funds amounting to a mere one percent of the budget authority reserved for international affairs in each of the fiscal years involved and a mere one one-hundredth of one percent of the aggregate budget in those same years. Office of Management & Budget, ''Appendix to the Budget of the United States for Fiscal Year 1996'' 692–93 (1995); Office of Management & Budget, ''Historical Tables to Supplement the Budget of the United States for Fiscal Year 1996'' 14, 69 (1995).

[7] The Court had previously noted that the Board of Review was ''an entity created at the initiative of Congress, the powers of which Congress has delineated, the purpose of which is to protect an acknowledged federal interest, and membership in which is restricted to congressional officials. Such an entity necessarily exercises sufficient federal power as an agent of Congress to mandate separation-of-powers scrutiny.'' Id. at 2308.

Mr. LEVIN. Mr. President, I rise in support of the bill which I have cosponsored which will relocate the American Embassy to Israel's capital of Jerusalem by a date certain.

For nearly 50 years now, Jerusalem has served as the capital of the State of Israel. Israel is the only place in the world that I know of where the United States has established its Embassy in a city other than that identified by the host nation as its capital. Jerusalem is the seat of Israel's Government and there should be little question of where our Embassy should be.

Now, some have suggested that establishing the American Embassy in Jerusalem during the ongoing peace negotiations might adversely affect the peace process. For reasons just stated by Senator KYL, I think it actually could have the opposite effect, that our clear determination to place our Embassy in Jerusalem by a date certain will avoid any misunderstanding, and it is that misunderstanding or lack of clarity which could harm the peace process, because surely no one seriously suggests that Israel would ever agree to change the status of Jerusalem as Israel's capital.

I do not think anyone has made that suggestion. I do not think anyone in the world would make that suggestion.

It is now Israel's capital. It is clearly going to remain Israel's capital. We, as Israel's ally, should make it very clear that we recognize that fact and that we act to assure the movement of our Embassy to the capital of the State of Israel by a fixed date.

Mr. President, there will be and has been some discussion about a possible Presidential waiver. We had such a waiver with the Jackson-Vanik legislation, for instance—very important legislation which focused some very significant pressure on the then Soviet Union.

That legislation had an impact. It worked well to focus pressure on the Soviet Union. It made a very important statement about our feelings about human rights in the Soviet Union and its relationship to trade. But it also had a waiver.

The question is, what kind of a waiver would be appropriate for the President in this instance? It is clear to me that the waiver should be narrowly drawn so as not to undermine or detract from the point of this legislation.

This is historic legislation. This is action which is long overdue. It is cosponsored by 67 Senators, which will, hopefully, assure its overwhelming passage today. I cosponsor it in the hope that it will receive the overwhelming bipartisan support of the Senate that it deserves.

I yield the floor.

Mr. HELMS. Mr. President, I am among those who have long supported the concept embodied in the Jerusalem Embassy Relocation Implementation Act of 1995. Since Senator DOLE introduced this legislation, there has been great gnashing of teeth and wringing of hands that have trivialized a fundamental and significant fact: Jerusalem is the capital of Israel, and the capital is where the United States Embassy should always be regardless of the country involved.

The Government of Israel has asserted that Jerusalem is and will remain the capital of Israel. The dire warnings being heard that the peace process will be endangered are, in fact, threats. The peace process will be dismantled only if and when Yasser Arafat wants to dismantle it.

I commend Senator DOLE for his efforts, for his conviction, and for accomplishing what I feel should have been done years ago. I am pleased to be a cosponsor, and I will be pleased to visit the United States Embassy in Jerusalem, capital of the State of Israel.

Mr. WARNER. Mr. President, I am honored to rise today as an original cosponsor of S. 1322, the Jerusalem Embassy Relocation Implementation Act of 1995. I would like to commend Majority Leader DOLE and Senators D'AMATO and MOYNIHAN for the leadership they have shown on this important issue.

I think it is only fitting—and long overdue—that the Senate act on this resolution this week, prior to Wednesday's ceremony in the Capitol rotunda celebrating the 3,000th anniversary of the Jewish presence in Jerusalem.

The resolution before us today would put the Senate clearly on record as supporting a unified Jerusalem as the permanent capital of the State of Israel. Some have argued that Senate passage of this resolution would somehow harm the peace process—in particular, the upcoming negotiations on the final status of Jerusalem. I would point out to my colleagues that this resolution has been carefully drafted so that it is compatible with the timetable established by the peace process. Under the terms of this resolution, the

Senate would state that it is the policy of the United States that ''the United States Embassy in Israel should be relocated to Jerusalem no later than May 31, 1999.'' That is the date established in the Oslo Agreement of 1993 for the completion of final status negotiations for Jerusalem. I think it is appropriate that we send a clear signal of congressional support for our Israeli allies as they enter these difficult negotiations.

Mr. President, Jerusalem has been the declared capital of the State of Israel since January 23, 1950. And yet, over 45 years later, the United States has not recognized Jerusalem as the capital of our friend and ally, the State of Israel. Israel is the only nation in the world where the United States Embassy is not located in the host nation's capital.

Like many of my colleagues, I have had the privilege of visiting Jerusalem on many occasions. I have seen the many holy sites which make Jerusalem the cradle of three of the world's largest religons—Judaism, Christianity, and Islam—and an inspiration to us all.

I have also seen the bombed out buildings in West Jerusalem that stand just outside the wall of the Old City—buildings which were shelled during the time of the Jordanian occupation of East Jerusalem. Those buildings serve as a constant reminder of the sacrifices endured by the Jewish people from 1947 to 1967 when Jews were denied access to the holy sites in East Jerusalem; and a reminder that the world must never allow the citizens of Israel—and indeed Jews around the world—to be subjected to such suffering again.

Mr. President, Israel is our strong friend and ally in the Middle East. As the only democracy in the region, this brave nation stands as a symbol of hope for millions. The people of Israel claim Jerusalem as their capital. This is their right. Their choice should be honored. America should recognize that Jerusalem is, and will remain, the undivided and permanent capital of the State of Israel.

I thank the Chair.

Ms. SNOWE. Mr. President, I support this legislation, and would like to congratulate the distinguished majority Leader for his consistent leadership on this very important issue. This bill states the simple fact that Jerusalem is Israel's national capital. It puts in place a series of careful, measured steps to eventually locate our Embassy in Israel's capital city, but in any case no later than May 31, 1999.

I am a cosponsor of both S. 770, the original Jerusalem Embassy Relocation Implementation Act, as well as the slightly modified bill that we are considering today, S. 1322. S. 770 was introduced on May 9 by the gentleman from Kansas, Senator DOLE, and I am proud to have joined with 62 of my colleagues as a cosponsor of both S. 770 and S. 1322.

I was also pleased to join 92 of my colleagues in our March 20 letter to Secretary of State Christopher calling for the relocation of our Embassy to Jerusalem no later than May 1999, the time when both the Israelis and Palestinians have agreed that the final status of Jerusalem would be settled.

Some may argue that now is not the time for us to establish a firm policy on the eventual location of the U.S. Embassy in Jerusalem. The irony, of course, is that it appears that for 47 straight years the State Department has never yet found precisely the right moment to take this commonsense action. All we are saying in this legislation is that we are giving State 4 years in which they certainly can find an appropriate time.

As a cosponsor of the original House Lantos bill to take this action over a decade ago, I have consistently supported this position throughout my congressional career.

Only in the sometimes fantastic politics of the Middle East could this issue even be considered remarkable. It is a simple fact that Jerusalem—or at least some part of Jerusalem—has been Israel's capital city ever since Israel's 1948 war for independence. Observing this fact is no different than observing that the sun rises in the east. And trying to deny the act does not make it any less true.

This takes us to a potentially troubling aspect of the State Department's consistent refusal to recognize Jerusalem as Israel's capital. This policy originated from the days of the U.N. partition plan ending Britain's colonial mandate over the region. That plan envisioned the establishment of Jerusalem as an international city not under the sovereignty of any nation.

The U.N. partition plan of 1947, however, was never implemented due to its total rejection by the Arab countries because it would have split the British protectorate into a Jewish and Arab state. Thus, the State Department continues to cling to a formal position refusing to acknowledge Israel's sovereignty over any part of Jerusalem.

The only, and I repeat only possible justification for such a position would be if the State Department believed that Israeli sovereignty over even west Jerusalem was illegitimate, and that Israel must cede the entire city to an Arab state or to international control.

If our country does not take this position, we have no more right maintaining our Embassy in Tel Aviv than we do insisting on maintaining our Embassy in Alexandria, Egypt, which was that country's capital until the military overthrow of its monarchy by Col. Gamel Abdel Nassar in 1952.

Mr. President, I believe it is long past time for our country to begin treating our closest ally in the Middle East—Israel—in the same way that we treat every Arab country, and indeed, every other country in the world with whom we maintain diplomatic relations. It is time for us to locate our Embassy in Israel's capital city, and stop making excuses why any particular moment never seems to be exactly the right moment. Sometime in the next 4 years that moment will arrive, and that is all this bill is saying.

I urge overwhelming bipartisan support for this important bill, and I again congratulate the Senator from Kansas for his leadership on this issue.

Mr. FRIST. Mr. President, I rise today in support of S. 1322, a bill to relocate the United States Embassy in Israel to Jerusalem from Tel Aviv. I am honored to be a cosponsor of this legislation and to have joined the overwhelming majority of my colleagues in writing a letter to Secretary Christopher this past March regarding this issue.

Mr. President, for nearly 50 years, the United States and Israel have shared a unique and historic relationship. Israel has been our strongest, most loyal ally in the Middle East, and the location of our Embassy in Tel-Aviv is inconsistent with this relationship.

Israel is the only country in the world where the United States Embassy is not located in the capital city, and I believe this policy must change. It is important to note that Israel's Parliament, supreme court, central bank, and all other state institutions and headquarters are located in Jerusalem, including the Foreign Ministry. Beyond just the important symbolism, the location of our embassy in Jerusalem, rather than in Tel Aviv, an hour away from the seat of government, makes practical sense.

Mr. President, I believe that since this year marks the 3,000th anniversary of King David establishing Jerusalem as the capital city of the Jewish nation, there is no better time for the United States to recognize this historic seat of government. The site for the Embassy is not located in disputed territory, the status of Jerusalem as Israel's capital is not disputed, and we ought to support this valuable friend and ally.

Thank you, Mr. President. I yield the floor.

Mr. GRAMM. Mr. President, the Arab-Israel peace process must be judged by one question, and one question only: Will Israel be stronger and more secure at the end of the process than it was at the beginning? To achieve that end, I support this legislation to move the U.S. Embassy to Jerusalem.

Our Embassy should be located in Jerusalem. Jerusalem is Israel's chosen seat of government, where its Parliament, prime ministry, Supreme Court, and most government ministries are located. The United States has diplomatic relations with 184 countries, and in every country—except Israel—our embassy is located in the capital designated by the host nation.

The Clinton administration argues that moving the Embassy will destroy the peace process. I believe that the peace process can continue only if Israelis believe that their nation's vital

interests will not be compromised. Moving our Embassy to Jerusalem will strengthen that conviction, and it will be a clear demonstration of the fact that no wedge will be driven between Israel and the United States over the status of Jerusalem.

This week, we will begin a celebration of Jerusalem and its 3,000 years of playing a critical, central role in world history. As we begin this celebration, I am pleased to support this bill in the conviction that moving the American Embassy would send an unmistakable signal that the unity of Jerusalem is irreversible, and it will remain, now and forever, the capital of Israel.

Mr. D'AMATO. Mr. President, I rise in support of S. 1322, as an original cosponsor, an author, along with my colleague Senator MOYNIHAN of a letter to the Secretary of State along with 91 of our colleagues proposing this very idea, and finally as a true believer in the principle of this legislation. I want to make it very clear: Jerusalem is and shall remain the undivided capital of the State of Israel. Jerusalem belongs to Israel and our Embassy belongs in Jerusalem.

Relocation of our Embassy from Tel Aviv to Jerusalem should begin as soon as possible. Under this bill, it will.

It is outrageous that we have diplomatic relations with 184 countries throughout the world and in every one, except Israel, our Embassy is in the functioning capital.

Israel has endured much throughout her history and for her to have to suffer the indignity of her main ally refusing to place its embassy in her capital is an insult.

We would never allow another country to tell us where to locate our capital. Why are we dictating this to Israel?

In a time when the Palestinians are placing more and more demands on Israel and when the United States is providing $500 million to the PLO, only to find Yasir Arafat unable to deliver on his end of the peace agreement, we must make it clear that some things are not negotiable. Jerusalem for one is not a topic for negotiation. Jerusalem belongs to Israel.

If we delay moving our Embassy any longer, we will be raising unrealistic hopes about the future of this holy city.

It was for this reason that I along with Senator MOYNIHAN and 91 other Senators sent a letter to Secretary of State Warren Christopher urging him to begin planning now for the relocation of the Embassy to Jerusalem by no later than May 1999. At this time, I ask unanimous consent that the text of this letter be printed in the RECORD.

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

UNITED STATES SENATE,
*Washington, DC, March 20, 1995.*

Hon., Warren Christopher,
*Department of State, Washington, DC.*

DEAR MR. SECRETARY: We believe that Jerusalem is and shall remain the undivided capital of the State of Israel. It is now over eleven years since 50 United States Senators and 227 members of the House of Representatives joined in endorsing the transfer of the United States embassy In Israel from Tel Aviv to Jerusalem.

In the subsequent decade both Houses of Congress have passed, by near-unanimous margins, a total of four resolutions calling on the United States government to acknowledge United Jerusalem as the capital of the State of Israel. A fifth resolution adopted last year called on the administration to veto language in United Nations Security Council Resolutions that states or implies that Jerusalem is occupied territory.

This administration has been open, direct and specific with regard to its position concerning an undivided Jerusalem. In this light, we are particularly pleased to note that the most recent edition of ''Key Officers of Foreign Service Posts: Guide for Business Representatives,'' published by the Department of State lists Jerusalem under Israel for the first time in 46 years, albeit with a disclaimer. This is not enough.

There can be little doubt that Jerusalem is a sensitive issue in the current peace process. While the Declaration of Principles stipulates that Jerusalem is a ''final status'' issue to be negotiated between the parties, we share Prime Minister Rabin's view which he expressed to the Knesset that:

''On Jerusalem, we said: 'This Government, like all of its predecessors, believes that is no disagreement in this House concerning Jerusalem as the eternal capital of Israel. United Jerusalem will not be open to negotiation. It has been and will forever be the capital of the Jewish people, under Israeli, sovereignty, a focus of the dreams and longings of every Jew.''

United States policy should be equally clear and unequivocal. The search for peace only be hindered by raising utterly unrealistic hopes about the future status of Jerusalem among the Palestinians and understandable fears among the Israeli population that their capital city may once again be divided by cinder block and barbed wire.

The United States enjoys diplomatic relations with 184 countries. Of these, Israel is the only nation in which our embassy is not located in the functioning capital. This is an inappropriate message to friends in Israel and, more importantly, a dangerous message to Israel's enemies.

We believe that the United States Embassy belongs in Jerusalem. It would be most appropriate for planning to begin now to ensure such a move no later than the agreements on ''permanent status'' take effect and the transition period has ended, which according to the Declaration of Principles is scheduled for May 1999. We would appreciate hearing from you as to what steps are being taken to make such a relocation possible.

Sincerely,

Daniel Patrick Moynihan, Alfonse M. D'Amato, Paul S. Sarbanes, Bob Packwood, Russell D. Feingold, Jess Helms, Barbara Boxer, Connie Mack, Frank R. Lautenberg, Don Nickles.

Joseph I. Lieberman, Mitch McConnell, Bob Graham, Christopher S. Bond, John D. Rockefeller IV, Olympia J. Snowe, Richard H. Bryan, James M. Inhofe.

Charles S. Robb, Dirk Kempthorne, Howell Heflin, Jon Kyl, Carl Levin, Phil Gramm, Carol Moseley-Braun, Larry E. Craig.

Patty Murray, Robert Dole, Paul Wellstone, Slade Gorton, Dianne Feinstein, Hank Brown, Joseph R. Biden, Jr., Mike DeWine.

Tom Harkin, Charles E. Grassley, Daniel K. Inouye, Thad Cochran, John Glenn, Arlen Specter, Wendell H. Ford, Richard C. Shelby.

Claiborne Pell, Trent Lott, Paul Simon, Dan Coats, Ben Nighthorse Campbell, Conrad Burns, Max Baucus, William S. Cohen.

Daniel K. Akaka, Kay Bailey Hutchison, Christopher J. Dodd, John Ashcroft, John F. Kerry, Robert F. Bennett, Thomas A. Daschle, Larry Pressler.

Barbara A. Mikulski, Bill Frist, Herb Kohl, Paul Coverdell, Bill Bradley, Rod Grams, Harry Reid, Lauch Faircloth.

J. Bennett Johnston, John McCain, J. James Exon, Bob Smith, Robert J. Kerrey, Richard G. Lugar, John B. Breaux, Rick Santorum.

Edward M. Kennedy, Orrin G. Hatch, Kent Conrad, Strom Thurmond, Ernest F. Hollings, Craig Thomas, Byron L. Dorgan, John W. Warner, Jeff Bingaman, Alan K. Simpson.

Sam Nunn, Nancy Landon Kassebaum, Patrick J. Leahy, Pete V. Domenici, William V. Roth, Jr., Judd Gregg, Frank H. Murkowski, Fred Thompson, Ted Stevens.

Mr. D'AMATO. The bill calls for completion of the Embassy in May 1999, to ensure that such a move occurs no later than when the agreements on permanent status take effect and the transition period has ended, according to the Declaration of Principles signed by Israel and the Palestinians in September 1993.

Jerusalem is and will remain the permanent and undivided capital of Israel. I am not going to let the State Department bureaucrats forget that.

The Clinton administration must recognize this and begin the process of moving the U.S. Embassy to Jerusalem. It is shameful that the United States continues to bend to pressure to keep its Embassy outside of Jerusalem.

While I understand that the present Middle East peace negotiations are both complicated and delicate, I do not want this administration to be under the impression that Jerusalem will belong to anyone other than Israel.

Further delay in moving the U.S. Embassy to Jerusalem will only embolden the Palestinians who believe that they have a justified claim to the city.

While some worry that such a move will damage the peace process, delay can only hurt it. If the future of Jerusalem remains unclear in the minds of the Palestinians then they will increase their demands and this will further complicate the already tense negotiations.

Let the message be clear: A united Jerusalem is off limits to negotiation. Jerusalem belongs to Israel and our Embassy belongs in Jerusalem.

Mr. LEVIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LIEBERMAN. Mr. President, I rise to speak on behalf of the legislation before us, which would compel the movement of the United States Embassy in Israel to Jerusalem.

Jerusalem, city of peace, the holy city, was entered almost 3,000 years ago by King David. Mr. President, 47 years ago, in 1948, the modern State of Israel was established. The Prime Minister at that time, David Ben-Gurion, declared Israel a state and declared also that its capital would be Jerusalem, although at that time, after the war for independence, Jerusalem was a divided city: the western part Israeli; the old city and the eastern part, Jordanian.

In the normal course of diplomatic relations, every nation in the world would have established their embassy in the city, Jerusalem, designated as the capital by the new state of Israel, the state having been recognized by the United States, having been accepted as a member of the United Nations. But, for reasons that need not be spelled out in detail here, because of controversy that surrounded the State of Israel and its creation, the modern state, the United States did not move its Embassy to the capital of the State of Israel.

When you think about it, it is nothing short of outrageous. We have gone through 47 years of the history of this country, 47 years of extraordinary friendship between the United States and Israel based on common values, common history, our common commitment to what is appropriately described as the Judeo-Christian tradition, our common commitment to democratic values. Through most of that time, the 47 years, Israel was the only country in the Middle East that was a democracy. It was 47 years in which our strategic relationships have grown ever closer, with joint military exercises and joint work on research and development, even, in this time, as we in the Senate have recently considered the priority threat that ballistic missiles represent to our country, the United States and Israel have been working jointly on a ballistic missile defense.

I remember once years ago hearing the then Prime Minister of Israel, Golda Meir, say, and I believe it is true today, that there is one country in the Middle East where the United States will always know—not just today, not just 10 years from now or 50 years from now or 100 years from now—as long as Israel exists, because the ties between these countries are so deep and so strong—there is one country in the Middle East where the United States will always know that in a time of need, in a time of conflict, in a time of danger, the United States can always land its planes, can always keep its equipment, can always bring its ships into Israeli docks. As she said, hopefully there will be a time—and, of course, we echo that here in this Chamber, and there is such a time now—where there are other countries in the Middle East where that is so, where U.S. troops, U.S. personnel, are welcome. But it will always be so in Israel.

Yet, in spite of all these points of common value, common interest, common strategic purpose, shared strategic developments, nonetheless the United States continued to be frozen into this inconsistent, illogical and in some senses insulting position of not moving its Embassy to the city of Jerusalem, which Israel has designated as its capital. There have been succeeding generations of American politicians—of both parties—who somehow manage to be committed to the movement of the embassy to Jerusalem during campaigns, but then when it comes time that they hold office, it does not happen.

I think we are about to change all that, and I think we are about to change it in a truly bipartisan way. It is, though a long overdue moment, nonetheless a critically important moment when we are in reach of a strong, bipartisan majority in this Chamber and in the other body in support of this legislation.

Would that the legislation were not necessary. But, it is. In some senses it may be unfortunate that it is, but in other senses it is fortunate that we bring this legislation to the Senate because the effect will be to show the world, to show the people of Israel, to show all concerned parties in the Middle East, that the representatives here in the Senate and in the House, both parties, from every section of the country, agree that this is a matter of principle, a matter of common sense, a matter in which the United States, a strong nation—the strongest nation in the world—acts like a strong nation and does what is consistent with its principles.

Mr. President, I congratulate those who have brought this legislation forward: the distinguished majority leader, Senator DOLE, Senator INOUYE, Senator KYL, Senator MOYNIHAN, and the countless others who have fought this battle for so many years now, standing together shoulder to shoulder behind this piece of legislation. I am privileged to join them as a cosponsor.

Mr. President, the details of the legislation have been spelled out. But the heart of it is that by this legislation, Congress will have stated a clear message. The Embassy of the United States in Israel will be relocated to Jerusalem, recognizing Israel's choice of that city as its capital.

That relocation will occur no later than May 31, 1999. Why that day? Obviously, if you believe that the Embassy ought to be moved to Jerusalem, it should be moved as soon as possible, but that date was inserted by the sponsors—and I think wisely so—as an expression of deference, or respect, if you will, for the peace process embodied in the Declaration of Principles signed by the parties, Israel, the Palestinian Liberation Organization, the United States, and Russia on September 13, 1993, here in Washington. May 1999 is the termination of the process begun by this Declaration of Principles, the so-called Middle East peace process. But let us set that definite date. Let us leave no uncertainty about it, that by that date the Embassy of the United States will be located in Jerusalem.

Mr. President, there are those who are concerned about what impact this movement now will have on the peace process. Of course, every time in the past—I heard Senator INOUYE speak in a meeting about this—any time he has begun to move forward moving the Embassy to Jerusalem, there is always something going on in the Middle East that makes it less than the perfect time.

So there are those who will say they are worried about what effect this movement will have on the peace process. But I say that this is the perfect time, though long overdue, to move the Embassy to Jerusalem because of the peace process, because we have a growing level of trust, because we have a growing level of mutual interest, and of common purpose among the parties in the Middle East. The United States has played a leadership role in bringing those changes about. But at the heart of those changes, at the heart of the peace process, must be an honest relationship between the parties involved.

I do not think the United States should be at all unclear about this. We are committed to doing in Israel what we do in every other country that we know about in the world—putting the Embassy in its capital. Let this not be an act of delusion of the Palestinians or any of the other parties to this process. Let us be honest about it and, in a sense, let us get the question of where the American Embassy is in Israel off the table in the peace process. Let us get it over with. There is a lot to negotiate.

Some have suggested that somehow moving the Embassy was contrary to the Declaration of Principles. Mr. President, I read from article V of the Declaration of Principles signed here in Washington on September 13, 1993. It says in section 3 of article V that it is understood that these negotiations—which is to say, the permanent statis negotiations that begin next year—shall cover the remaining issues, including Jerusalem; presumably final status of Jerusalem, and certainly not the question of where the United States locates its Embassy in this country. We are a great nation. How could we, as a great nation, yield that sovereign determination of ourselves to a process in which third parties are negotiating?

So I think we ought to be honest with the Palestinians here and indicate that this Embassy of ours will move to Jerusalem. That kind of honesty will lead to trust as we go forward in the peace process.

Second, Mr. President, I need not go on at length but would simply say I

have supported the peace process. I think the status quo before the peace process was going nowhere good, nowhere good for Israel, nowhere good for the Arab world, nowhere good for the Palestinians, and nowhere good for the Israeli security. There were no viable options to the attempt to make peace between the parties in conflict, understanding that peace would not come overnight. It would be built step by step and with each step outlined in the Declaration of Principles, hopefully enough trust would have been built to go on to the next step.

There are enemies of peace all around, and the worst enemies of peace are committing acts of terrorism still. Those acts of terrorism, directed particularly against citizens of Israel, have an effect on the body politic in Israel and shake confidence in the peace process, shake support for the peace process.

So I want to say, Mr. President, is that as the Israel people wonder and ask themselves whether the peace process really will provide more security; as they express diminishing support for the peace process in polls that are taken; and as the Rabin government finds that in taking Oslo 2 or Oslo B, the most recent agreement between Israel and the Palestinian authority, to the Israeli parliament—in the Knesset, the vote on ratification was 61 to 59; it is that close—the people of Israel look to the United States, the foremost, most steadfast supporter of the state, and ask where security will come from. Are there limits to what Israel will be asked to do?

I think this is the perfect moment for the Congress of the United States to say there are some limits here. There are some matters that are off the table. We understand the critical importance of the city of Jerusalem to the people of Israel. And as a sign of that, this is the appropriate moment—long overdue, as I have said, but nonetheless a constructive moment—to say by this act we are ready to move our Embassy to Jerusalem.

So I hope, though I know there are questions raised, we will find a way, and perhaps before too long here today, to build a strong, overwhelming bipartisan vote for this measure.

I know there are concerns about constitutional questions. I know there is a discussion of a possible waiver going on; that is to say, to give the President the authority under some circumstances to waive the ultimate penalties associated with not moving the Embassy by May 31, 1999. I understand those questions, and I am involved in the discussions of those questions.

But it seems to me, as my friend and colleague from Michigan, Senator LEVIN, said, it is critically important that any waiver be narrowly drawn in that it not be a waiver that will go on forever, but that if the President determines—first, the President must be required to find a genuine threat to America's national security to stop the forward movement of the Embassy to Jerusalem, a threat to our national security. Second, that the waiver ought to be limited in time to perhaps 6-month periods so that the President will have to make that decision each time those 6 months are over.

Mr. President, I am confident at this moment that we share—all of us in this Chamber—a goal; that is, to do what is right, to move the Embassy to Jerusalem. The question now really is over legislative wording, the appropriate relationship between the branches. I am optimistic that we can do that because I think we all share in this goal, and we are all committed to strengthening both our relationship with our cherished ally, Israel, but also in bringing peace both to the Israelis and the Palestinians, and to the Arab nations throughout the Middle East.

So I urge my colleagues to do what I know they want to do, which is to vote for this proposal.

I thank the Chair, and I yield the floor.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I also rise to speak in favor of S. 1322, which is the Israel Embassy Relocation Act. I have long supported moving the United States Embassy in Israel to Jerusalem, and I firmly believe that Jerusalem should remain as the undivided capital of Israel.

Earlier this year, I joined 92 of my Senate colleagues in sending a letter to Secretary of State Warren Christopher endorsing the transfer of the United States Embassy from Tel Aviv to Jerusalem, and as an original cosponsor of S. 1322, I commend the majority leader and Senator KYL of Arizona for their constant and persistent leadership on this issue.

Of the 184 United States Embassies around the world, our Embassy in Israel is the only one that is not located in the chosen capital of the host country. Israel has been mentioned many times on the floor today as a key strategic ally for America and the only true democratic nation in the Middle East. It makes good sense that the United States Embassy should be located in the same city where the business of government is conducted. The Israeli people will not abandon the rightful claim to Jerusalem as the eternal and undivided capital, and the United States will not force them to relinquish that claim. This simply is not a negotiable matter.

As the peace process continues, moving the United States Embassy to Jerusalem again will send a clear message that America supports Israel's claim to Jerusalem. It is far better that all parties in the Middle East peace process understand America's position and know that it is a clear position. By allowing our position to remain ambiguous throughout the peace talks, we would risk creating false and unrealistic expectations about the status and the destiny of Jerusalem.

Critics out there, including some in the administration, try to dismiss this bill as political pandering, but during his 1992 campaign it was President Clinton who deplored the fact that ''George Bush has repeatedly challenged Israel's sovereignty over the united Jerusalem and groups Jerusalem with the West Bank and Gaza as up for negotiation. Bill Clinton and Al Gore will . . . support Jerusalem as the capital of the State of Israel.''

S. 1322 has strong bipartisan support with 67 cosponsors. This bill has already been modified to provide the administration with more flexibility in trying to determine the construction timetable for a new Embassy in Jerusalem, and as a member of the Foreign Relations Committee, I hope the administration will drop any of its remaining opposition to this important symbolic legislation.

Mr. President, S. 1322 would rectify a half-century-old wrong, contribute to the ongoing peace process, implement the wishes of the American people, and it would fulfill the hopes of the Israeli people. I close by urging my colleagues to show that Congress overwhelmingly supports this effort.

I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LAUTENBERG. Mr. President, we have before us an issue that I think commands attention all around the world. It is an issue about whether or not we acknowledge what is a fact of life—that the Embassy, our Embassy, embassies of countries with diplomatic relations with Israel, belong in Israel's capital. There is no doubt that Jerusalem will remain the undivided capital of Israel. What we are discussing today, frankly, is not whether or not the United States Embassy belongs in Jerusalem, our Ambassador to Israel should be stationed there; we are talking about something that is, frankly, I believe, a matter of timing more than a matter of principle.

The question of timing raises many arguments and many views. I am only able to stand in the Chamber a few minutes now because I have a Budget Committee meeting, which is kind of at the crux of lots of things at the moment—reconciliation, how we develop our revenues and what our expenses are and how we get to a balanced budget.

That is certainly critical when we talk about foreign relations generally because we continue to reduce America's ability to communicate its views and ideas and implement its policies around the world as we limit the funds available for the operation of the State Department and our ability to grant aid.

Just by way of quick example, in 1986 we gave 21 billion dollars' worth of foreign aid, and in 1996 we are going to provide around $12 billion. And when you consider inflation, it is probably more like 30 billion dollars' worth of aid or more at present values. But we will be giving less than half of that, kind of saying that America is withdrawing; America is stepping back; we are returning to a period, not a very pleasant one in history, where we isolated ourselves from the rest of the world. We continue to fund friendly nations like Egypt and Israel so that we can help maintain stability and an honest relationship with these countries. And so part of what we want to do is respect the sovereign view of where the capital lies and functions, and, as a responsible ally, place our Embassy there, within the normal reach of their Government. I think there are few in this Chamber who do not want it to happen.

I ask unanimous consent that an article in today's Washington Post on page A9, entitled ''He Felt What I Felt,'' be printed in the RECORD.

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

[From the Washington Post, Oct. 23, 1995]

''HE FELT WHAT I FELT''—JEW, PALESTINIAN REACH OUT AFTER SONS' DEATHS

(By Barton Gellman)

JERUSALEM, Oct. 22.—Almost exactly a year ago, Abed Karim Bader pinned on a skullcap to pass for a Jew and stopped his rented car for a hitchhiking Israeli soldier.

With three confederates from Hamas, the Islamic Resistance Movement, Bader overpowered Cpl. Nachshon Waxman and abducted him to the West Bank. Israeli commandos staged a rescue raid, and the kidnappers shot their bound captive to death in his chair. Bader died in the gunfight moments later.

This is a conflict that trains even bystanders for their roles. Loss calls for vengeance, hate for hate. Most of the time those calls are answered. But not always.

Tonight two grieving fathers, Bader's and Waxman's sat together behind a table and spoke of treading a new path of peace. They each wore a gray beard and a skullcap—Yehuda Waxman the knitted kippah of a religious Zionist, Yassin Bader the white linen takiyah of a Muslim sheik.

They told a gathering of Israeli and Palestinian youths that things had to change—that, as Waxman said, ''we have no choice but to live together.''

''We are two peoples who live in this land,'' Bader said. ''We have each suffered. We have paid a heavy price with our sons. Mr. Waxman is a religious man. He felt what I felt, and I felt what he felt. I hope no one here will ever feel what we have felt or suffer what we have suffered.''

There was no political program in the words, just a heart-heavy hope good might somehow come of their loss. Waxman is tortured by the time he did not make for his son, the conversations he was always too busy to have. Bader asks himself how he could have missed the signs that his son had turned to Hamas. Both want to be teachers of tolerance, and they started here.

The result were mixed. All the teenagers gathered at East Jerusalem's American Colony Hotel were inclined to listen. The Israelis were from Peace Now Youth, the Palestinians from an informal peace group in Ramallah. Even so, there was anger in the room, and strong distrust.

Ori Dirdikman, 17, an Israeli, stood up and said she wanted to ask how Bader ''responded to all his son's expressions of extremism, since I assume it didn't suddenly happen and he must have had an opportunity to respond.''

Bader, a dignified man who runs a grocery in the Beit Hanina section of East Jerusalem, composed his face. ''It is hard,'' he said. ''I didn't know what was inside my son.''

Afterward, the Israeli teenager shook her head. ''I want to believe him,'' she said, ''but no. I'm sorry, but I don't think it is possible. If he was really for peace, he was obliged to do something.

Fayez Othman, 17, a Palestinian, asked Waxman why Jews who kill Arabs seem to get off lightly, while Arabs who dare cast a stone are imprisoned for years.

Waxman tried to deflect the question at first, saying such matters are for the government. But Othman pressed again. ''What do you call this government? Is this a just government?'' he asked.

''You're a young man and you're looking for justice,'' Waxman replied. ''I'm not looking for justice any more. There are no just governments. There is only the best that people can do. . . . It's better for a man to look for justice near his home, with his brothers, with his friends. There you can make a difference. Absolute justice? There's no such thing.''

Othman liked the second answer better, but only a little.

''I didn't want to hear, 'This is not my responsibility,' '' the Palestinian said. ''I wanted to hear that this is wrong.''

Even so, Othman said, he respected a man who could respond to his son's death with a gesture of tolerance. ''This will encourage us,'' he said.

Nachshon Waxman's kidnapping transfixed Israel last year. His kidnappers released a videotape of the young man pleading for his life. Yehuda Waxman, who said he could not stand to watch, must be one of the few Israelis who did not see it. His son, who held American and Israeli passports, died the same day that the Nobel Peace Prize committee announced the award would be shared among Palestinian leader Yasser Arafat, Israeli Prime Minister Yitzhak Rabin and Israeli Foreign Minister Shimon Peres.

At first, the two families, Waxman and Bader, shared no link save trauma. Yehuda Waxman prayed and spoke of punishment for Hamas. At the Bader home—just a mile away—the funeral tent featured slogans painted by Hamas declaring Yassin Bader's son a martyr righteous cause.

The idea for reconciliation came as something of a journalistic stunt. A weekly newspaper called Jerusalem worked tirelessly to bring the two men together, negotiating every detail for months.

Israeli soldiers had sealed the Bader home in retribution, and Yassin Bader wanted nothing to do with Israelis. Yehuda Waxman feared being used. Before he would meet Bader, he insisted on a letter dissociating the sheik from his son's acts.

Gradually Bader became convinced. He sat down and wrote out longhand the requested note. ''I had no control over my son,'' he wrote. ''I did not know of his plans. Had I known, I would have opposed them. For who would want his son to risk his life? Who would want his son to do such deeds?''

When the two men finally met, they said, they were struck by how alike they were. Devout and serious, they decided to work together.

Did it help? ''To tell the truth,'' said Naomi Cohen, 17, ''with all the pain and for all the fact that I've grown up on the left, I couldn't help hating [Bader] since he is the father of a murderer, and he was sitting beside the total opposite. They symbolize different things. Waxman is an example to me. He is able to be more forgiving than I am, and it was his son.''

Nihaya Harhash, also 17, said she felt ''anger and tension on both sides.''

Waxman, interviewed afterward, said he was not discouraged or surprised. ''This is our purpose, to see this anger melt off,'' he said. ''It will take a long time. It will take years and years. But we will do it.''

Mr. LAUTENBERG. The article talks about the pain of two fathers, one whose son was kidnapped by the other's son and put on television when this young man was held by Hamas, pleading for his life. His father heard the pleas of the young man as they held a gun to his head.

When the rescue attempt took place, just a little later on, not only was the victim killed, but the perpetrator was killed. And now the fathers are meeting a year later and discussing their feelings. Nothing can restore their children, but they can describe how they felt, their anger, their pain, the call for revenge, the call for healing, still unsure about what to do.

Mr. President, what we are witnessing now is almost a modern miracle. I have traveled many times to Israel and Jerusalem. I know people there. I have visited the entire breadth of the country. And I know how important Jerusalem is to all faiths and that Israel has promised that its responsibility is to make sure that all faiths have access. There is not a lot of debate about what the capital of the country is. But more than anything else, people want peace. They want to stop the killing.

What we have seen in the last couple of years has been astonishing. President Clinton and the United States have help make peace between these long-term enemies. It is something that, to me, resembled a modern miracle. Everyone knows Yasser Arafat. They know his costume. They know his manner. They know he was at the United Nations some years ago with a gun on his hip; and he was there this time, 2 days ago, yesterday, talking about peace and moving the process along.

It was noted on this same page of the Washington Post, ''Joint Jordanian-Israeli Flight Marks Anniversary of Treaty.'' Two air forces, Israel and Jordan, flying side by side in joint maneuvers over both countries. And I am sure the sirens in Israel did not go off when the Jordanian airplanes flew over, and vice versa.

Peace in the making, but violence continues. Fathers and mothers still anguish to understand what it is that takes their young son's lives. A few days ago six Israelis died on their northern border with Lebanon. This killing has to stop.

Yesterday in New Jersey I spoke on behalf of a newly opened school. It was a religious day school. And I met a man who I had only known by telephone. His name is Stephen Flatow. I

spoke to him on the phone while I was touring Israel and Egypt in April of this year, 6 months ago. The day I arrived in Israel from Egypt, an attack took place on a bus in which a number of people, innocent people, died.

At that time the newly appointed Ambassador to Israel, Martin Indyk, was presenting his credentials in Israel. And he said to me, ''Frank, I have terrible news. A young woman, 20 years of age, was on that bus and is on life support at the moment. She comes from New Jersey. She comes from West Orange, NJ. Her family has been just notified.''

I tried to find out more about her condition. It was precarious, at best. And within 2 days she died. Twenty years old. She was in Israel studying, on a learning experience. Murdered. For what reason? No explanation. Terrorism. People angry at one another, so angry that reason was obliterated. The father flew to Israel immediately and saw his daughter before she took her last breath.

I spoke to him on the phone after the funeral was held in New Jersey. I expressed my sympathy and he said one thing to me that, frankly, I found almost so overpowering that it was hard to understand. He told me that his 16-year-old daughter, his other child who was studying in Israel also, was being asked by her father and mother, who just lost a 20-year-old daughter, to continue her studies in Israel and to continue to fight for peace. Their daughter was killed in a senseless act of terrorism, and they continued to search for peace.

I saw him yesterday, as I said, and we talked about the peace initiatives that are taking shape. I said, ''I may quote you. I want you to know that I am going to mention our conversation. Do you want to see the search for peace continued there, raising all kinds of questions at the same time? Can Chairman Arafat keep law and order in the Palestine community? Will there be disruptions from Hamas and other mad organizations, angry, supported by mad men with lots of money, by mad nations with lots of money? Is it worth the pursuit?''

And he said, ''Yes,'' it was worth the pursuit. ''And they should continue to search for peace.''

And the relevance of this, Mr. President, goes to the discussion underway about whether or not the Embassy should be moved immediately, after 47 years of being established in Tel Aviv, whether it should move immediately or whether the move takes place in the context of general discussions of peace.

Now, I, for one, have advocated the establishment of the American Embassy in Jerusalem from the day that Israel was declared a State, a country. I have said so as well in my many visits there—the first one being 1969 after the city had been united, when I saw what happened to holy Jerusalem during the years of occupation when there was total disregard for artifacts, for archeological treasures, for custom, for religion, for culture. I was stunned and glad to see the city undivided, and declared then, in 1969, that as long as I live and could do anything about it, that city would never be divided again, that it was essential that the world recognize that Jerusalem is the capital of Israel.

And I do not like being in a discussion, Mr. President, where there are those saying, ''Well, perhaps it ought to take a little more time.'' I do not want it to take more time. But I want it to be consistent with the discussions that are taking place.

I could not believe that a couple weeks ago I stood with Chairman Arafat, shook his hand. I have been very angry with Arafat in the past. And I am sure he felt the same way about me. But there we were, shaking hands and taking pictures because he was here in Washington on a peace mission.

We do not have to like the people we do business with, but if they are on the same wavelength, if they are on the same track, share the same goals and principles, then one would have to be a fool not to respect it.

And so, Mr. President, I fully support the establishment of the American Embassy in Jerusalem, the undivided capital of the State of Israel, but I will continue to debate the process as to exactly when and how we move. That is the only thing I ask, an open discussion.

The people who I know, the people I talk to feel similarly about whether or not Jerusalem is the place that embassies belong. It is the capital of the country. It does not belong anyplace else. We do not go to France and say we are going to locate our Embassy in Marseilles. We do not go to Russia and say we will locate it outside of Moscow. It is up to them to decide where their capital is, and it is up to us, as full diplomatic partners, to locate our Embassy where their capital is.

So I hope that as this debate unfolds, Mr. President, that we will keep in mind that peace is the objective, a noble objective. I hope we will try to understand the many sides of this peace discussion, because there is now Jordan, a full diplomatic partner with Israel, there is Egypt, and there is hope that other countries will come along.

I hope the situation with the Palestinians can be resolved into a full understanding. I hope we will see a more structured community and assistance to help the Palestinians establish themselves to have jobs, to have schools, to have a structured life, to have a chance to live peacefully.

So while I respect and appreciate Senator DOLE's willingness to have this move take place as well as the willingness of our colleague from Arizona, who has been fully supportive of the establishment of the Embassy in the capital of Israel, I hope that we have a chance to work out an understanding that we do not take away the President's initiative to conduct foreign policy, and I hope that he will help us to help them conclude the peace discussions and get the Embassy moved as part of a total understanding.

I yield the floor.

Mr. KYL. Mr. President, I would like to pass on that the majority leader, with whom I was meeting, asked me to make the point that he is enormously gratified at the support over the years and, in particular, the support of the Senator from New York for the bill on which he is about to speak and without the support of the Senator from New York, obviously we would not be nearly as far along in this process as we are. The majority leader appreciates that very much.

UNANIMOUS-CONSENT AGREEMENTS

Mr. KYL. Mr. President, I ask unanimous consent that at the hour of 6 p.m. today, the majority leader, or his designee, be recognized in order to move to table the pending Dorgan amendment No. 2940.

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

Mr. KYL. I further ask unanimous consent that at the hour of 5:40 p.m., the Senate resume amendment No. 2940 and that there shall be 20 minutes equally divided in the usual form prior to the motion to table.

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

Mr. KYL. All Senators should therefore be informed, Mr. President, that there will be a rollcall vote on the motion to table the Dorgan amendment at 6 o'clock this evening.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I would like to carry on the manner and the thoughtfulness of my colleague and friend from New Jersey as we begin this debate, which will shortly, I think, conclude for today.

The Senate stands ready to correct an absurdity which has endured for nearly half a century. We propose to respect Israel's sovereign right to choose her capital. We do this by providing for the relocation of our embassy to the city which contains the Parliament of that State.

The bill which the distinguished majority leader has proposed will ensure that the United States Embassy in Israel is moved to Jerusalem, the undivided capital of that State, no later than May 31, 1999.

I have been involved with this particular issue in some measure since my tenure as Permanent Representative to the United Nations in 1975. By the early 1970's, the United States was faced with a General Assembly where a Soviet-led coalition wielded enormous power and used it in an assault against the democracies of the world. In that regard, I cite an editorial in the New Republic which recently said of the United Nations in that time that ''During the cold war, the U.N. became a

chamber of hypocrisy and proxy aggression.''

Proxy aggression, Mr. President, and in particular directed to the State of Israel, which became a metaphor for democracy under virtual siege at the United Nations.

Those who had failed to destroy Israel on the field of battle joined those who wished to discredit all Western democratic governments in an unprecedented, sustained attack on the very right of a U.N. member state to exist within the family of nations.

The efforts in the 1970's to delegitimize Israel came in many forms, none more insidious than the twin campaigns to declare Zionism to be a form of racism and to deny Israel's ties to Jerusalem. Those who ranted against the ''racist Tel Aviv regime'' were spewing two ugly lies. Both had at their heart a denial of Israel's right to exist.

The first lie, the infamous Resolution 3379, was finally repealed on December 16, 1991, after the cold war had ended and the Soviet Union dissolved.

Today, we take an important step to refute the second lie, the absurd suggestion that Israel did not have a right to select its own capital city.

Israel expects attempts by her enemies to undermine her, but it is more difficult to fathom our own refusal to recognize Israel's chosen capital and to locate our Embassy in Jerusalem. In so doing, we have given and continue to give unintended encouragement to those enemies of Israel who hope one day to be able to divide the United States and that nation, the only democratic state in the Middle East. For as long as Israel's most important friend in the world refuses to acknowledge that Israel's capital city is not its own, we lend credibility and dangerous strength to the lie that Israel is somehow a misbegotten, an illegitimate, or transient state.

This suggestion is all the more untenable when you consider that no other people on this planet have been identified as closely with any city as the people of Israel are with Jerusalem —a city which this year celebrates the 3000th anniversary of King David declaring it his capital. No Jewish religious ceremony is complete without mention of the Holy City. And twice a year, at the conclusion of the Passover Seder and the Day of Atonement services, all assembled repeat one of mankind's shortest and oldest prayers ''Next year in Jerusalem.''

Throughout the centuries Jews kept this pledge, often sacrificing their very lives to travel to, and live in, their holiest city. It should be noted that the first authoritative Turkish census of 1839 reported that Jews were by far the largest ethnic group in Jerusalem—and this long before there was a West Jerusalem, or even any settlements outside the ancient walled city.

When the modern State of Israel declared independence on May 14, 1948, Jerusalem was the only logical choice for the new nation's capital —even if it was only a portion of Jerusalem, the Jordanian Arab Legion having occupied the eastern half of the city and expelled the Jewish population of the Old City—Jerusalem was sundered by barbed wire and cinder block and Israelis of all faiths and Jews of all citizenship were barred from even visiting the section under Jordanian occupation.

The world was silent while the historic Jewish Quarter of the city was sacked and razed to the ground, 127 synagogues were destroyed, and 3,000 years of history were denied. This bizarre anomaly only ended on June 5, 1967, when Israel faced renewed aggression from Egypt and Syria, both then close friends of, and dependents of the Soviet Union. As hostilities commenced, Israeli Prime Minister Levi Eshkol sent a message to King Hussein of Jordan promising that, if Jordan refrained from entering the war, Israel would not take action against it. Jordan, however, attacked Israel that same day. Within the week, Israeli forces had captured all of Jerusalem, as well as other territories west of the Jordan River. The City of David was once again united, and has been since 1967. Under Israeli rule Jerusalem has flourished as it did not under Jordanian occupation, and the religious shrines of all faiths have been meticulously protected.

Israel has found itself repeatedly attacked, boycotted, and spurned by its neighbors. But slowly Israel has worked to secure a less hostile environment. First, the historic Camp David Accords brought peace between Israel and Egypt. All Senators are aware of the unprecedented accomplishments of the last 2 years. Jordan is at peace with Israel and a peace process is well underway with the Palestinians. In fact, Mr. Arafat gave voice at the United Nations just yesterday.

The United Nations is celebrating its 50th anniversary. Even Yasir Arafat, who 21 years ago addressed the General Assembly wearing a gun holster, spoke yesterday of the tremendous achievements in Israeli-Palestinian relations. The New York Times characterizes Mr. Arafat's remarks as ''a far more conciliatory tone than during his last visit.'' And contrasts his earlier calls for the destruction of Israel with yesterday's General Assembly pledge to ''turn over the leaf of killing and destruction once and for all so that the Palestinian people and Israeli people may live side by side.''

There are those who might criticize our proposal, saying that we have no business taking such action while the peace process continues. On the contrary—or such is my view. This is our Embassy and congressional sentiment should be made known. In this I am reminded of a message from Prime Minister Yitzhak Rabin to the American-Israel Friendship League on November 28, 1993 in which he wrote:

In 1990, Senator Moynihan sponsored Senate Resolution 106, which recognized Jerusalem as Israel's united Capital, never to be divided again, and called upon Israel and the Palestinians to undertake negotiations to resolve their differences. The resolution, which passed both houses of Congress, expressed the sentiments of the United States toward Israel, and, I believe, helped our neighbors reach the negotiating table.

The negotiators will soon turn to final status issues, as defined by the Declaration of Principles signed on September 13, 1993, by Israel and the Palestinians. The status of Jerusalem is one of the agenda items to be settled during this final stage of the peace process. It is inconceivable that Israel would agree to any proposal in which Jerusalem did not remain the capital of Israel. Since Jerusalem will continue to be the capital of Israel, it is time to begin planning to move the United States Embassy to ensure that at the end of the process it will be where it belongs.

Our Embassy should have been moved long ago, but we recognize the momentous achievements taking place in the Middle East and they temper our actions. Our intentions are clear. When the peace process is completed, which according to the Declaration of Principles is scheduled for May 1999, our Embassy will be located in Jerusalem.

On March 20th of this year, Senator D'AMATO and I sent a letter to Secretary Christopher with the support of 91 other Senators. That letter made it clear that the overwhelming majority of Senators agree with the proposition that ''Jerusalem is and shall remain the undivided capital of the State of Israel.'' We also wrote that our embassy belongs in Jerusalem and we asked the Secretary to inform us of the steps being taken to make a relocation of our Embassy to Jerusalem possible.

Today we have before us legislation that reflects the spirit of our letter to Secretary Christopher. I am hopeful that the President will be able to sign this legislation. Prime Minister Begin once advised me that the ''battle for Jerusalem should never be fought in the halls of Congress.'' I agree and am pleased that the majority leader worked with those of us on our side of the aisle to produce a draft that reflects the bipartisan consensus of the Senate. I would also like to commend my friend, the Senator from Connecticut, Senator LIEBERMAN, for his considerable contribution to the formulation of this bill.

This administration has been effective in the Middle East peace process. Secretary Christopher has personally flown to the region numerous times and has clearly committed himself to active participation in the peace process. On the issue of our Embassy, I would respectfully suggest that the administration direct its attention to the comments of Prime Minister Rabin, as our letter to the Secretary of State noted:

There can be little doubt that Jerusalem is a sensitive issue in the current peace process. While the Declaration of Principles stipulates that Jerusalem is a ''final status''

issue to be negotiated between the parties, we share Prime Minister Rabin's view which be expressed to the Knesset that:

On Jerusalem, we said: ''This Government, like all its predecessors, believes there is no disagreement in this House concerning Jerusalem as the eternal capital of Israel. United Jerusalem will not be open to negotiation. It has been and will forever be the capital of the Jewish people, under Israeli sovereignty, a focus of the dream and longing of every Jew.''

It continues:

United States policy should be equally clear and unequivocal. The search for peace can only be hindered by raising utterly unrealistic hopes about the future status of Jerusalem among the Palestinians and understandable fears among the Israeli population that their capital city may once again be divided by cinder block and barbed wire.

Charles Krauthammer adopted a similar line of argument in a column in the Washington Post on May 19, 1995, when he wrote:

True, the embassy move does endorse the proposition that Jerusalem is the capital of Israel. What possibly could be wrong with that? Is it the PLO position that even after a final peace, Jerusalem may not be the capital of Israel?

That is the simple proposition for the Senate today, Mr. President. This bill would provide for the relocation of our Embassy to Jerusalem where it has always belonged. It does not interfere with the peace process, because there is no scenario in which Israel would agree to relinquish Jerusalem as its capital.

The Senate's involvement in this particular issue could be traced in some degree to the seventh conference of heads of state of government of nonaligned countries, which convened in New Delhi, India, March 7 through 11, in 1983. This summit devoted several lengthy passages of its final declaration as it is called—final declaration—to excoriating Israel and its ally the United States. Special attention was devoted to the question of Jerusalem's status. And not just east Jerusalem as had become the practice of such forums.

I happened to be in New Delhi in the days before the summit began and was shown a draft of the final declaration. The draft passage on Israel read: ''Jerusalem is part of the occupied Palestinian territory and Israel should withdraw completely and unconditionally from it and restore it to Arab sovereignty.''

While surely this can be read as a provocative statement that all of Jerusalem is occupied Palestinian territory, when pressed on the point, my Indian hosts assured me that by Jerusalem they really only meant east Jerusalem, which is to say the old city, or perhaps the Arab section. Hence, the significance of the revised final text of the declaration of some 101 nations. This is what nonaligned declared in that session in 1983:

West Jerusalem is part of the occupied Palestinian territory and Israel should withdraw completely and unconditionally from it and restore it to Arab sovereignty.

West Jerusalem, Mr. President.

The 101 nations of the nonaligned movement declared that the Israeli Parliament and government buildings, Yad Vashem, the Holocaust memorial, the whole of the new city, did not belong to Israel. The State of Israel is not a nation. It has no capital, or so said the nonaligned.

What was the response from Washington to such polemics? Not a word. In effect, our silence could have been interpreted as implying that we had no quarrel with those who state that Israel has no capital. And thus, that Israel is less than a sovereign nation.

It was at this point that I brought the issue to the Senate floor. On September 22, 1983, during consideration of the State Department authorization bill, I offered an amendment to articulate the clearest and most emphatic demonstration of a policy of fairness toward Israel. The amendment was only one sentence long: ''The United States shall maintain no embassy in Israel that is not located in the city of Jerusalem.''

I withdrew the amendment after Senator Percy, the distinguished chairman of the Foreign Affairs Committee at the time, gave his assurance that a hearing would be held on the matter. On October 31, 1983, I introduced S. 2031 which also required the relocation of our Embassy from Tel Aviv to Jerusalem.

Senator Percy, always true to his word, convened a hearing of the Senate Foreign Affairs Committee on February 23, 1984, to consider that bill. Lawrence Eagleburger, then Under Secretary of State for Political Affairs testified on behalf of the administration.

I stated in my testimony to the committee:

I begin with the simple proposition that Jerusalem is the capital of the state of Israel and our embassy in that State should be in its capital.

This would seem to be an unexceptional statement, Mr. Chairman. That it is not is the result of actions the United States has taken and actions not taken.

In the first category is the unprecedented and bewildering practice of the United States Government in its official publications to record that there is a ''country'' named Israel in which our Embassy is located at a ''post'' named Tel Aviv; and another ''country'' named Jerusalem in which we are represented at a ''post'' named Jerusalem.

Secretary Eagleburger suggested they might at least be able to correct the State Department phone book, but nothing was done.

Offical documents published by the United States Government at the time, such as the State Department's ''Key Officers of Foreign Service Posts: Guide for Business Representatives,'' listed Jerusalem separate from Israel. The guide listed countries alphabetically, under each of which in subscript was enumerated the various diplomatic posts the United States Government maintained in that country.

There was Ireland, with the one post in Dublin; then came Israel, with one diplomatic office listed, its address in Tel Aviv; then curiously several pages later, after Japan, there was listed a Consulate General in a country called Jerusalem. Then came Jordan and Kenya.

That was how the Key Officers of Foreign Service Posts was organized until the end of 1994, when Secretary Christopher published the document with Jerusalem listed under the Israel heading. This is a welcome change. That simple refusal by the United States Government to associate our consulate in Jerusalem with the State of Israel carried much greater weight with the nonaligned countries than we realized.

They would not have acted as they had done in 1983 if they did not think at some measure we were not in disagreement. Our documents have so implied.

No doubt, we wounded the Israelis more than we intended as well, while sending a dangerous message to Israeli enemies.

Clarifying the status of Jerusalem began to gain momentum in the Senate in 1990 when I submitted S. Con. Res. 106, which States simply: ''Jerusalem is and should remain the capital of the State of Israel.'' A simple declarative sentence which gained 85 cosponsors and was adopted unanimously by the Senate and by an overwhelming majority in the House.

Two years later, Senator Packwood and I submitted Senate Concurrent Resolution 113 to commemorate the 25th anniversary of the reunification of Jerusalem.

The measure stated that, ''Congress strongly believes that Israel must remain an undivided city.'' That, too, was agreed to unanimously, both in the Senate and the House.

Last year, in the wake of the massacre in Hebron, the United Nations Security Council adopted a measure which referred to Jerusalem as ''occupied territory.'' Senator MACK and I sent a letter to the President, with the signature of 81 other Senators, calling on the administration to veto any U.N. Security Council resolution which states or implies that Jerusalem is occupied territory.

To his credit, President Clinton responded with a forceful promise to veto any future U.N. resolution which raised questions about the status of Jerusalem. A promise that he kept on May 17, 1995, when Ambassador Albright cast such a long overdue veto in the Security Council.

In the winter of 1981, I wrote an article in Commentary entitled ''Joining The Jackals'' in response to the Carter administration's disastrous support for a resolution challenging Israel's rights in Jerusalem. Almost 15 years later, we find that the jackals are in retreat. Israelis and Palestinians are negotiating the details of their future. And today we have an opportunity to make a simple but important contribution to this process by unequivocally recognizing Israel's chosen capital.

Mr. President, I see my friend from Connecticut has risen. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I rise to thank my friend and colleague from New York for his statement, which is not only characteristically learned—which is to say characteristic of him, not necessarily of all of us—but also characteristically principled.

The history of our Government's policy on this question of the location of the American Embassy in Israel is a tawdry history. It is not the history of a great and principled nation. It is a history of a nation that has, I think, in the words of a musical, ''bowed and kowtowed'' too often and too low, when it was not necessary, on a matter as fundamental as respecting a country—not just any country but a country that is a dear and cherished, valued ally—in its own decision about where its capital is. It is a sovereign nation, a member of the United Nations.

There has been a way in which our whole history here—harking to my earlier incarnation as Attorney General enforcing consumer protection laws—unfortunately, has been one of bait and switch. The political process has engaged in kind of alluring promises during campaigns and then switched to an entirely less principled, more pragmatic—in the worst sense of pragmatic—position once in office.

But I really rise to recite that unhappy history just to say that, throughout all of that, as long as he has been in public office, the Senator from New York has been a steadfast beacon of principle on this—and of course other questions—but on this, unwavering, speaking out of the best of our traditions and the best traditions of international law. Hopefully, the Chamber will catch up with him in the vote on the measure before us.

But I do not know that I have adequate words, not only to express my admiration, but to do the historical record justice here as to the really pioneering and principled and consistent position that the Senator from New York has taken. I thank him for his statement, but, really, more than that, I thank him for all he has done over the years to bring the Chamber to the point where we may finally be about to direct the movement of the Embassy to Jerusalem by a date certain.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, may I express my profound gratitude for the remarks of my friend from Connecticut. If he is only partially correct, I am wholly complimented and deeply honored.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I rise to express my strong support for relocating the U.S. Embassy in Israel to Jerusalem. I want to share with my colleagues my reasons for holding this view.

First, locating the Embassy in Jerusalem is practical and will streamline our diplomatic operations. For decades, the offices of Israel's President and Prime Minister, the Knesset, and most government ministries have been located in Jerusalem. Moving our Embassy there will make it easier to conduct diplomatic business. So it is common sense to move the Embassy to Jerusalem.

Second, it is consistent with our policies for other nations. Israel is the only nation in the world where our Embassy is not located in the host nation's chosen capital. Let me repeat that. Israel is the only nation in the world where our Embassy is not located in the host nation's chosen capital.

A number of concerns have been expressed about the wisdom of moving the Embassy at this time. I want to address each of these concerns specifically.

Opponents have said that this bill could trigger anger and terrorism on the part of Israel's opponents. Indeed, when the bill was first being circulated, opponents said the peace process would fall apart. They said the peace process would fall apart if we even introduced this bill. But the peace process did not fall apart. As a matter of fact, the peace process moved forward. That is because this bill is not directly related to the peace process. As a matter of fact, this bill, as recently modified—and I support the modifications—shows great deference to the peace process. By removing the requirement for an early construction start date, this bill shows complete respect for the peace process. Opponents of this bill have also argued we should wait to move our Embassy until the so-called final status negotiations are complete. I would argue that, although the final status of Jerusalem may be an issue in the peace talks, the location of our Embassy is not. The location of an American Embassy is entirely an American decision.

In any case, our Embassy will be located within the pre-1967 West Jerusalem border, not in the more controversial eastern section. It is this fact that leads me to conclude that moving our Embassy would in no way prejudice the outcome of the final status negotiations. It is not as if we are breaking new ground in a new area that has not been under Israeli control.

Finally, and perhaps the most important point I wish to make for my colleagues today, is that when I was in Israel in November, I sensed an undeniable fear and concern about the future. Terrorist attacks were escalating. Support for peace was falling. As a matter of fact, there was not one person, whether it was a cab driver or a student, that I met who did not indicate to me the fears that they had.

Israel, of course, is taking a risk for peace, and, therefore, the people are taking a risk for peace. As a matter of fact, all the good people who come to the table, whatever side they are on, are taking a risk for peace. So, when I left Israel, I thought, we need to do something here to just show that we support the peace process, and that we support our close ally, Israel. I think this is something we can do that demonstrates a high level of respect for the good people of the State of Israel, and for the peace process as a whole.

I have a very balanced view of this issue. I believe that Yasser Arafat must have what he needs to build confidence among Palestinians for the peace process so that extremist groups like Hamas renounce violence and go to the ballot box as their way. I think this is very important. And that is why I supported the Middle East Peace Facilitation Act, which authorized continuing aid to the Palestinian authority so long as they continued to meet their commitments to work for peace.

So, Mr. President, I support the Palestinians who are working for peace, and I support the Israelis who are working for peace. Just as we show support for the Palestinians through the Peace Facilitation Act, we must also show support for the people of Israel who have taken some very serious risks for peace. I think that this bill sends a very important message.

I want to say again that I understand that there are those in the Senate who want changes to this bill. And we may have a couple of amendments. I will look them over very carefully.

But the point that I want to make today is that I hope we are going to pass this bill with a united front—all of us together, regardless of political party or ideology. To pass this important legislation with a unified voice would send a strong message. Yes, we support the peace process, and yes, we support moving our Embassy to Jerusalem. Surely, we should do no less for our friend and ally Israel.

Thank you very much.

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

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

Mr. DORGAN. Mr. President, as I indicated when I previously rose to speak on this bill, I intend to support the bill. I think this underlying bill makes a great deal of sense. I offered a sense-of-the-Senate amendment to this bill, which I understand is now going to be voted on at 6 o'clock this evening, and just prior to that vote there will be 10 minutes of debate on each side. I wanted to rise briefly to describe what the sense-of-the-Senate amendment is.

I indicated when I offered it that I have no intention of holding up this legislation. I support this legislation. I want this legislation to move. But I was constrained last week from offering this sense-of-the-Senate amendment, and it is the only way I have to

express myself—and hopefully, express the sentiments of the Members of the Senate—on this issue. So this device is an attempt in the sense-of-the-Senate resolution to once again weigh in on this question of priorities.

My sense-of-the-Senate resolution expresses the following: It is the sense of the Senate that any tax cut provided by the Congress this year shall be limited to those whose income is under $250,000 a year, and the savings, by limiting the tax cut to those who earn less than $250,000 a year, shall be used to reduce the cut that is being proposed for Medicare.

Again, my suggestion is very simple. This is always a debate about priorities. It is really nothing more than that. It is not a debate about whether there should be a balanced budget. Of course, there should be a balanced budget. It is a debate about how we get there. Some say give very large tax cuts to some very affluent people, and let us give very large budget cuts in Medicare that will affect some very low-income elderly people. I think that the proper priority would be to say, let us think about this more clearly.

I offered an amendment a couple of weeks ago saying, let us at least limit the tax cut to those whose incomes are below $100,000 a year and use the savings from that to reduce the amount of cuts in the Medicare Program. That was voted down by the Senate.

I say, all right. I indicated then I am going to offer another resolution. How about limiting the tax cut to those whose incomes are below a quarter of a million dollars a year? Gosh, there are not a lot of Americans who make more than a quarter of a million dollars a year. Those who do I do not think at this point need a tax cut. Their top tax rate has gone down from 70 percent in 1980, down to 39 percent low. Let us at least decide that we will limit the tax cut to those whose incomes are below a quarter of a million dollars a year. Then whatever we save from that limitation, let us use that to offset the cuts that are now being proposed for Medicare, to see if we can soften that blow a bit.

That is the purpose of my sense-of-the-Senate resolution. And we will have a vote on that at 6 o'clock. I hope the Senate will approve that. Then I hope following approval of that, it will express itself to those who are writing this reconciliation bill, and maybe we will have a reconciliation bill to come to the floor that does just that.

I would be happy to yield to the Senator from California.

Mrs. BOXER. Thank you very much for yielding.

I want to commend my friend for giving us an opportunity to express ourselves on a very basic point. To me, it is extraordinary that the Republican Congress with very few exceptions—maybe one or two—are going to cut $270 billion out of Medicare and use about $245 billion for a tax cut that mostly benefits the very wealthy.

What my friend is saying is, look—to the Republicans—we want to give a tax cut, but at least come along with us and say that the people who earn over a quarter of a million dollars a year do not really need that tax cut as much as our seniors need Medicare.

In California, the average woman who is on Social Security earns $8,500 a year. I say to my friend from North Dakota that the numbers are probably even lower in his State—$8,500 a year for the average woman on Social Security.

I daresay that if you talk to any decent human being, a gentleman who earns $350,000 or a woman who earns $500,000 a year, and you ask them, ''Do you really need to have this tax cut, or would you rather that our senior citizens live in dignity,'' I daresay the reasonable, thoughtful, decent American in that highest 1 percent income bracket would say, ''You know something? Sure. It would be nice to have another trip to Europe, but I think that is not the American way. I do not think that is really family values.''

I want to say to my friend. I wonder if he has heard some of Kevin Phillips' quotes on this issue. Kevin Phillips is a Republican commentator, and on the 19th of September he made a number of quotes. I wonder if I could read them to my friend and ask him to comment on them.

First of all, this is Kevin Phillips. This is not Senator BOXER from California, a Democrat from California, speaking. This is a Republican commentator. On September 19, he said:

If the Republican Medicare reform proposal was a movie, its most appropriate title would be ''Health Fraud II.''

Then he says, ''Today's Republicans see Federal Medicare outlays to old people as a treasure chest of gold for partial redirection in their favorite direction towards tax cuts for corporations. Furthermore,'' he says, ''the revolutionary ideology driving the new Republican Medicare proposal is cut middle-class programs as much as possible and give the money back to business and high-income taxpayers.'' And finally he says, ''In part, the Republicans' Medicare shell game is a redistribution towards America's small 1 or 2 percent elite.''

So my friend is giving us a chance here, in a bipartisan way, to be I think humane, reasonable, sensible, and smart. I wonder if he would comment on these quotations from Kevin Phillips, because I think it is rather extraordinary that even a Republican says they have gone too far with their budget proposal. Will my friend comment on that?

Mr. DORGAN. This discussion has often been called class warfare; it is just more politics, just partisan.

I really do not see it so much as Republican versus Democrat. It really is choices. In the case of the reconciliation bill heading our way, the choice is to decide that one-half of the American families will pay higher taxes. That is the choice. And that is not for me. That is from the Treasury Department and others who have analyzed it.

Mrs. BOXER. Will my friend yield? Is it not true it is those who earn under $30,000 a year who will pay more taxes under the Republican plan?

Mr. DORGAN. I was just going to give a multiple choice question, and the multiple choice question would be A or B.

Mrs. BOXER. I am sorry.

Mr. DORGAN. If you learned that the reconciliation bill coming to the floor of the Senate from the majority party provides that one-half of the American families will end up paying higher taxes, do you think it would be, A, the bottom 50 percent of income earners or B, the top 50 percent of income earners?

I will bet you that most Americans would say, well, given what we have read so far, they probably say that the lower half of the income folks ought to pay higher taxes. And you know, that is exactly what is coming our way. But for the top 5 or 6 or 1 percent of the American people it is not higher taxes. It is an enormous amount of benefits in form of lower taxes. That is the purpose of this amendment. It is not anti-Republican or anticonservative. It is to say this is about a series of choices we are going to make and let us express ourselves.

Is the choice of cutting Medicare funding that is needed for senior citizens to the depths that they are talking about, $270 billion, is that a choice that ought to take precedence over a tax cut for the wealthy? That is what I want people to express themselves on.

My sense is that if this Congress could sit down without all the lights and without a lot of fanfare and thoughtful people discuss what really are the priorities, just in a room without microphones, I do not have any question that this Congress would say those 55,000 kids, those little 2-, 3-, 4-, and 5-year-olds, all of them who have names—every one of them has a name—those little kids on the Head Start Program who are disadvantaged, come from low-income households, those that are going to get kicked off the Head Start Program because we have decided there is not enough money for those 55,000, I do not have any doubt that a group of thoughtful people would say you know something in our judgment, Head Start investment for 55,000 4-year-olds and 5-year-olds is a better investment and a more important investment than building the second $1 billion amphibious assault ship.

I do not think there is any question at all that is the case. This Congress was provided with a choice during the defense bill—lots of choices: star wars, yes. B–2 bombers yes—20 of them, $30 billion, and then the choice was which of the two amphibious assault ships shall we build, the $900 million one or the $1.3 billion one. You know what the

Congress decided? ''Let's build both of them. Why should we have to choose?''

My point is the choice is to say yes, let us build a second amphibious assault ship for $1 billion and then let us take 55,000 kids out of the Head Start Program. It is just that simple because it is always about choices. You choose to spend the resources and what represents an investment in the future of the country.

Mrs. BOXER. Will my friend yield just one last time?

Mr. DORGAN. I would be happy to yield.

Mrs. BOXER. Because I am going to head back to the Budget Committee so I can vote against the Republican budget and proudly do it. I again thank my friend for pointing these things out. He is so right about the defense number. The admirals and generals came to us and said we need *x* billions of dollars to do our job, and this Republican Congress gave them $30 billion-plus, more than they asked for over the next 7 years. To me, it is extraordinary how far those dollars could go, whether it is in the Senator's home State, my home State, the Chair's home State. And just cavalierly not wanting to make any choice, we are going back to the days of the $400 hammers and the $600 toilet seats and the $7,600 coffee pot. The wasteful spending kind of gets lost in the debate.

I wish to make one final point in support of my friend. The reconciliation bill that is headed here clearly is really a funnel plan. It is a funnel from the senior citizens in our country through the Medicare Program, from the poor, the disabled in our country through the Medicaid plan—and by the way two-thirds of our seniors in nursing homes are on Medicaid, so it is a funnel from those people, it is a funnel from those working people who the Senator described who earn $30,000 or less, it is a funnel from all of those groups, the middle-class right into this tax cut for the wealthy.

What my friend is giving us a chance to do later on this evening is to say enough is enough. Enough is enough. We are hurting too many people in this country. For all the talk about family values, we are hurting families. Buried in this bill, we are repealing nursing home standards. It is extraordinary. And I vowed that in my mother's name I would fight that—seniors who are scalded in bathtubs in nursing homes, seniors who are sexually molested, seniors who wander out of nursing homes onto the streets and freeze to death. That is why we have national standards.

But in the Republican budget, what is more important than nursing home standards is giving a tax break for the wealthiest. What my friend is saying is that enough is enough. Defer that tax break, if you earn over a quarter of a million dollars, and let us not hurt the kids, the families, the middle class, the working poor, the grandmas and grandpas in nursing homes. I will be proud to stand with my friend and I hope we can win this vote.

I yield back to my friend.

Mr. DORGAN. I thank the Senator from California. We will have a vote on this at 6 o'clock. And again I do not intend to pursue it further. I will come back for 10 minutes of debate prior to that time. But it is very simple. It simply says let us limit the tax cut, if there is a tax cut coming in this legislation—there apparently is; I would prefer there not be but there is—let us limit that to families earning at least $250,000 a year and then let us use the savings by that limitation to reduce the cuts in Medicare. It is a very simple sense-of-the-Senate resolution.

Mr. President, let me mention one additional item. I did not respond earlier today. following the presentation by Senator CONRAD and myself, the Senator from New Mexico came to the floor and the Senator from Arizona, and there was some discussion about balanced budgets and the Congressional Budget Office and a whole range of other things. So let me respond briefly. In effect, the Senator from Arizona was generous enough to bring to the floor the voting records and described what Senator CONRAD and I had voted for.

It always amazes me some to find someone changing the subject. That is the equivalent of getting lost and then claiming that where you found yourself is where you intended to be.

Well, I guess that is an interesting way to describe what the debate is about. But the debate was not about whether Senator CONRAD or I voted for budget resolutions in the past. Yes, we did.

We voted for the one in 1993. We voted for previous ones. We never claimed those budget resolutions, which, incidentally, reduces the deficit, which is why we voted for them, we never claimed what the Republicans are claiming. They are claiming that they now have a balanced budget. I never claimed that the 1993 proposal balanced the budget.

I have felt since 1983 that those who use, in whatever circumstances, under whatever conditions, the Social Security trust funds, are misusing the trust funds, and it does not matter whether it is the President's budget, President Clinton or President Bush or the Congressional Budget Office. When trust funds are included in the operating revenues—Social Security trust funds especially—it is not being honest.

Now, the point we made earlier was on October 18 the majority party came over to the floor and held up this letter from the Congressional Budget Office. The letter says, we estimated, based on your submission to the CBO, that your plan will produce a small budget surplus in the year 2002. And I came to the floor and said that obviously is not true.

I wrote to the CBO and said, ''Give us your estimate of the Republican plan if you do not take the Social Security trust funds and use them as operating revenues.'' And the next day the director sent us another letter and said, ''Well, we estimate, if that is the case, that the deficit in the year 2002 will be $98 billion.'' So it went from a small surplus to a $98 billion deficit.

On the third day, October 20, they sent us another letter and said the deficit is not $98 billion: ''We recalculated, and the deficit would be really $105 billion.'' And so that is what we have learned from the Congressional Budget Office. And our point was to say, if you take the Social Security trust funds and use them over on the operating budget, it is dishonest budgeting, and dishonest budgeting for Democrats to do it and dishonest budgeting for Republicans to do it.

This is business as usual. It has been going on way too long. I introduced a half dozen proposals to stop it. The Senator from South Carolina has. In 1983, I began to try to stop this process. But when the Senator came today with his big chart, and he had a gold medallion on the chart or a gold certificate of some type, certified with a big gold thing, certified balanced budget, that is baloney. There is no certification of a balanced budget. October 20 says that this is a budget with a $105 billion deficit in the year 2002.

Why is that important? It is important because if you do not have a balanced budget, you cannot trigger the tax cuts presumably.

What is that gold certificate about that they paraded on the floor? That is their certificate so they can go ahead and proceed to make the tax cuts. But it is a fraudulent certificate. It does not have any seal on it, so I assume it was just printed up for their purposes.

I mean, that is just gamesmanship. It is not a certificate of anything. The only thing that matters is the October 20 letter that said, ''CBO says in the year 2002 there will be a $105 billion deficit.'' That is the official number. The only way you can say that is not true is if you believe you should take the money out of the Social Security trust fund and use it as an operating budget revenue.

I would guarantee you, you run a business and do that, you take your employees' trust fund, pension funds and pull them over to your P&L statement and say, ''This is my business income,'' you will be on a fast track to a penitentiary of someplace. You cannot do it in business; you ought not be able to do it in Government. It is not honest budgeting.

So when the folks came to the floor today—it is amusing to have this debate, I suppose, about past budgets, but no one claimed what the Republicans are claiming, that they have this balanced budget. This is not in balance. The Congressional Budget Office says it is not in balance. They ought to stop pretending it is in balance. If it is not in balance, they cannot trigger a tax cut, 50 percent of which, incidentally,

goes to taxpayers with incomes or families whose incomes are over $100,000 a year.

Mr. BIDEN. Mr. President, I rise to speak in favor of the amendment offered by the Senator from North Dakota. We are fast approaching the culmination of this session—the culmination of a year of significant debate on the course of the Federal budget.

This amendment goes to the heart of that debate—how should we bring the budget into balance, and how should the burdens of that process be shared among the people of this country?

As one who voted for a balanced budget amendment, and as a cosponsor of a balanced budget plan, I share the conviction that deficit reduction should be among the top priorities of this Congress. But we should not let the urgency of that task blind us to our fundamental principles, or to the other, equally important responsibilities we face.

As I have explained here before, Mr. President, balancing the budget is essential, not as an end in itself, but a means of restoring healthier growth to our economy, and as a means of promoting the basic principles that first led me to the Senate.

I won't revisit here the clear and convincing reasons for fundamental change in our Federal budget. But while I am encouraged by the powerful consensus behind balancing the budget, Mr. President, I am concerned about the shortsighted priorities and the lack of fundamental fairness that characterize the budget plan that is now taking shape in this Congress. We will debate that budget plan on the floor of the Senate this week.

The amendment of the distinguished Senator from North Dakota represents what should be simply common sense. But unfortunately, Mr. President, common sense seems to be in short supply these days.

The amendment says simply that we should limit any tax cuts to families with incomes under $250,000, and use the savings to reduce the cuts that are planned for Medicare.

I believe that there is a real need for tax relief—in a perfect world, perhaps we could spread tax cuts around a little more. But there can be no argument that families with middle incomes have seen their paychecks stuck for years—with no reward from the substantial gains in productivity that our national economy has made.

Those working families spend more of their waking hours running faster just to stay in place. Mothers and fathers strain for a few minutes with their kids, with each other—never mind a moment for themselves. Because their wages haven't gone up, they have to spend more hours working every day just to keep up with growing expenses.

Chief among the costs that are growing faster than the average family's income are health care and education. For most middle Americans, Mr. President, those are not luxuries to be deferred or cut back—they are costs that must be met by cuts in family time, in savings, in things that we used to consider essential and that increasingly are beyond reach.

So we should do what we can to cut the costs of health care and education for Americans. Incredibly, the budget that is shaping up now does exactly the opposite. In their search for the funds to give tax cuts to people with incomes over $250,000, the Republican majority is increasing the costs of health care and education for the average American family.

And, by itself, the tax bill just reported by the Finance Committee would actually increase the tax burden on the majority of Americans, Mr. President, those with incomes of $30,000 or less. Can't we at least put a cap on the unfairness in that plan?

And, as the Republicans' own Congressional Budget Office has certified, Mr. President, their plan does not balance the budget. It continues to borrow from the Social Security surplus in the year 2002 to cover up a glaring $98 billion deficit.

This is unconscionable, Mr. President, and it is unnecessary. We can reach the goal of a balanced budget, provide tax relief for the middle class, and restore some of the excessive cuts in Medicare that are part of the Republican budget plan.

With Senator BRADLEY, I cosponsored earlier this year a budget plan that would have permitted up to $100 billion in tax relief for the middle class, including help with higher education expenses. That plan would have balanced the budget by 2002, without borrowing against the future obligations of the Social Security system. I also supported Senator CONRAD's plan, that would have balanced the budget without raiding the Social Security system.

We apparently cannot pass a budget this year that will not continue the charade of using Social Security surpluses—needed to meet its future legal and moral obligations—to cover up annual deficits in our operating budget.

But, by supporting the amendment now before us, we can still restore some fairness to tax relief, and we can reduce some of the damage that will be caused by the exorbitant increases in Medicare costs in the Republican plan.

This amendment simply expresses the sense of the Senate—a statement of our priorities—that we should limit any tax cuts to those who really need it, and that we should use those savings to reduce the hit on Medicare that the Republicans have planned—a hit that will be used to pay for tax cuts for those who don't really need it.

I think those are the real priorities of almost all Americans—even those who may not directly benefit from the tax cuts. Most Americans share the goals of deficit reduction—because it will help all Americans. Deficit reduction will free up more of our scarce saving for private investments by homeowners, entrepreneurs, and corporations—investments that will create jobs and sustain a growing economy.

For those who are now well off, who will share in the benefits of a growing economy at least as much as anyone else, a tax brake now to sustain those whose incomes have been stuck for years is scarcely grounds for resentment.

This amendment recognizes that we must use common sense and fairness as we search for ways to reduce the deficit and restore balance to our country's finances.

So I urge my colleagues to join me in supporting this amendment, that will put the Senate on record sharing the priorities of most Americans—doing what is right and what is fair while we do what is necessary.

Mr. DORGAN. I notice, Mr. President, Senator PELL is waiting to speak.

I will, because of that, relinquish the floor.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

## MEDICARE BY THE NUMBERS

Mr. PELL. Mr. President, the national debate over the future of the Medicare and Medicaid programs is not so much about objectives as it is about means. But it is the means that make all the difference.

There clearly is widespread agreement that steps must be taken to restrain growth in Government spending for medical programs. But there is considerable disagreement about how to achieve this objective, how to distribute the impact of change, and about the timeframe in which all of this is to occur. In that connection, I join in expressing my distress about the course the congressional majority would have us take.

I should say at the outset that I believe it is unfortunate that we are allowing arbitrary dollar limits to drive our consideration of essential social policy. We are seeking to evaluate fundamental human needs through the green eye shades of accountants.

As I have stated on previous occasions, while I do share the view that Government spending should be curtailed where appropriate and that the deficit should be substantially reduced, I do not believe that this automatically translates into a cast-iron doctrine that the national budget must be in absolute balance by a time certain.

In the case of the medical programs, it would have been far preferable, in my view, to have devised first a rational strategy for curtailing unreasonable growth in spending for these programs—while preserving their essential services—and then see how much savings could be dedicated to deficit reduction.

But since the majority has committed us to a dollar-driven course of action, let's consider the figures.

In their quest to reach budget balance by the year 2002, the majority seeks to reduce Government spending by an arbitrary $894 billion over the 7-year period.

Over half of the saving—and by far the largest single component—would be $452 billion in reduced spending for the Federal medical programs: $270 billion would be realized from reduced spending on Medicare, and $182 billion from Medicaid.

While protracted cutbacks may be needed to assure solvency over the long term, there simply does not seem to be justification for reductions of the proposed order of magnitude in the timeframe of the next 7 years.

I found particularly persuasive in this regard the recent testimony of the Secretary of the Treasury, Robert Rubin. Speaking in his capacity as managing trustee of the Medicare hospital insurance trust fund, Mr. Rubin stated:

> Simply said, no member of the Senate should vote for $270 billion in Medicare cuts believing that reductions of this size have been recommended by the Medicare Trustees or that such reductions are needed now to prevent an imminent funding crisis . . . Nonetheless, the Majority is asking for $270 billion in Medicare cuts, almost three times what is needed to guarantee the life of the Hospital Insurance Trust fund for the next ten years.

The Secretary went on to observe that the $270 billion in reduced Government spending would be accomplished in part by increasing costs to beneficiaries of the Medicare part B program, even though such increases do not contribute to the solvency of the Part A Hospital Trust Fund.

''In this context,'' Secretary Rubin stated, ''it is clear that more than $100 billion in Medicare funding reductions are being used to pay for other purposes—not to shore up the Hospital Insurance Trust Fund.''

Secretary Rubin's testimony is disturbing because it validates the presumption that the proposed reductions in Medicare are being made for reasons not dictated by necessity, including the possibility that the amount of proposed reductions might have been inflated for the specific purpose of accommodating a tax cut.

In that light we can only ask what manner of needless sacrifice, worth more than $100 billion, are we asking of our senior citizens. Will most of it be accounted for by the $71 billion in increased payments by beneficiaries? Or will it be attributed to the $73.6 billion in reduced payments to hospitals, or the $22.6 billion reduction in the allowable fee schedule for physicians treating Medicare patients?

It seems apparent to me that the majority has overreached and that a far more modest cutback of the Medicare Program would serve our purpose. Since Secretary Rubin says that more than $100 billion is being siphoned off for other purposes, this would suggest that the $270 billion reduction proposed should be in the order of $150 billion at the most. And the reduction could be even less if we take appropriate steps to deal with the annual loss of $18 billion through waste, fraud, and abuse.

With respect to Medicaid, I am very distressed that the majority proposal would dismantle a 30-year-old commitment to the poor and disabled, and transfer a less binding responsibility to the States.

The result, it seems to me, can only be the creating of pockets of medical impoverishment between a few overburdened oases of generosity. Some States and regions simply will not be able to maintain the level of compassionate service on which their citizens have come to depend.

My own State of Rhode Island is in this latter category, partly because it has a larger proportion of elderly people using nursing home facilities. I would point out that our Republican Governor, Lincoln Almond, has voiced his opposition to the block-grant formula as it was proposed in the House.

Here, I would like to salute the efforts in the Finance Committee of my distinguished colleague, Senator CHAFEE, to modify the plan, particularly through restoring entitlement status to pregnant women, children under age 12, and the disabled. But notwithstanding these efforts, the basic proposal is still fatally flawed in my view.

As one of the original advocates of the Federal medical programs, I regret exceedingly that we have come to this juncture when in the name of economy, the gains of decades of progress in social responsibility are being jettisoned or badly compromised. The proposals should not become law, and I applaud and support the President's announced determination to veto them if they reach his desk in their present form.

## JERUSALEM EMBASSY RELOCATION IMPLEMENTATION ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. PELL. Mr. President, on the question of the American Embassy in Jerusalem, I suggest that most of us here believe the same thing, that Jerusalem is the capital of Israel and that our Embassy belongs there one day. Where some of us disagree, however, is whether or not the President has the right to decide when. I do not think the Congress has the right or the obligation or the responsibility to micromanage the decision. We all agree it should move. How it should move and when it should move, that I really think should be left to our President.

All Americans are aware, too, of the respect and deeply seated, emotional attachment that Israelis—indeed all Jews—have for Jerusalem. I would add the same emotions and attachments apply to Moslems and Christians, and I think all of us appreciate the care and effort that Israel has made to make Jerusalem accessible to adherents of all faiths. For these reasons, I find it difficult to fathom a final settlement for the Middle East that does not declare, once and for all, that Jerusalem is, and shall forever remain, Israel's undivided capital.

The administration has suggested that by adopting this legislation, Congress would be prejudging the outcome of the Israeli-Palestinian talks, and in doing this, we might undermine our own traditional place as the honest broker and cast the peace process into disarray.

Mr. President, I believe we must take due acknowledgement of the administration's strong and forceful views about this bill. When officials from the administration suggest, as they have in recent days, that adopting this legislation could interrupt—or indeed kill—the peace process, I think we must take those suggestions seriously. When the same officials predict that adopting this legislation could lead to an explosion of passions in the West Bank and Gaza, we cannot take those predictions lightly. When these officials say that passing the bill could mean that people, whether they are Israelis, Palestinians, Jordanians, or U.S. diplomats, could lose their lives, we have a solemn obligation to be absolutely sure of what we do.

I am not convinced that the arguments, both pro and con, have been given a chance to be aired properly. The Senate is on the verge of making an extraordinary decision without even having had the benefit of one hearing on the Senate side, at least, devoted to the issue.

Against all these concerns, most of which I share, we must balance some fundamental truths. First among these is the fact that Israel is the only country in the world where the United States does not have its Embassy in the functioning capital. With the Israeli Government based in Jerusalem, having our Embassy in Tel Aviv has made it difficult to maintain our official contacts with the Israeli Government. Frankly, it has also stigmatized, indeed cheapened, our relationship with Israel. Moving our Embassy will at least settle once and for all what many of us know to be true—that Jerusalem is truly the capital of Israel.

Second, by requiring the President to move our Embassy, the United States will once and for all dispel whatever unrealistic hopes remain that Jerusalem will somehow become the capital of a Palestinian State.

Finally, no one, including the Palestinians, can really contest Israeli sovereignty over West Jerusalem. If this bill passes and is implemented, our Embassy would clearly be moved there, not to East Jerusalem.

I acknowledge, Mr. President, that I opposed this bill when it was introduced in an earlier form. Since then, it has been reintroduced with a significant change in text which has given a more flexible approach than existed

earlier. I still believe more is needed, and for that reason, I tend to support amending it to address some of President Clintons additional concerns. If we moderate this bill sufficiently, then I am hopeful that we can arrive at a version the President could sign and implement. If we do not, then there is the risk that the President might feel forced to veto it.

I do believe in my heart, however, that Jerusalem is truly and rightfully the capital of Israel. Once that premise is accepted, there can be no other choice but to move our Embassy there, whether it be now or in the near future. I therefore hope we can arrive at more flexible, consensus-based language that will enable everyone—the Senate, the administration, the Jewish-American community, the American people at large—to support this bill.

To repeat, the important thing here is that eventually it be moved, but specifying the day, the hour, the minute, or the week or the month even is not up to Congress, it is up to the Executive to make that decision.

I yield the floor.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from New Hampshire.

Mr. SMITH. Mr. President, I rise in very strong support of the resolution before us to provide for the relocation of the United States Embassy in Israel to Jerusalem where it rightfully belongs and has belonged. This is something that I feel very strongly about and of which I am proud to be an original cosponsor when it was introduced by the distinguished majority leader, Senator DOLE.

As Congress and the executive branch grapple with the various issues of national policy, oftentimes we tend to overlook what is most compelling and what is most fundamental in terms of right and wrong. Despite the best of intentions, the best of motives, by all parties on both sides, occasionally we seem to lose sight of the forest for the trees. When this happens, we owe it to ourselves, as a legislative body, but also to our constituents and, frankly, to the very issue of morality itself, to make amends, to do the right thing, to remedy a wrong. Today, with this legislation, we have that historic opportunity; that is, recognizing, by putting our Embassy there, that Jerusalem is the rightful capital of the State of Israel.

Mr. President, Jerusalem is the eternal capital of the State of Israel. It has been and, in my opinion, forever will be a shining symbol of faith, of inspiration and tradition, not only to the Jewish people but Christians and Moslems as well. No other place on Earth holds such a unique and rich history as this holiest of holy cities, and no other place in all the world can reasonably be considered the capital of Israel.

I think, in the legislation before us, we see in our findings a sampling of many of the reasons, which are really quite obvious. But to recite a few of them, and I know they have been stated before, I do not think it hurts to reinforce the importance of these findings:

No. 1, that each sovereign nation under international law and custom has the right to designate its own capital. Israel has done that. Since 1950, the city of Jerusalem has been the capital of the State of Israel. The city of Jerusalem is the seat of Israel's President, Parliament, supreme court, and the site of numerous Government ministries and social and cultural institutions.

Jerusalem is the spiritual center of Judaism. It is also considered a holy city by the members of other religious faiths as well.

Historically, from 1948 through 1967, Jerusalem was a divided city, and Israeli citizens of all faiths, as well as Jewish citizens of all states, were denied access to holy sites in the area controlled by Jordan. But in 1967, the city of Jerusalem was reunited during the conflict known as the Six Day War.

Since 1967, Jerusalem has been a united city administered by Israel, and persons of all religious faiths have been guaranteed full access to holy sites within that city by Israel.

In March 1995, 93 Members of the U.S. Senate signed a letter to Secretary of State Warren Christopher encouraging planning to begin now for relocation of the U.S. Embassy in the city of Jerusalem. Well, now is the time, Mr. President, to make that happen. The United States maintains its Embassy in the functioning capital of every country, except in the case of this, one of our most loyal allies and strategic allies, the State of Israel.

In 1996, the State of Israel will celebrate the 3,000th anniversary of the Jewish presence in Jerusalem since King David's entry. I think the facts, Mr. President, in this bill speak for themselves, and I certainly commend its authors—especially Senator DOLE—for pointing out those facts. But it is troubling that the U.S. policy with respect to the status of Jerusalem has been less then clear.

Reasonable people can disagree on the best means to achieve peace in the Middle East, but that is another issue. That is not the same issue, Mr. President. On the question of Jerusalem, there is only one inescapable conclusion: It is now, has been in the past, and forever will be and should be the capital of Israel. That is the plain and simply truth.

The United States maintains diplomatic relations with over 180 nations and, of these, as indicated in the findings of the bill, Israel is the only nation in which our Embassy is not located in the functioning capital. We say Tel Aviv, but we do not have the right to say Tel Aviv. Israel has the right to choose its capital; it has done so, and we should honor that. How do we justify anything else? How do we explain this to our friends in Israel, who have endured such hardship and remained true to the principles of democracy throughout the years? The answer is that there is no justification for not doing it. This is a terrible oversight, and it should be corrected.

The legislation offered by the majority leader does correct this wrong. It initiates the long overdue process of moving the U.S. Embassy to Jerusalem but more importantly, Mr. President, moving it to Jerusalem by a date certain—May 31, 1999.

I understand that the administration, unfortunately, opposes this legislation. I do not think their arguments have much merit—they do not have any merit, and they lose sight of the real issue. This is not about executive-legislative turf battles, Mr. President. It is about what is right and wrong. It is about the right of a sovereign nation to choose its capital and to have the United States and other countries of the world honor that by putting their embassies in that capital. It is about precedent, it is about history, it is about culture and recognition, and it is about changing a misguided policy. I say to my friends in the administration, correcting such an injustice and doing what is right is more important than perpetrating some inside-the-beltway turf war between the Congress and the executive branch. This is much bigger than that; it is much more important than that.

Jerusalem is the capital of Israel. The U.S. Embassy belongs in Jerusalem. I urge the adoption of this legislation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. GREGG. I ask unanimous consent to proceed in morning business for up to 10 minutes.

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

## BALANCING THE BUDGET

Mr. GREGG. Mr. President, I heard earlier a discussion on this floor from a number of Members on the other side, specifically the Member from California and the Member from North Dakota about the effects of the coming debate or the implications of the coming debate on the matter of balancing the budget relative to tax policy.

First, I think it should be noted once again for the record that for the first time in 25 years this Congress, this Senate, is going to get the opportunity to take up the issue of balancing the budget. For the first time in 25 years there will be on the floor of this Senate a reconciliation resolution which, if passed by this Congress and agreed to

by this President, will lead to a balanced budget by the year 2002.

That fact is certified by the Congressional Budget Office, the fair arbiter, as we have all agreed around here, including the President during his first speech to Congress, of the number-scoring process.

We have a major opportunity, probably the most significant opportunity—clearly the most significant opportunity in the last 25 years to bring under control the spending of this country.

The purpose of doing this is really rather simple, as has been discussed before. It is to give our children a chance to have a prosperous lifestyle, to pass on to the next generation the opportunity to live in a Nation which is fiscally solvent.

If we do not take this action, I think the matter has been well debated, and generally agreed to, that the next generation will have very little opportunity for prosperity, that they will be given a country which is insolvent, that they will be faced with a Nation where we will probably have to grossly inflate our money supply, creating economic havoc as children move into their earning years, as our children move into their earning years, in the period of their twenties and on.

So we as a Congress stepped up to this matter. At least as a party we have stepped up to the matter. We have produced a budget which is in balance. As a result of producing that budget in balance, certain very good things happen.

First, of course is the point that our children will have a shot at an economically solvent future. A more immediate event occurs, which will assist almost all Americans, or at least all Americans who borrow money—which is I suspect almost all Americans.

That is, that under a generally accepted view of economists and once again the Congressional Budget Office, the interest rates in the economy generally will drop as a result of passing a balanced budget and having it be in law by approximately 2 percent.

What does that mean? It means if you are borrowing to buy a new home, that the interest rates you will have to pay on that new loan will be 2 percent less. That translates into literally thousands of dollars for middle-income Americans seeking home ownership.

It will mean if you are going to school as a student that your interest rates will probably be at 2 percent less than what they are today, meaning you will be able to go to school longer or get out of school with less debt—either one being a very positive aspect of this.

It means if you buy a car or household goods or you improve on your home or you are simply borrowing money because it is necessary due to some circumstances of your lifestyle, that the cost of borrowing that money will drop rather significantly.

It also means good news for the Federal Government. It means that our rate of interest will drop by 2 percent.

As a result, CBO has said that we will receive over the next 7 years, because we have put in place this balanced budget, a windfall, if you wish to describe it that way, or dividend if you wish to describe it that way, or approximately $170 billion in savings on the cost of paying for the Federal debt, the interest.

We have taken that $170 billion and we have passed it back to the taxpayers of this country. We have said—the Republicans in this Senate—that if we are going to balance the budget and we are going to reduce the size of growth of the Federal Government, we ought to return to the people who support this Government and who are the underpinnings of our Nation, the taxpayers specifically, that they ought to be able to participate in the benefits of this event of balancing the budget.

So we have decided to use this economic dividend, this drop in interest rates which generates $170 billion, and return it, return it directly to the taxpayers.

Now we have heard a lot from the other side about the fact we should not have any tax cut, that there should not be any tax cut at all, that there should be no return to the taxpayers of this country of putting in place a balanced budget.

Of course, they do not want a balanced budget, so you can probably understand the fact they do not want to return the money to the taxpayers, but it seems to me a little crass and unfeeling and unkind to say to the taxpayers of this country who have been supporting the largess of this liberal Government for the last 40 years when it finally gets its act together those taxpayers will not receive any of the benefit.

We are not going to take that on this side of the aisle. We are going to suggest that that money flow back to the taxpayer.

We also heard first they do not want a balanced budget, or a real balanced budget, put it that way. They want something like the President sent up here that CBO scores as being out of balance for as far as the eye can see—for at least $200 billion a year, adding $1 trillion of new debt to our children's backs over the next 7 years.

They do not want a real budget. They want some sort of gamesmanship budget. They will not support our balanced budget which has been scored as a real balanced budget. They do not want a tax cut.

Furthermore, not only are they opposed to a balanced budget and opposed to a tax cut, they come to the floor and misrepresent the tax cut that is before the Senate. I heard a number of Members on the other side, or at least two, state that that tax cut is just going to the wealthy, that this economic dividend which we are going to use to send back to the taxpayers of this country which is their right and due reward for having a balanced budget, is just going to go to the wealthy.

Somebody ought to refer them to real figures. Maybe CBO figures, for example, rather than OMB figures. Under those figures, we will talk about where the benefit of that tax cut goes.

Mr. President, 84 percent—84 percent of the benefit of that tax cut flows to people with incomes under $100,000; 77 percent of the benefit of that tax cut goes to people with incomes under $75,000. Maybe we have a new definition of ''wealthy'' coming from the Members of the other side of the aisle. If you make up to $75,000 in this country you are suddenly wealthy. I do not think so.

If 77 percent of the economic benefit of the tax cut goes to people with incomes under $75,000, I say a vast majority of the tax cut, at least three-fourths of the tax cut goes to people with moderate and lower incomes.

This is only logical, because if you look at what the terms of the tax cut are, they are clearly targeted progressively on assisting especially moderate income families. First, of course, is the $500 tax credit for children.

This does not in any way put the average family into the type of position that they were in, say, back in the 1940's and 1950's, when you could have a single earner in a household and maintain a family, and about 3 percent of your income went to the Federal Government. Today, unfortunately, 24 percent of your income goes to the Federal Government.

But, in order to try to alleviate in some minor way—and actually it should be fairly significant for many people—the cost of raising a family in this country, and especially the tax cost of being a moderate-income family, we have said we are going to put in place a $500 tax credit. That is a fairly reasonable proposal.

So, if you have children—one, two, three, four—you can multiply the number of children you have by $500 and that is how much you are going to get back as a tax credit. This tax credit, by the way, phases out as your income goes up. For very high-income people there is no tax credit. So it must be fairly logical, since this is the largest part of the tax cut, it clearly flows to people with moderate incomes, under $75,000, who have families. So when you say the tax cut is going to the wealthy, when I hear that statement from the other side of the aisle, it is either, first, disingenuous; second, uninformed; or, third, potentially misleading.

Then look at some of the other proposals we have. We have a spousal IRA. Again, it phases out as your income goes up, so high-income people do not have the benefit. So, clearly, low- and moderate-income individuals will have that benefit.

We have elimination of the marriage tax penalty, again for middle- and low-income individuals who find themselves, because they got married, actually paying more taxes than if they had remained single and been filing the

same type of returns. That is an unfair and unique quirk of our tax laws which has existed too long and needs to be changed.

So, we have put in place in this tax package the tax benefits which are targeted directly on, essentially, the middle- and moderate- and to some extent low-income families, to the extent they pay taxes, in this country. So it is a blatant misrepresentation to come to this floor and say this tax cut goes to the wealthy. It is equally unfair and inappropriate to come to this floor and suggest there should be no tax cut at all if we actually have a balanced budget, when you are not even willing to vote for the balanced budget. There seems to be something inappropriate in taking that position.

So, as we go forward on this debate, I hope he will look at the hard numbers, at the real substantive action rather than the political hyperbole. I hope we will step back from this attitude, which the White House seems to be taking, which is to pick a constituency a day to scare through misrepresentation, and, rather, inform people as to what is actually happening. Because, if people look at the facts of this situation, they will come to two very clear conclusions. First, if we do not do something fairly soon, this country is going to find itself unable to remain financially solvent; and, second, if we follow the program put forward by the Republicans in the Senate and in the House, which leads to a real balanced budget, we will be able to pass on to our children a country which is financially solvent and one where they have an opportunity for prosperity. We will be a generation which passes on to the next generation opportunities that exceed even those that were given to us by our parents.

If we fail to take this action, we will, of course, be the opposite, the first generation in the history of this country which will pass less on to our children than was given to us by our elders. That is not acceptable, it is not right, and it is not fair. That is why I strongly support the reconciliation bill that will be coming forward toward the end of this week.

Mr. President, I appreciate the courtesy of the Chair and yield such time as I may have.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

A reminder to the Senator from South Carolina that, under unanimous consent, 20 minutes of debate will begin at 20 minutes before 6, equally divided between both sides, dealing with the Dorgan amendment to S. 1322.

Mr. HOLLINGS. Very good. I thank the distinguished Chair.

## THE BUDGET

Mr. HOLLINGS. Mr. President, what I want to do, right quickly is, first to put in the RECORD the letter of October 20 from June E. O'Neill. I ask unanimous consent to have the letter from the Congressional Budget Office printed in the RECORD at this particular point.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC. October 20, 1995.*

Hon. KENT CONRAD,
*U.S. Senate, Washington, DC.*

DEAR SENATOR: Pursuant to Section 205(a) of the budget resolution for fiscal year 1996 (H. Con. Res. 67), the Congressional Budget Office provided the Chairman of the Senate Budget Committee on October 18 with a projection of the budget deficits or surpluses that would result from enactment of the reconciliation legislation submitted to the Budget Committee. As specified in section 205(a), CBO provided projections (using the economic and technical assumptions underlying the budget resolution and assuming the level of discretionary spending specified in that resolution) of the deficit or surplus of the total budget-that is, the deficit or surplus resulting from all budgetary transactions of the federal government, including Social Security and Postal Service spending and receipts that are designated as off-budget transactions. As stated in the letter to Chairman Domenici, CBO projected that there will be a total-budget surplus of $10 billion in 2002. Excluding an estimated off-budget surplus of $115 billion in 2002 from the calculation, CBO would project an on-budget deficit of $105 billion in 2002. (The letter you received yesterday incorrectly stated these two figures.)

If you wish further details on this projection, we will be pleased to provide them. The staff contact is Jim Horney.

Sincerely,

JUNE E. O'NEILL, *Director.*

Mr. HOLLINGS. While the distinguished Senator from New Hampshire said that the Republican budget was ''certified as being balanced,'' this letter certifies a $105 billion deficit.

Now, I would also ask unanimous consent that we insert two budget tables in the RECORD which have been prepared with the help of my staff.

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

BUDGET TABLES

[Outlays in billions]

| Year | Government budget | Trust funds | Unified deficit | Real deficit | Gross Federal debt | Gross interest |
|---|---|---|---|---|---|---|
| 1968 | 178.1 | 3.1 | −25.2 | −28.3 | 368.7 | 14.6 |
| 1969 | 183.6 | −0.3 | +3.2 | +2.9 | 365.8 | 16.6 |
| 1970 | 195.6 | 12.3 | −2.8 | −15.1 | 380.9 | 19.3 |
| 1971 | 210.2 | 4.3 | −23.0 | −27.3 | 408.2 | 21.0 |
| 1972 | 230.7 | 4.3 | −23.4 | −27.7 | 435.9 | 21.8 |
| 1973 | 245.7 | 15.5 | −14.9 | −30.4 | 466.3 | 24.2 |
| 1974 | 269.4 | 11.5 | −6.1 | −17.6 | 483.9 | 29.3 |
| 1975 | 332.3 | 4.8 | −53.2 | −58.0 | 541.9 | 32.7 |
| 1976 | 371.8 | 13.4 | −73.7 | −87.1 | 629.0 | 37.1 |
| 1977 | 409.2 | 23.7 | −53.7 | −77.4 | 706.4 | 41.9 |
| 1978 | 458.7 | 11.0 | −59.2 | −70.2 | 776.6 | 48.7 |
| 1979 | 504.0 | 12.2 | −40.7 | −52.9 | 829.5 | 59.9 |
| 1980 | 590.9 | 5.8 | −73.8 | −79.6 | 909.1 | 74.8 |
| 1981 | 678.2 | 6.7 | −79.0 | −85.7 | 994.8 | 95.5 |
| 1982 | 745.8 | 14.5 | −128.0 | −142.5 | 1,137.3 | 117.2 |
| 1983 | 808.4 | 26.6 | −207.8 | −234.4 | 1,371.7 | 128.7 |
| 1984 | 851.8 | 7.6 | −185.4 | −193.0 | 1,564.7 | 153.9 |
| 1985 | 946.4 | 40.6 | −212.3 | −252.9 | 1,817.6 | 178.9 |
| 1986 | 990.3 | 81.8 | −221.2 | −303.0 | 2,120.6 | 190.3 |
| 1987 | 1,003.9 | 75.7 | −149.8 | −225.5 | 2,346.1 | 195.3 |
| 1988 | 1,064.1 | 100.0 | −155.2 | −255.2 | 2,601.3 | 214.1 |
| 1989 | 1,143.2 | 114.2 | −152.5 | −266.7 | 2,868.0 | 240.9 |
| 1990 | 1,252.7 | 117.2 | −221.4 | −338.6 | 3,206.6 | 264.7 |
| 1991 | 1,323.8 | 122.7 | −269.2 | −391.9 | 3,598.5 | 285.5 |
| 1992 | 1,380.9 | 113.2 | −290.4 | −403.6 | 4,002.1 | 292.3 |
| 1993 | 1,408.2 | 94.2 | −255.1 | −349.3 | 4,351.4 | 292.5 |
| 1994 | 1,460.6 | 89.1 | −203.2 | −292.3 | 4,643.7 | 296.3 |
| 1995 | 1,530.0 | 121.9 | −161.4 | −283.3 | 4,927.0 | 336.0 |
| 1996 estimate | 1,583.0 | 121.8 | −189.3 | −311.1 | 5,238.0 | 348.0 |

Source: CBO's January, April, and August 1995 Reports.

| | Year 2002 (billion) |
|---|---|
| 1996 Budget: Kasich Conf. Report, p. 3 (deficit) | −$108 |
| 1996 Budget Outlays (CBO est.) | $1,583 |
| 1995 Budget Outlays | 1,530 |
| Increased spending | +53 |
| CBO Baseline Assuming Budget Resolution: | |
| Outlays | 1,874 |
| Revenues | 1,884 |
| This Assumes: | |
| (1) Discretionary Freeze Plus Discretionary Cuts (in 2002) | −121 |
| (2) Entitlement Cuts and Interest Savings (in 2002) | −226 |
| (3) Using SS Trust Fund (in 2002) | −115 |
| Total reductions (in 2002) | −462 |

MORE BUDGET TABLES

[In billions]

| Year | National debt | Interest costs |
|---|---|---|
| 1996 | $5,238 | $348 |
| 2002 | 6,728 | 436 |

[In billions]

| | 1996 | 2002 |
|---|---|---|
| Debt Includes: | | |
| (1) Owed to the Trust Funds | $1,361.8 | $2,355.7 |
| (2) Owed to Government Accts | 81.9 | (1) |
| (3) Owed to Additional Borrowing | 3,794.3 | 4,372.7 |
| [Note No "unified" debt, just total debt] | 5,238.0 | 6,728.4 |
| Surplus in Social Security (CBO through 1996) | 544.0 | |
| Surplus in Medicare (CBO through 1996) | 145.0 | |

[1] Included above.

"SOLID" BUDGET PLAN

[In billion; 1995 Real Deficit (CBO) (1) $283.3 billion]

| Year (2) | CBO outlays | CBO revenues |
|---|---|---|
| 1996 | $1,583 | $1,355 |
| 1997 | 1,624 | 1,419 |
| 1998 | 1,663 | 1,478 |
| 1999 | 1,718 | 1,549 |
| 2000 | 1,779 | 1,622 |
| 2001 | 1,819 | 1,701 |
| 2002 | 1,874 | 1,884 |
| Total | 12,060 | 11,008 |

Note: $636 Billion "embezzlement" of the Social Security Trust Fund.

[In billions]

| | Outlays | Revenues |
|---|---|---|
| 2002 CBO Baseline Budget | $1,874 | $1,884 |
| This assumes:. | | |
| (1) Discretionary Freeze Plus Discretionary Cuts (In 2002) | | −$121 |
| (2) Entitlement Cuts and Interest Savings (in 2002) | | −226 |
| [1996 Cuts, $45 B] Spending Reductions (in 2002) | | −347 |
| Using SS Trust Fund | | −115 |
| Total reductions (in 2002) | | −462 |

Mr. HOLLINGS. Mr. President, as they demonstrate, you can add up the CBO outlays—the spending of the years 1996, 1997, 1998, 1999, 2000, 2001, 2002—and find that over that 7-year period, we will spend a total of $12.06 trillion. Over that same period, CBO estimates that revenues will total $11,008 trillion. So you can see that spending will actually increase over revenues during the 7-year period by $1.052 trillion.

Even that figure is low is it requires what the former Senator, John Heinz, called ''embezzlement''; namely, using the Social Security trust fund to mask the true size of the deficit.

I just heard in the Budget Committee the distinguished chairman, Senator DOMENICI, call it a phony argument. But he voted for it and all the Members who were present in 1990 voted to stop using Social Security surpluses to mask the size of the deficit. Senator Heinz and I put it into the law, section 13301 of the Congressional Budget Act. There is nothing phony about it, but I hear the Senator from Washington coming in and quoting Charles Krauthammer as saying the argument was fraudulent. I know that Mr. Krauthammer was a psychiatrist before he started spilling ink in the editorial page. It reminds me of the old saw that a psychiatrist is the fellow who goes to the burlesque show to look at the audience.

Let us not use economic figures from psychiatrists, let's use the $105 billion deficit cited by CBO.

## JERUSALEM EMBASSY RELOCATION IMPLEMENTATION ACT OF 1995

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2940

The PRESIDING OFFICER. I remind the Senator that 20 minutes of debate has begun on the Dorgan amendment, but none of the managers is here.

I see the Senator from North Dakota is here.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Under the previous unanimous-consent order, the Senator has 10 minutes.

Mr. DORGAN. Let me yield myself 5 minutes of the 10 minutes and then reserve the time.

Mr. President, this issue will be relatively simple. The vote we are going to have in 20 minutes is a very simple proposition. It is a sense-of-the-Senate resolution that says let us limit the tax cut to those whose incomes are under a quarter of a million dollars a year and use the savings from that limitation to reduce the cut in Medicare. It is very simple. This follows an amendment I had previously that was voted on by the Senate—it failed—saying let us limit the tax cut to those whose incomes are $100,000 a year or less. That failed.

So I indicated that I intended to offer another resolution which I now offer that says I do not personally think we ought to talk about tax cuts at the moment. I think we ought to deal with the budget issue, and the Congressional Budget Office has told us there is not a balanced budget in this proposal. The deficit in the year 2002 will be $105 billion. But the majority side says they have reached a balanced budget. So they want now to proceed to a tax cut.

While I wish they would not do that, my amendment is painfully simple. It says let us at least agree to limit the tax cut to those whose incomes are $250,000 a year or less. If we do that, we will save some money and be able to cut Medicare less than is now proposed.

What does this amount to? I do not have exact figures. But, from talking to the Treasury Department and others, my reckoning is that we are talking about 20 percent of the tax cut going to slightly more than 1 percent of the earners in this country, or about $50 billion over the 7 years. This sense-of-the-Senate would, say, let us save $50 billion that will otherwise, during the 7 years, go to those whose incomes are over a quarter of a million dollars a year and use that $50 billion to soften the blow on Medicare recipients. It is interesting. That $50 billion over the 5 years is almost exactly the same amount as the $50 billion increase in part B premiums that senior citizens will be asked to pay.

It is simply about choices. It is not about Republicans, Democrats, conservative, or liberal. It is about choices. What is important? Is it more important to provide tax cuts to people whose incomes are a quarter of a million dollars or greater? Is it more important to do that than to try to soften the blow on low-income senior citizens who will, I think, get hit fairly hard on the question of these Medicare cuts?

So that is the purpose of this amendment. As the Members of the Senate know, the Treasury Department has indicated that the reconciliation bill that will come to the floor will provide nearly one-half of its tax benefits to those with incomes of $100,000 a year or more, and it will at the same time increase taxes on about half the families in our country. Which half? The lower half, of course. That is the subject of this amendment. It is about priorities.

I hope that others in the Chamber, having reflected on this and having turned down the proposition to limit the tax cut to those under $100,000 a year, will now at least agree that those who make over a quarter of a million dollars a year really do not need at this point a tax cut. So that is the purpose of the sense-of-the-Senate resolution.

Mr. President, how much time have I consumed?

The PRESIDING OFFICER. The Senator from North Dakota has about 5½ minutes remaining.

Mr. DORGAN. Mr. President, the reconciliation bill will come to the floor of the Senate tomorrow perhaps, or at the latest Wednesday. We will begin debate on the reconciliation bill under a procedure that is very restricting and very constrained, as you know.

It will, by necessity, limit the debate on the amendments, and, frankly, we will have an insignificant opportunity to effect what is happening in the committees that is brought to the floor under the reconciliation bill.

Tragically, this reconciliation bill really does almost everything. It is going to have a farm bill in it. For the first time in history, they stick a farm bill in the reconciliation bill. I mean, it has the kitchen sink in it—profound, massive changes in Medicaid and Medicare and eliminates national standards for nursing homes. You name it. But

especially it deals with choices, and that is the purpose of my sense-of-the-Senate resolution. The choice that says what we would like to do at this point is balance the budget and provide a tax cut.

I have no objection to a tax cut provided that we have done the heavy lifting to balance the budget first. But the Congressional Budget Office says that with the reconciliation bill there exists a $105 billion deficit in the year 2002, and still the majority party wishes to proceed with a tax cut, half of which will benefit those families with incomes over $100,000 a year, $50 billion of which over the 7 years will benefit those families with incomes over a quarter of a million dollars a year.

My point is very simple. With the number of people out there in this country living on very modest incomes, especially senior citizens, the bulk of whom live on less than $15,000 a year, we are saying to them, ''Tighten your belt, buckle up, you are in for some tough times, because we are going to change the programs that you count on because we cannot afford to do otherwise.''

And then we say to the wealthiest families in America, those who earn over a quarter of a million a year and more, guess what. We are going to stop at your house with an envelope, and guess what is in the envelope. A very significant tax cut. So start grinning; it is coming your way. Why? Well, it is about pals and pols. It is about choices. It is about the wrong choices. My sense-of-the-Senate resolution is very simple. It says let us at least make a decision to limit this tax cut to those families that earn less than $250,000 a year and say to those with a quarter million dollars a year or more income, we think you are doing great; you do not need a tax cut, and use the savings, $50 billion in 7 years, to offset some of the cut that is going to be impacting and hurting senior citizens in this country.

Mr. President, I yield the floor and I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? If no one yields time, time will be deducted from both sides equally.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that I be allowed to speak for 4 minutes as if in morning business.

The PRESIDING OFFICER. Again, we are under a unanimous-consent order between 5:40 and 6 o'clock. Any unanimous consent would have to use part of that time.

Mr. BINGAMAN. I would ask that my 4 minutes be charged equally to the two sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from North Dakota controls 40 seconds. The rest would have to come from the other side.

## CLINTON ANDERSON CENTENNIAL

Mr. BINGAMAN. Mr. President, 100 years ago, New Mexico was 17 years from becoming a State and Grover Cleveland was in his second term as President, the x ray was discovered, and O. Henry, who was a writer of great importance in this country, was charged with embezzlement. Also, 100 years ago was the time that Senator Anderson, Clinton Anderson of my home State of New Mexico, was born. Senator Anderson was a man who would mean a great deal to this institution, to this country, and to my home State of New Mexico.

Mr. President, 100 years ago today he was born in Centerville, SD. As a young man, he contracted tuberculosis and moved to New Mexico for treatment of that disease. I should note, Mr. President, that many other of my State's distinguished residents did the very same thing. The dry air of New Mexico revived more than one set of eastern lungs, and Senator Anderson's were among these. He recovered from his illness. He worked in journalism. He was active in Democratic politics. He was elected to the House of Representatives in 1941, served until 1945, when President Truman asked him to become Secretary of Agriculture. In 1948, he ran for the Senate and came to this body in the famous class of 1948 that included Margaret Chase Smith, Lyndon Johnson, Hubert Humphrey, Paul Douglas, Russell Long, Robert Kerr, and Estes Kefauver.

He served for 24 years, creating a very distinguished legislative record, as many of his illustrious classmates did.

One of the finest studies of this outstanding Senator was written by Senate historian, Richard Baker, entitled ''Conservation Politics/The Senate career of Clinton P. Anderson.'' Dr. Baker perfectly described Senator Anderson's technique as a legislator. He said in that book, and I quote:

> Anderson saved his shots. He was not accustomed to launching trial balloons. When he spoke, his colleagues listened. When he decided that New Mexico could gain no more by prolonged debate, he settled for the best package available. And when he attached to a legislative measure the full weight of his intellect and prestige, doubting solons set aside their skepticism, and he prevailed.

Mr. President, however many of us have the honor of representing New Mexico in the Senate, Senator Anderson provides a benchmark against which we will be measured. I am proud to have known him. My uncle, John Bingaman, was active in getting him elected and reelected to the Senate and felt when he died we lost a great public servant.

Today we honor the fact of his birth and the value of his life. For us in New Mexico and in the Senate, his are the shoulders we stand on as we move into the future.

Mr. President, I thank you for the chance to speak, and I yield the floor.

## JERUSALEM EMBASSY RELOCATION IMPLEMENTATION ACT OF 1995

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, here we go again. It is not enough that President Clinton has admitted that he and his allies have raised taxes too much, but here his allies in Congress are already seeking to undermine real tax relief for middle-class Americans.

These folks cannot have it both ways. What Senator DORGAN's amendment amounts to is little more than business as usual. At home and on the campaign trail, the President and his allies talk about change—real change—but here in Washington they continue a game that has been playing out for three decades, a game that has led our Nation into a debt that is almost $4.9 trillion, a game that has run us into $200 billion deficits, and a game that has done little, if anything, to improve the conditions of the most vulnerable among us.

Why do they persist? Because they want it both ways. In some quarters this is called talking out of both sides of the mouth. Even the Washington Post has identified this symptom. According to the Post, the Democrats have fabricated the Medicare tax cut connection because it is useful politically. In an earlier editorial, the Post opined that

> The Democrats are engaged in demagoguery, big time. And it's wrong. . . . [The Republicans] have a plan. Enough is known about it to say it is credible; it's gutsy and in some respects inventive—and it addresses a genuine problem that is only going to get worse. What Democrats have, on the other hand, is a lot of expostulation, TV ads and scare talk.

What my colleagues on the other side of the aisle will not tell the American people is that under the plan we are proposing, using Medicare savings for tax cuts would be illegal. The law requires that money saved on the Medicare Program will stay in the Medicare Program. Remember, these are trust funds, the assets of which may not be used for any other purpose. And to say otherwise, as the Post points out, is little more than politically motivated scare tactics.

The sense-of-the-Senate amendment completely undermines the progress we have made toward saving Medicare. Without our plan, the trust fund is bankrupt in 2002. It is that simple. Without our plan, the Government will not be able to live up to its obligations. We assure solvency of the program until the year 2020. This gives us a sufficient time to focus on the needs that will arise when the baby-boom generation reaches the age of eligibility.

It is important to note that Senator DORGAN's plan is not even based on the

Senate Finance Committee proposal. It is based on the Clinton administration assessment of the House plan. How in the world are we supposed to make an intellectual judgment call when the amendment Senator DORGAN asks us to vote on mixes apples and oranges, citing what only can at best be called partisan economic data.

Let us restore intellectual honesty to the debate. According to the Joint Committee on Taxation, 70 percent of the benefits of the Finance Committee tax bill will go to families making under $75,000 a year. Seventy percent. Our bill provides a $500 per child tax credit to our hard-working families. It eliminates the marriage penalty for many, creates a credit for adoption expenses, and helps with student loan payments. We also provide much-needed incentives for savings and investment. These are all middle-class provisions that go to help the people President Clinton has admitted to raising taxes on. What we are doing is trying to help the President and his allies correct a mistake. Let us make it right for the American people.

Mr. President, I move to table the pending Dorgan amendment.

The PRESIDING OFFICER. All time under the unanimous-consent agreement has expired.

The question now occurs on agreeing to the motion to table the Dorgan amendment numbered 2940.

Mr. ROTH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be. There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from North Carolina [Mr. HELMS], and the Senator from Kansas [Mrs. KASSEBAUM] are necessarily absent.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY], the Senator from South Dakota [Mr. DASCHLE], the Senator from Hawaii [Mr. INOUYE], the Senator from Nebraska [Mr. KERREY], and the Senator from Georgia [Mr. NUNN] are necessarily absent.

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

The result was announced—yeas 51, nays 40, as follows:

[Rollcall Vote No. 495 Leg.]

YEAS—51

| | | |
|---|---|---|
| Abraham | Coverdell | Gregg |
| Ashcroft | Craig | Hatch |
| Bennett | D'Amato | Hatfield |
| Bond | DeWine | Hutchison |
| Brown | Dole | Inhofe |
| Burns | Domenici | Jeffords |
| Campbell | Frist | Kempthorne |
| Chafee | Gorton | Kyl |
| Coats | Gramm | Lieberman |
| Cochran | Grams | Lott |
| Cohen | Grassley | Lugar |
| Mack | Roth | Specter |
| McCain | Santorum | Stevens |
| McConnell | Shelby | Thomas |
| Murkowski | Simpson | Thompson |
| Nickles | Smith | Thurmond |
| Pressler | Snowe | Warner |

NAYS—40

| | | |
|---|---|---|
| Akaka | Feinstein | Mikulski |
| Baucus | Ford | Moseley-Braun |
| Biden | Glenn | Moynihan |
| Bingaman | Graham | Murray |
| Boxer | Harkin | Pell |
| Breaux | Heflin | Pryor |
| Bryan | Hollings | Reid |
| Bumpers | Johnston | Robb |
| Byrd | Kennedy | Rockefeller |
| Conrad | Kerry | Sarbanes |
| Dodd | Kohl | Simon |
| Dorgan | Lautenberg | Wellstone |
| Exon | Leahy | |
| Feingold | Levin | |

NOT VOTING—8

| | | |
|---|---|---|
| Bradley | Helms | Kerrey |
| Daschle | Inouye | Nunn |
| Faircloth | Kassebaum | |

So the motion to lay on the table the amendment (No. 2940) was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote.

Mr. CHAFEE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

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

## RECONCILIATION

Mr. GORTON. Mr. President, a few hours ago this afternoon the Senate Budget Committee reported to the Senate the reconciliation bill for 1996 through the year 2002. We will soon begin to debate that bill—perhaps the most momentous debate that this Senate will engage in this year or perhaps any year during the course of the last decade.

The design of that bill is, of course, to see to it that the budget of the United States is balanced in the year 2002, precisely the time at which the constitutional amendment on a balanced budget would have required such a balance, had it been passed and submitted to the States by this Senate.

Hidden in the debate over the budget, however, is one vitally important proposition. That is, that this budget does not lead us to balance on the basis of figures submitted by my distinguished friend, the chairman of the Budget Committee, by the majority leader, by a party caucus, or by any other such partisan individual or organization.

The certification that this budget will be balanced comes from our Congressional Budget Office, an office set up literally decades ago in order to provide us with the most objective advice possible with respect to the budgetary implication of our actions.

In fact, just 2 short years ago, the President of the United States reported that we ought to end debate over assumptions and projections and all operate off baselines provided by the Congressional Budget Office. I regret that the President has abandoned that salutary course of action.

It is not relevant for the purposes of my argument here this evening, Mr. President. What is relevant is the fact, first, that the Congressional Budget Office has said to us, if you pass this bill, if you follow these policies, you will, in fact, reach balance by the year 2002. As a result, we, the Congressional Budget Office, can tell you that the economy of the United States will be healthier, much healthier, as a result of adopting those policies.

The figure the Congressional Budget Office gives in this regard is that we will have a dividend of $170 billion in increased revenues from our present tax system as a result of the fact that we are going to balance the budget, increased revenues that come because the economy will grow more rapidly because interest rates will be lower. These will be reflected in the budget itself.

Of course, it is this $170 billion dividend, together with changes which close corporate loopholes—corporate welfare as it were—that provide the great bulk of the $245 billion tax cut for middle-income and working Americans, which is an integral part of this reconciliation bill.

The dramatic differences which will be debated later on this week have to do with whether or not we want that dividend, whether or not we want to adopt difficult and tough policies that will result in a stronger or better economy, or whether we prefer the status quo at a slower rate of growth, a higher interest rate, and a higher rate of inflation. It is just that simple.

Now, Mr. President, in addition to repudiating the ideas that were causing this dividend to take place, Members on the other side of the aisle do not want to give a tax break to middle-income Americans under any set of circumstances. They would much prefer to continue the policies of the past—slow growth, no tax reductions, no balanced budget now or ever.

The President's budget, by contrast, according to the same Congressional Budget Office, will never result in deficits significantly below $200 billion a year.

Finally, Mr. President, we will have, during the course of the debate over this reconciliation bill, a paradox. The President, the official line is that these spending reductions are too great, that we should not give working Americans tax reductions. We simply ought to continue the status quo.

Grace notes from some on the other side in connection with this debate will be that we really have not balanced the budget at all, we have not gone far enough, we should not be using a unified budget, we should ignore all of the taxes collected under the Social Security system and paid out under that Social Security system.

Implicit in that argument is that we have not gone far enough, that we have

not cut spending sufficiently. There will be a great deal of confusion on the part of the American people when they hear on one side the argument that we have not gone far enough because we do not bring the budget to balance in the year 2002, in spite of the words of the Congressional Budget Office—without any suggestion, I may say, as to how we should do so—and, on the other side, the argument we are simply going to far.

I hope this debate will be worked out during the course of, simply, the balance of this week. But the bottom line is that this Senate, the majority in this Senate, are going to vote for a budget which not only brings us into balance as quickly as a constitutional amendment would have brought us into balance but will also pay off $170 billion less in deficits than would otherwise take place. That $170 billion is itself only the tip of the iceberg above water. That is how the Federal Government benefits. The people of the United States will benefit two, three, four times as much, in higher incomes, in better jobs, in a brighter future and in more opportunity.

So I commend my friend, the chairman of the Senate Budget Committee, for his work in getting us to the verge of this great success and look forward to a significant and vitally important debate in this Senate on the future of this country.

## UNANIMOUS-CONSENT AGREEMENT—S. 1322

Mr. GORTON. Mr. President, I ask unanimous consent that during the pendency of S. 1322, the only amendment in order be one substitute amendment to be offered by Senator DOLE and others. I further ask that following the disposition of the above-listed amendment, the bill be advanced to third reading and, at 11 a.m. on Tuesday, there be 30 minutes of time remaining to be equally divided in the usual form, with 10 minutes under the additional control of Senator BYRD, with a vote to occur on passage of S. 1322, as amended, at 11:40 a.m. Tuesday, and that paragraph 4 of rule 12 be waived.

The PRESIDING OFFICER. Is there any objection to the request?

Mr. FORD. Mr. President, this side of the aisle has no objection.

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

Mr. GORTON. I thank the Senator.

Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

## THE BUDGET

Mr. FORD. Mr. President, I enjoyed listening to my friend from the State of Washington. It seems like the only hearings we are going to have on this budget are on the Senate floor. It is very difficult not to have people in to hold hearings and have markups on many pieces of legislation.

Mr. President, it is a little bit interesting to look at all the figures that are coming out. Everybody has different figures. CBO says one thing and they give you a certification. Then we get numbers from someplace else. Then the Budget Committee comes up with theirs, and I am tickled to death with the work of the Budget Committee except I do not think they ought to give the tax cut.

Now we see almost 50 percent of the taxpayers of this country are going to have their taxes increased by not allowing the tax credit that they have had in past years that encouraged people to work, to bring people above the poverty level.

So, you can say all you want to about how great this is. There is a hymn, ''How Great Thou Art.'' There is nothing about ''thou art'' in this budget.

So I hope we will look at it very closely. I am disappointed we did not have an opportunity to dig into the details because, as I have brought up, the devil is in the details. We have not seen all the details yet, and I hope at some point during the debate some of the details will come out.

I do not know whether or not anybody else is seeking the floor, Mr. President. If not, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## JERUSALEM EMBASSY RELOCATION IMPLEMENTATION ACT OF 1995

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 1322.

AMENDMENT NO. 2941

(Purpose: To provide for the establishment of the United States Embassy in Israel in the capital of Jerusalem, and for other purposes)

Mr. DOLE. Mr. President, I send a substitute to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 2941.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Jerusalem Embassy Act of 1995''.

**SEC. 2. FINDINGS.**

The Congress makes the following findings:

(1) Each sovereign nation, under international law and custom, may designate its own capital.

(2) Since 1950, the city of Jerusalem has been the capital of the State of Israel.

(3) The city of Jerusalem is the seat of Israel's President, Parliament, and Supreme Court, and the site of numerous government ministries and social and cultural institutions.

(4) The city of Jerusalem is the spiritual center of Judaism, and is also considered a holy city by the members of other religious faiths.

(5) From 1948–1967, Jerusalem was a divided city and Israeli citizens of all faiths as well as Jewish citizens of all states were denied access to holy sites in the area controlled by Jordan.

(6) In 1967, the city of Jerusalem was reunited during the conflict known as the Six Day War.

(7) Since 1967, Jerusalem has been a united city administered by Israel, and persons of all religious faiths have been guaranteed full access to holy sites within the city.

(8) This year marks the 28th consecutive year that Jerusalem has been administered as a unified city in which the rights of all faiths have been respected and protected.

(9) In 1990, the Congress unanimously adopted Senate Concurrent Resolution 106, which declares that the Congress ''strongly believes that Jerusalem must remain an undivided city in which the rights of every ethnic and religious group are protected''.

(10) In 1992, the United States Senate and House of Representatives unanimously adopted Senate Concurrent Resolution 113 of the One Hundred Second Congress to commemorate the 25th anniversary of the reunification of Jerusalem, and reaffirming congressional sentiment that Jerusalem must remain an undivided city.

(11) The September 13, 1993, Declaration of Principles on Interim Self-Government Arrangements lays out a timetable for the resolution of ''final status'' issues, including Jerusalem.

(12) The Agreement on the Gaza Strip and the Jericho Area was signed May 4, 1994, beginning the five-year transitional period laid out in the Declaration of Principles.

(13) In March of 1995, 93 members of the United States Senate signed a letter to Secretary of State Warren Christopher encouraging ''planning to begin now'' for relocation of the United States Embassy to the city of Jerusalem.

(14) In June of 1993, 257 members of the United States House of Representatives signed a letter to the Secretary of State Warren Christopher stating that the relocation of the United States Embassy to Jerusalem ''should take place no later than . . . 1999''.

(15) The United States maintains its embassy in the functioning capital of every country except in the case of our democratic friend and strategic ally, the State of Israel.

(16) The United States conducts official meetings and other business in the city of Jerusalem in de facto recognition of its status as the capital of Israel.

(17) In 1996, the State of Israel will celebrate the 3,000th anniversary of the Jewish presence in Jerusalem since King David's entry.

**SEC. 3. TIMETABLE.**

(a) STATEMENT OF THE POLICY OF THE UNITED STATES.—

(1) Jerusalem should remain an undivided city in which the rights of every ethnic and religious group are protected;

(2) Jerusalem should be recognized as the capital of the State of Israel; and

(3) the United States Embassy in Israel should be established in Jerusalem no later than May 31, 1999.

(b) OPENING DETERMINATION.—Not more than 50 percent of the funds appropriated to the Department of State for fiscal year 1999 for ''Acquisition and Maintenance of Buildings Abroad'' may be obligated until the Secretary of State determines and reports to Congress that the United States Embassy in Jerusalem has officially opened.

**SEC. 4. FISCAL YEARS 1996 AND 1997 FUNDING.**

(a) FISCAL YEAR 1996.—Of the funds authorized to be appropriated for ''Acquisition and Maintenance of Buildings Abroad'' for the Department of State in fiscal year 1996, not less than $25,000,000 should be made available until expended only for construction and other costs associated with the establishment of the United States Embassy in Israel in the capital of Jerusalem.

(b) FISCAL YEAR 1997.—Of the funds authorized to be appropriated for ''Acquisition and Maintenance of Buildings Abroad'' for the Department of State in fiscal year 1997, not less than $75,000,000 should be made available until expended only for construction and other costs associated with the establishment of the United States Embassy in Israel in the capital of Jerusalem.

**SEC. 5. REPORT ON IMPLEMENTATION.**

Not later than 30 days after the date of enactment of this Act, the Secretary of State shall submit a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate detailing the Department of State's plan to implement this Act. Such report shall include—

(1) estimated dates of completion for each phase of the establishment of the United States Embassy, including site identification, land acquisition, architectural, engineering and construction surveys, site preparation, and construction; and

(2) an estimate of the funding necessary to implement this Act, including all costs associated with establishing the United States Embassy in Israel in the capital of Jerusalem.

**SEC. 6. SEMIANNUAL REPORTS.**

At the time of the submission of the President's fiscal year 1997 budget request, and every six months thereafter, the Secretary of State shall report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate on the progress made toward opening the United States Embassy in Jerusalem.

**SEC. 7. PRESIDENTIAL WAIVER.**

(a) WAIVER AUTHORITY.—(1) Beginning on October 1, 1998, the President may suspend the limitation set forth in section 3(b) for a period of six months if he determines and reports to Congress in advance that such suspension is necessary to protect the national security interests of the United States.

(2) The President may suspend such limitation for an additional six month period at the end of any period during which the suspension is in effect under this subsection if the President determines and reports to Congress in advance of the additional suspension that the additional suspension is necessary to protect the national security interests of the United States.

(3) A report under paragraph (1) or (2) shall include—

(A) a statement of the interests affected by the limitation that the President seeks to suspend; and

(B) a discussion of the manner in which the limitation affects the interests.

(b) APPLICABILITY OF WAIVER TO AVAILABILITY OF FUNDS.—If the President exercises the authority set forth in subsection (a) in a fiscal year, the limitation set forth in section 3(b) shall apply to funds appropriated in the following fiscal year for the purpose set forth in such section 3(b) except to the extent that the limitation is suspended in such following fiscal year by reason of the exercise of the authority in subsection (a).

**SEC. 8. DEFINITION.**

As used in this Act, the term ''United States Embassy'' means the offices of the United States diplomatic mission and the residence of the United States chief of mission.

Mr. DOLE. There is no objection to the substitute.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 2941) was agreed to.

Mr. DOLE. Mr. President, as I understand it, we have 40 minutes? There will be 40 minutes of debate beginning at 11 a.m. tomorrow, to be followed on a vote on the passage of S. 1322, the substitute. We expect a vote about 11:40. I think 10 minutes of that 40 is reserved for Senator BYRD and the other is equally divided.

In addition, I ask at this point to add the following cosponsors to the bill: Senators FEINSTEIN, LAUTENBERG, and KENNEDY.

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

Mr. DOLE. Mr. President, I ask for yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

## MORNING BUSINESS

Mr. DOLE. Mr. President, I now ask there be a period for morning business not to extend beyond the hour of 7:30 p.m., with Members permitted to speak for up to 5 minutes each.

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

## REPORT ON BLOCKING ASSETS AND PROHIBITING TRANSACTIONS WITH SIGNIFICANT NARCOTICS TRAFFICKERS—MESSAGE FROM THE PRESIDENT—PM 89

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

*To the Congress of the United States:*

Pursuant to section 204(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(b) and section 301 of the National Emergencies Act, 50 U.S.C. 1631, I hereby report that I have exercised my statutory authority to declare a national emergency in response to the unusual and extraordinary threat posed to the national security, foreign policy, and economy of the United States by the actions of significant foreign narcotics traffickers centered in Colombia and to issue an Executive order that:

—blocks all property and interests in property in the United States or within the possession or control of United States persons of significant foreign narcotics traffickers centered in Colombia designated in the Executive order or other persons designated pursuant thereto; and

—prohibits any transactions or dealing by United States persons or within the United States in property of the persons designated in the Executive order or other persons designated pursuant thereto.

In the Executive order (copy attached) I have designated four significant foreign narcotics traffickers who are principals in the so-called Cali cartel in Colombia. I have also authorized the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to designate additional foreign persons who play a significant role in international narcotics trafficking centered in Columbia or who materially support such trafficking, and other persons determined to be owned or controlled by or to act for or on behalf of designated persons, whose property or transactions or dealings in property in the United States or with United States persons shall be subject to the prohibitions contained in the order.

I have authorized these measures in response to the relentless threat posed by significant foreign narcotics traffickers centered in Colombia to the national security, foreign policy, and economy of the United States.

Narcotics production has grown substantially in recent years. Potential cocaine production—a majority of which is bound for the United States—is approximately 850 metric tons per year. Narcotics traffickers centered in Colombia have exercised control over more than 80 percent of the cocaine entering the United States.

Narcotics trafficking centered in Colombia undermines dramatically the health and well-being of United States citizens as well as the domestic economy. Such trafficking also harms trade and commercial relations between our countries. The penetration of legitimate sectors of the Colombian economy by the so-called Cali cartel has frequently permitted it to corrupt various institutions of Colombian government and society and to disrupt Colombian commerce and economic development.

The economic impact and corrupting financial influence of such narcotics trafficking is not limited to Colombia but affects commerce and finance in the United States and beyond. United States law enforcement authorities estimate that the traffickers are responsible for the repatriation of $4.7 to $7 billion in illicit drug profits from the United States to Colombia annually, some of which is invested in ostensibly legitimate businesses. Financial resources of that magnitude, which have been illicitly generated and injected

into the legitimate channels of international commerce, threaten the integrity of the domestic and international financial systems on which the economies of many nations now rely.

For all of these reasons, I have determined that the actions of significant narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm that they cause in the United States and abroad, constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. I have, accordingly, declared a national emergency in response to this threat.

The measures I am taking are designed to deny these traffickers benefit of any assets subject to the jurisdiction of the United States and to prevent United States persons from engaging in any commercial dealings with them, their front companies, and their agents. These measures demonstrate firmly and decisively the commitment of the United States to end the scourge that such traffickers have wrought upon society in the United States and beyond. The magnitude and dimension of the current problem warrant utilizing all available tools to wrest the destructive hold that these traffickers have on society and governments.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *October 21, 1995.*

## MEASURES REFERRED

The following concurrent resolution, previously received from the House of Representatives for the concurrence of the Senate, was read and referred as indicated:

H. Con. Res. 108. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 1594; to the Committee on Labor and Human Resources.

## MEASURES PLACED ON THE CALENDAR

The following measure was read the second time and placed on the calendar:

H.R. 1715. An act respecting the relationship between workers' compensation benefits and the benefits available under the Migrant and Seasonal Agricultural Worker Protection Act.

## 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–1536. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the annual Horse Protection Enforcement Report for fiscal year 1994; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1537. A communication from the Secretary of Agriculture, transmitting, a draft of proposed legislation for the Conservation Title of the 1995 Farm Bill; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1538. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 93–03; to the Committee on Appropriations.

EC–1539. A communication from the Secretary of the Panama Canal Commission, transmitting, pursuant to law, a notice of determination relative to contract awards; to the Committee on Armed Services.

EC–1540. A communication from the Chief of Legislative Affairs, Department of the Navy, transmitting, pursuant to law, notice of the intention to offer transfer by sale of three vessels; to the Committee on Armed Services.

EC–1541. A communication from the Director of the Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the report entitled, ''Flood Insurance Compliance''; to the Committee on Banking, Housing, and Urban Affairs.

EC–1542. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation to amend chapter 303 of title 49, United States Code, to provide for the transfer of selected National Driver Register functions to non-Federal management, to provide authorizations for appropriations for each of fiscal years authorizations for appropriations for each of fiscal years 1996 and 1997, and for other purposes; to the Committee on Veterans' Affairs.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DOMENICI, from the Committee on the Budget, without amendment:

S. 1357. An original bill to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996.

## 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. BREAUX:

S. 1354. A bill to approve and implement the OECD Shipbuilding Trade Agreement; to the Committee on Finance.

By Mr. DORGAN (for himself, Mr. DASCHLE, Mr. CONRAD, Mr. LEVIN, Mr. REID, Mr. WELLSTONE, Mr. SIMON, Mr. FEINGOLD, Mr. KENNEDY, Mr. LEAHY, Mr. HARKIN, Mr. BYRD, Mr. FORD, Mr. KERREY, Mr. BUMPERS, and Mr. KERRY):

S. 1355. A bill to amend the Internal Revenue Code of 1986 to end deferral for United States shareholders on income of controlled foreign corporations attributable to property imported into the United States; to the Committee on Finance.

By Mr. PRESSLER:

S. 1356. A bill to amend the Shipping Act of 1984 to provide for ocean shipping reform, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DOMENICI:

S. 1357. An original bill to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996; from the Committee on the Budget; placed on the calendar.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BREAUX:

S. 1354. A bill to approve and implement the OECD Shipbuilding Trade Agreement; to the Committee on Finance.

THE SHIPBUILDING TRADE AGREEMENT ACT

● Mr. BREAUX. Mr. President, I introduce legislation to approve and implement the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, also known as the OECD Shipbuilding Agreement. While not perfect, this agreement appears to be our last best chance to eliminate unfair subsidies, to counter injurious pricing policies, to reign in trade distorting export financing, and to institute an effective binding dispute settlement system for shipbuilding controversies. Because of this agreement, for the first time, U.S. shipyard workers will have safeguards against having to compete with continued funding from foreign treasuries.

My involvement with the issue of unfair foreign shipbuilding practices relates to my State of Louisiana being one of the premier shipbuilding States in the country. Over 27,000 Louisiana jobs are impacted by constructing or repairing ships. As has been the case nationwide, Louisiana's shipbuilding employment has suffered significantly since the 1980's. This situation is due to U.S. defense downsizing and to unfair foreign shipbuilding practices. Since 1989, I've been actively working to eliminate unfair foreign shipbuilding practices and to restore the U.S. commercial shipbuilding industry.

How did the United States get in this dilemma? From 1974 to 1987, worldwide overall demand for ocean going vessels declined 71 percent. During the same time span, United States merchant vessel construction dropped drastically from an average of 72 ships/year to an average of 21 ships/year. Also during this period governments in all the major shipbuilding nations, with the exception of the United States, dramatically increased aid to their shipyards and their associated infrastructure with massive levels of subsidies in virtually every form.

The U.S. Government, however, decided to unilaterally terminate commercial construction subsidies to U.S. yards. Instead, U.S. Defense shipbuilding increased. U.S. Defense shipbuilding construction rose from an average of 79 ships/year in the 1970's to an average of 95 ships/year in the 1980's. The net result was a virtual abandonment by the large U.S. Defense yards to subsidized foreign yards of the international commercial shipbuilding market. In 10 years, the number of major U.S. shipyards producing only commercial ships declined from 11 to 1.

The end of the 1980's saw a Department of Defense reevaluation of the need for a 600-ship navy. It also saw the U.S. shipbuilding industry reevaluate its need to compete for commercial ship construction orders in a subsidized world market. Consequently, in June of 1989, the U.S. shipbuilding industry,

represented by the Shipbuilders Council of America, filed a claim for injurious unfair subsidies under section 301 of the U.S. trade laws against the major shipbuilding countries of the world.

Later that year, however, U.S. Trade Ambassador Carla Hills, persuaded the industry that a better way to eliminate the foreign subsidies was through multilateral negotiations. Industry decided to give international negotiations a chance and therefore withdrew its section 301 claim. The 5-year OECD quest to eliminate shipbuilding subsidies had begun.

From late 1989 to late 1994, the OECD negotiations were constantly on again and off again. During 1993, when the talks had seemingly collapsed, I introduced a bill in the Senate (S. 990) and Congressman SAM GIBBONS introduced a bill in the House (H.R. 1402), that would have invoked significant sanctions against ships constructed in foreign subsidized yards when those ships called upon the United States. This legislation became unnecessary when the agreement was finally signed.

From June 1989 until the present agreement was signed on December 21, 1994, the U.S. objective and the industry's urgent request appeared to be straightforward: ''Eliminate subsidies and we can compete.'' When the Clinton administration came into office, to its credit, it proposed a shipyard revitalization plan. Assistant U.S. Trade Representative Don Phillips described the nature of the plan for the Senate Finance Committee Trade Subcommittee on November 18, 1993 when he said:

> Finally, this five-point program is a transitional program, consistent with federal assistance to other industries seeking to convert from defense to civilian markets. In addition, it seeks to support, not undercut, the negotiations that are currently underway in the OECD. *In this regard, we have made clear our intention to modify this program, as appropriate, so that it would be consistent with the provision of a multilateral agreement—if and when such an agreement enters into force.* (emphasis added).

Now we have such an agreement, but the largest U.S. Defense shipyards don't want it because current U.S. transitional subsidies will need to be curbed, as well as additional future subsidies prohibited, in order to be consistent with the agreement. This is really the issue in a nutshell. We can talk about the Jones Act, we can talk about the trustworthiness of other countries, we can talk about the adequacy of enforcement mechanisms, but what it really seems to come down to for these big shipyards is whether or not we can keep our currently advantageous subsidies.

In all the comments I have heard to date about this agreement, I have yet to hear of a scenario whereby U.S. industry is better off fighting unfair foreign shipbuilding practices without the agreement than it would be with the agreement. For example, this agreement will give us real tools to fight unfair French subsidies. It will allow us to counter unfair dumping of ships by Japan and Korea. It will finally plug the gap in existing U.S. trade laws that has cost so many American shipyard workers their jobs.

The assertions that this agreement somehow puts the Jones Act domestic build provisions in jeopardy is discredited by our own Jones Act carriers who stand to lose the most under a faulty agreement. The largest Jones Act carriers, in fact, support the agreement and they clearly would not if this agreement hurt their interests—it does not. In addition, many of the new shipbuilding orders that have been placed at U.S. shipyards are for use in the Jones Act trade.

It also seems that the optimism over the current success of our title XI financing program may be overstated. As I understand it, the new export orders associated with the current title XI program exist because our stepped-up title XI program is currently protected by a standstill clause in the OECD agreement. If we reject the agreement, we lose the standstill clause, and consequently it seems to reason that we will lose our current title XI advantage. While I recognize the need to conform our title XI program, I am willing to explore the continuation of current title XI terms, subject to reasonable due diligence negotiations, to the date that we implement the terms of the agreement.

Unless we are prepared to win a long-term subsidies race with our competitors, I don't understand how we can reject this agreement. Not only is Congress faced with dire budgetary decisions, such as cutting over $450 billion from Medicare and Medicaid over the next 7 years, but the Department of Defense has also indicated that it will not fund commercial shipbuilding subsidies through its DOD accounts.

Add heightened competition due to increasing world shipbuilding capacity and it seems to me, and history supports, that our competitors are very likely to match or exceed what little amounts we will be able to devote to title XI. It was estimated by the Shipbuilding Council in 1993 that the top six subsidizing nations in the OECD were budgeting over $9 billion on average each year to assist their shipyards. We may then find ourselves in the same untenable situation that confronted our industry in 1981: No international subsidies disciplines, inadequate U.S. trade remedies, and no recourse for the U.S. commercial shipbuilding industry and its workers.

Mr. President, we're all in the same boat, so to speak. However, before anyone attempts to scuttle this agreement to help revise our U.S. commercial shipbuilding industry, I'd like to redouble efforts with all members of the industry to see what we can do to close the remaining competitiveness gap. Our goal should be to couple the significant advantages of this agreement with genuine and creative improvements in U.S. shipbuilding competitiveness.

With this in mind, I am introducing the Shipbuilding Trade Agreement Act. The text of this bill closely reflects an administration draft that we have attempted to improve and strengthen. It is a bipartisan work-in-progress bill composed of two titles. Title I contains ''injurious pricing and countermeasures'' provisions that closely track current U.S. antidumping laws, while taking into account the unique nature of ship transactions. Title II contains ''other provisions'' including amendments to the Merchant Marine Act of 1936, repeal of the U.S. vessel repair statute for signatory countries, and a special monitoring provision to ensure foreign country compliance with the terms of the shipbuilding agreement.

The House Ways and Means trade Subcommittee has already held a hearing on this agreement. I understand the subcommittee is currently making final revisions to the same USTR draft that we used and intends to introduce a bill in the House shortly. It is my hope that the House can move its bill quickly in order that both legislative bodies might pass a bill and send it to the President for signature before year-end. I have requested a full committee hearing on this Senate bill with the chairman of the Senate Finance Committee. Commerce Committee Surface Transportation and Merchant Marine Subcommittee Chairman TRENT LOTT has also indicated interest in holding a hearing on the agreement.

In closing, we stand before a window of opportunity for the U.S. commercial shipbuilding industry. The $265 billion commercial shipbuilding market is fast approaching its cyclical peak. I am hopeful that we will seize this moment and implement this agreement. It may be our best and only chance to end foreign shipbuilding subsidies and finally five our workers and yards the level playing field for which they have asked, and deserved, for too long.

I also ask unanimous consent that a copy of the October 19, 1995, Journal of Commerce editorial supporting the OECD Shipbuilding Agreement be included in the RECORD.

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

[From the Journal of Commerce, Oct. 19, 1995

END SHIP SUBSIDIES

Government subsidies have been the mainstay of foreign shipbuilders for decades. That has been a good deal for companies that buy ships but a burden for taxpayers who underwrite the handouts, and a problem for unsubsidized shipyards, including those in the United States.

Much of this would change under a pending global agreement, which would end most subsidies and give U.S. shipbuilders a better chance to compete. But the agreement is languishing in Congress, a victim mainly of political concerns. After more than six years spent negotiating this deal, lawmakers would be foolish to let it unravel over partisan sniping. Congress should approve it, and soon.

Japan, Korea and Europe dominate the world shipbuilding market, and for years their governments have showered them with financial support. The United States, which ended its direct subsidies in 1981, has been trying for six years to stop the foreign handouts. A deal completed in 1994 would largely do that, and it is scheduled to take effect Jan. 1 but only if the major shipbuilding nations ratify it. So far, the United States has not, and the prospects for approval are uncertain.

Most of the problems are purely political. The shipbuilding agreement's strongest supporter, Rep. Sam Gibbons, is the former Democratic chairman of the House Ways and Means Committee. The new Republican chairman, Rep. Bill Archer, has been cool toward an agreement viewed largely as a Democratic initiative—even though, as a Republican, Mr. Archer should be stumping for *any* plan that ends government subsidies. Indeed, Mr. Archer might eventually back the agreement, but only if influential Democrats support one of his bills. This is the usual Washington game of political trade-offs, but if a deal isn't struck soon, the pact may not be ratified by the January deadline.

The other problem is rooted in the White House. The Clinton administration negotiated the shipbuilding agreement and supports it publicly. But several big shipyards oppose it, as do their labor unions. Mr. Clinton, anxious to rebuild his labor base in time for the election, has been careful not to offend unions this year, so the White House hasn't been pushing Congress very hard.

Mr. Clinton and Republican leaders would do well to look at the larger issue here. Like farming and steel, shipbuilding has been one of the most distorted of international industries. Decisions on where to build ships have been based as much on government subsidies as on quality and workmanship. This has hurt U.S. shipyards, and the agreement would begin to change that.

Ironically, the biggest U.S. shipyards continue to fight the pact, arguing, instead, for new direct subsidies to help them make up for lost time. That is stunningly shortsighted. Any new subsidy plan by the United states would be matched instantly by other shipbuilding nations. Indeed, other countries most likely would top any U.S. subsidy, as they have before. That would leave U.S. shipbuilders in the same position they've been if for the last 15 years. For that reason, many smaller shipyards, including those with more commercial experience, are supporting the agreement.

Foreign shipyards, admittedly, have a leg up on their U.S. competitors because of existing subsidies, some of which will not be completely phased out until 1999. But U.S. yards have had their own advantages over the years, including lucrative military work and a government-created monopoly on building ships for the U.S. domestic trades. In fact, commercial ship orders actually have been increasingly lately at U.S. yards. A generous government loan guarantee program has spurred the new orders, and while the program will be scaled back under the new pact, it has given U.S. yards a foot in the door with commercial buyers.

No trade agreement can ever instantly level the competitive field between nations. Still, the shipbuilding pact gets other countries off the subsidy treadmill and restores some sense to the global market. Leaders of both parties should put aside politics and get this deal done.●

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By Mr. DORGAN (for himself, Mr. DASCHLE, Mr. CONRAD, Mr. LEVIN, Mr. REID, Mr. WELLSTONE, Mr. SIMON, Mr. FEINGOLD, Mr. KENNEDY, Mr. LEAHY, Mr. HARKIN, Mr. BYRD, Mr. FORD, Mr. KERREY, Mr. BUMPERS, and Mr. KERRY):

S. 1355. A bill to amend the Internal Revenue Code of 1986 to end deferral for U.S. shareholders on income of controlled foreign corporations attributable to property imported into the United States; to the Committee on Finance.

THE AMERICAN JOBS AND MANUFACTURING PRESERVATION ACT

Mr. DORGAN. Mr. President, we will soon be making a number of tough choices on the Senate floor to reduce the Federal deficit. There is one choice, however, which should be easy for most of us: eliminating the costly and misguided tax subsidy which encourages American firms to move abroad and then compete, unfairly, with Main Street businesses in the U.S. market.

That's why I rise today—with 15 of my Senate colleagues—to introduce the American Jobs and Manufacturing Preservation Act. It repeals a perverse Federal tax incentive which actually encourages many of the finest U.S. companies to shut down their manufacturing plants in the United States, move them—and the jobs they provide—abroad, and then supply the U.S. market from foreign tax havens.

The often-overlooked loss of our manufacturing jobs is alarming. Yet the Federal Government actually rewards U.S. companies that move their jobs and capital to foreign tax havens.

This special tax subsidy is called deferral. The way it works is quite simple. If a U.S. company moves an operation abroad, it can defer its taxes on the resulting profits until it sends those profits back to the United States in the form of dividends. Evidence shows that this special tax break costs U.S. taxpayers billions of dollars in lost revenues, and accelerates the movement of U.S. jobs overseas.

According to the Bureau of Labor Statistics, about 3 million U.S. manufacturing jobs have been lost since 1979. One half of that job loss in manufacturing, 1.4 million, occurred between January 1989 and September 1993. During this time, the United States lost an average of 26,000 manufacturing jobs per month. This is the equivalent to shutting down one Fortune 500 manufacturing firm per month, for 56 months. While there was a short period of job growth in manufacturing in late 1993 and 1994, there are new and disturbing signs that employment in manufacturing is again declining.

While the United States was losing manufacturing jobs, many foreign tax havens were seeing significant increases in jobs creation from U.S. owned subsidiaries. For example, while the United States was losing 3 million manufacturing jobs, the number of jobs with United States based companies in Singapore sky-rocketed by 46 percent, or 36,800 jobs. In 1992, U.S. firms had hundreds of thousands of manufacturing jobs located in tax haven countries.

The Federal Government has just started to track data to tell us how many of the U.S. jobs lost through plant closure moved overseas. However, if only half of the plant closings involved these runaway plants moving jobs to other countries, this would account for the elimination of more than half a million U.S. manufacturing jobs per year.

This legislation is carefully targeted. It would end tax deferral only where U.S. multinationals produce abroad in foreign tax havens, and then ship those tax haven-produced products back into the United States. It is important to note that this bill does nothing to hinder U.S. multinationals that produce abroad from competing with foreign firms in foreign markets.

We can hardly be shocked when U.S. companies move jobs overseas—jobs which produce goods for U.S. consumption, no less—when we offer a special tax break giving them an unfair advantage over U.S. competitors to do so. Add the low tax rates and labor costs which foreign governments often use to entice U.S. firms to move overseas and it's not surprising at all that many companies find the lure to move U.S. jobs to foreign countries irresistible.

Congress should act now both to protect American jobs and to prevent any further erosion of our domestic economic base. And I intend to offer this legislation as amendment to the budget reconciliation bill later this week.

Some companies may still choose to dislocate thousands of workers in America in search of greater profits abroad. But taxpayers should not be asked to provide billions of dollars in tax subsidies to encourage them to do so.

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By Mr. PRESSLER:

S. 1356. A bill to amend the Shipping Act of 1984 to provide for ocean shipping reform, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE OCEAN SHIPPING REFORM ACT OF 1995

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

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

SUMMARY OF THE OCEAN SHIPPING REFORM ACT OF 1995

ELIMINATION OF THE FEDERAL MARITIME COMMISSION

Under the new legislation the Federal Maritime Commission will be eliminated no later than October 1, 1997. The legislation directs that the existing functions and responsibilities of the Commission should begin to be transferred to the Secretary of Transportation, beginning as soon as practical in fiscal year 1996.

ELIMINATION OF TARIFF ENFORCEMENT AND TARIFF AND CONTRACT FILING

On January 1, 1997, tariffs shall no longer be enforced and, on June 1, 1997, all requirements that tariffs and service contracts be

filed with the federal government are eliminated.

COMMON CARRIAGE

On June 1, 1997, a new and separate system for common and contract carriage takes effect. Under the common carriage regime, common carriers and conferences will be required to make available a schedule of transportation rates which shall include the rates, terms, and conditions for transportation services not governed by an ocean transportation contract. Upon the request of any person, the schedule of transportation rates shall be provided to the requesting person in writing. Common carriers and conferences may assess a reasonable charge for providing the schedule in writing; however, the charge may not exceed the cost of providing the information requested. Any disputes concerning the applicability of the rates, terms, and conditions provided, or any claim involving false billing, false classification, false weighing, false report of weight, or false measurement must be decided in State or Federal court.

CONTRACT CARRIAGE

The new legislation eliminates completely the rules and requirements pertaining to service contracts and establishes a broad and deregulated system of ocean transportation contracts. Under this system, one or more common carriers or a conference may enter into an ocean transportation contract with one or more shippers (as discussed below the definition of shipper has been expanded to include shippers' associations and ocean freight forwarders that accept responsibility for the payment of the ocean freight). The duties of the parties to an ocean transportation contract are limited to the duties specified by the terms of the contract, and ocean transportation contracts may not be challenged on the grounds that the contract violates a provision of the Act. The exclusive remedy for an alleged breach of an ocean transportation contract is an action in State or Federal court.

Ocean transportation contracts are not required to be filed with the federal government as are service contracts, and on January 1, 1998, such contracts may be made on a confidential basis, upon agreement of the parties. Also effective on January 1, 1998 is a requirement that members of a conference agreement may not be prohibited or restricted from agreeing with one or more shippers that the parties to the contract will not disclose the rates, services, terms, or conditions of that contract to any other member of the agreement, to the conference, to any other carrier, shipper, conference, or to any other third party.

INDEPENDENT ACTION ON CONTRACTS

On January 1, 1997, authorization is provided to the members of conference agreements to enter individual and independent contracts and, on June 1, 1997, the requirement that conferences may not prohibit or restrict conference members from engaging in individual negotiations for contracts and may not issue mandatory rules affecting individual contracts is implemented. However, a conference may require that a member of the conference disclose the existence of an individual contract or negotiations for a contract when the conference enters negotiations for a contract with the same shipper.

INDEPENDENT ACTION ON CONFERENCE RATES

On June 1, 1997, the notice requirements concerning independent action on conference common carriage rates is reduced from 10 calendar days to 3 business days.

CHANGES TO PROHIBITED ACTS

All prohibited acts related to rebating are stricken from the Shipping Act on January 1, 1997, and a new antidiscrimination provision is added that prohibits unreasonable discrimination by one or more common carriers against a person, place, port, or shipper, except when entering ocean transportation contracts.

On June 1, 1997, several other prohibitions concerning discrimination are stricken as is the restriction on the use of loyalty contracts. However, prohibitions concerning retaliation by carriers, the employment of fighting ships unreasonable refusals to deal, refusals to negotiate with shippers' associations, the acceptance of cargo or contracts with non-licensed and bonded ocean freight forwarders, and improper disclosure of information are retained. The legislation adds a new and controversial prohibited act that prevents conferences from subjecting a person, place, port, class or type of shipper, or ocean freight forwarder, to unjust or unreasonable ocean contract provisions.

EXPANSION OF THE MEANING OF SHIPPER

The definition of shipper is expanded to include shippers' associations and ocean freight forwarders that accept responsibility for payment of the ocean freight. One of the primary purposes of this change was to ensure that shippers' associations and ocean freight forwarders could enter ocean transportation contracts under the new contract carriage scheme established by the legislation. This change will also afford certain protections to such entities that traditionally have been limited to shippers.

OCEAN FREIGHT FORWARDERS/NVOCCS

The new Act collapses the definition of non-vessel-operating common carriers (''NVOCCs'') into the definition of ocean freight forwarders and requires all United States ocean freight forwarders to obtain a license and bond (or other surety). This change effectively eliminates the confusing legal distinctions between various types of third parties who perform similar or related functions.

OTHER CHANGES TO DEFINITIONS

The definitions of certain terms that are no longer relevant or necessary under the new statutory scheme are stricken (*i.e.* ''deferred rebates,'' ''bulk cargo,'' ''forest products,'' ''loyalty contracts'' and ''service contracts'') and a new definition for ''ocean transportation contracts'' is added.

CONTROLLED CARRIERS AMENDMENTS

All requirements that controlled carriers file tariffs with the FMC are eliminated by the new legislation. Additionally, a new provision is added to this section of the '84 Shipping Act that would expand the application of rate scrutiny to not only controlled carriers but to ''ocean common carriers that have been determined by the Secretary to be structurally or financially affiliated with nontransportation entities or organizations (government or private) in such a way as to affect their pricing or marketplace behavior in an unfair, predatory, or anticompetitive way that disadvantages United States carriers.'' The Secretary may make such a determination upon the request of any person or upon his own motion. This provision has been strongly criticized by many foreign carriers.

MARINE TERMINAL OPERATOR SCHEDULES

In order to address concerns raised by the ports and other providers of terminal services relative to the elimination of tariff enforcement, a provision is included in the Act that would require marine terminal operators to make a schedule of rates, regulations, and practices available to the public. This schedule shall be enforceable as an implied contract, without proof of actual knowledge of its provisions, for any activity taken by the operator to— (1) efficiently transfer property between transportation modes; (2) protect property from damage or loss; (3) comply with any governmental requirement; or (4) store property in excess of the terms of any other contract or agreement, if any, entered into by the marine terminal operator.

POLICY REGARDING FOREIGN GOVERNMENTS' OWNERSHIP AND CONTROL OF OCEAN COMMON CARRIERS

The Secretary of Transportation is required under the Act to implement a negotiation strategy to persuade foreign governments to divest themselves of ownership and control of ocean common carriers. The Secretary must develop and submit such strategy to Congress no later than January 1, 1997.

OTHER AMENDMENTS

Technical and conforming changes were made to the Penalties section of the 1984 Shipping Act and the Foreign Laws and Practices Act. In addition, the requirement concerning anti-rebating certificates is eliminated.

## ADDITIONAL COSPONSORS

S. 581

At the request of Mr. FAIRCLOTH, the names of the Senator from Oklahoma [Mr. NICKLES], the Senator from Montana [Mr. BURNS], and the Senator from Tennessee [Mr. FRIST] were added as cosponsors of S. 581, a bill to amend the National Labor Relations Act and the Railway Labor Act to repeal those provisions of Federal law that require employees to pay union dues or fees as a condition of employment, and for other purposes.

S. 607

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

At the request of Mr. PRYOR, the names of the Senator from Oklahoma [Mr. INHOFE] and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of S. 881, a bill to amend the Internal Revenue Code of 1986 to clarify provisions relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes.

S. 1028

At the request of Mrs. KASSEBAUM, the names of the Senator from Alaska [Mr. STEVENS] and the Senator from Kentucky [Mr. MCCONNELL] were added as cosponsors of S. 1028, a bill to provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes.

S. 1088

At the request of Mr. COHEN, the names of the Senator from Georgia [Mr. NUNN], the Senator from Vermont [Mr. JEFFORDS], and the Senator from Nevada [Mr. BRYAN] were added as cosponsors of S. 1088, a bill to provide for enhanced penalties for health care fraud, and for other purposes.

S. 1322

At the request of Mr. DOLE, the names of the Senator from Tennessee [Mr. THOMPSON], the Senator from Washington [Mrs. MURRAY], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from California [Mrs. FEINSTEIN], and the Senator from Massachusetts [Mr. KENNEDY] were added as cosponsors of S. 1322, a bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.

S. 1323

At the request of Mr. DOLE, the names of the Senator from Tennessee [Mr. THOMPSON], the Senator from North Dakota [Mr. DORGAN], and the Senator from Washington [Mrs. MURRAY] were added as cosponsors of S. 1323, a bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.

## AMENDMENTS SUBMITTED

## THE JERUSALEM EMBASSY RELOCATION IMPLEMENTATION ACT OF 1995

### DORGAN AMENDMENT NO. 2940

Mr. DORGAN proposed an amendment to the bill (S. 1322) to provide for the relocation of the United States Embassy in Israel to Jerusalem, and other purposes; as follows:

At the appropriate place, add the following new section:

**SEC. . SENSE OF THE SENATE ON BUDGET PRIORITIES.**

(a) FINDINGS.—The Senate finds that—

(1) the concurrent resolution on the budget for fiscal year 1996 (H. Con. Res. 67) calls for $245 billion in tax reductions and $270 billion in projected spending reductions from Medicare;

(2) reducing projected Medicare spending by $270 billion could substantially increase out-of-pocket health care costs for senior citizens, reduce the quality of care available to Medicare beneficiaries and threaten the financial health of some health care providers, especially in rural areas;

(3) seventy-five percent of Medicare beneficiaries have annual incomes of less than $25,000;

(4) most of the tax cuts in the tax bill passed by the House of Representatives (H.R. 1215) go to families making over $100,000 per year, according to the Office of Tax Analysis of the United States Department of the Treasury.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Senate should approve no tax legislation which reduces taxes for those making over $250,000 per year; and

(2) the savings from limiting any tax reductions in this way should be used to reduce any cuts in projected Medicare spending.

### DOLE AMENDMENT NO. 2941

Mr. DOLE proposed an amendment to the bill S. 1322, supra; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Jerusalem Embassy Act of 1995''.

**SEC. 2. FINDINGS.**

The Congress makes the following findings:

(1) Each sovereign nation, under international law and custom, may designate its own capital.

(2) Since 1950, the city of Jerusalem has been the capital of the State of Israel.

(3) The city of Jerusalem is the seat of Israel's President, Parliament, and Supreme Court, and the site of numerous government ministries and social and cultural institutions.

(4) The city of Jerusalem is the spiritual center of Judaism, and is also considered a holy city by the members of other religious faiths.

(5) From 1948–1967, Jerusalem was a divided city and Israeli citizens of all faiths as well as Jewish citizens of all states were denied access to holy sites in the area controlled by Jordan.

(6) In 1967, the city of Jerusalem was reunited during the conflict known as the Six Day War.

(7) Since 1967, Jerusalem has been a united city administered by Israel, and persons of all religious faiths have been guaranteed full access to holy sites within the city.

(8) This year marks the 28th consecutive year that Jerusalem has been administered as a unified city in which the rights of all faiths have been respected and protected.

(9) In 1990, the Congress unanimously adopted Senate Concurrent Resolution 106, which declares that the Congress ''strongly believes that Jerusalem must remain an undivided city in which the rights of every ethnic and religious group are protected''.

(10) In 1992, the United States Senate and House of Representatives unanimously adopted Senate Concurrent Resolution 113 of the One Hundred Second Congress to commemorate the 25th anniversary of the reunification of Jerusalem, and reaffirming congressional sentiment that Jerusalem must remain an undivided city.

(11) The September 13, 1993, Declaration of Principles on Interim Self-Government Arrangements lays out a timetable for the resolution of ''final status'' issues, including Jerusalem.

(12) The Agreement on the Gaza Strip and the Jericho Area was signed May 4, 1994, beginning the five-year transitional period laid out in the Declaration of Principles.

(13) In March of 1995, 93 members of the United States Senate signed a letter to Secretary of State Warren Christopher encouraging ''planning to begin now'' for relocation of the United States Embassy to the city of Jerusalem.

(14) In June of 1993, 257 members of the United States House of Representatives signed a letter to the Secretary of State Warren Christopher stating that the relocation of the United States Embassy to Jerusalem ''should take place no later than . . . 1999''.

(15) The United States maintains its embassy in the functioning capital of every country except in the case of our democratic friend and strategic ally, the State of Israel.

(16) The United States conducts official meetings and other business in the city of Jerusalem in de facto recognition of its status as the capital of Israel.

(17) In 1996, the State of Israel will celebrate the 3,000th anniversary of the Jewish presence in Jerusalem since King David's entry.

**SEC. 3. TIMETABLE.**

(a) STATEMENT OF THE POLICY OF THE UNITED STATES.—

(1) Jerusalem should remain an undivided city in which the rights of every ethnic and religious group are protected;

(2) Jerusalem should be recognized as the capital of the State of Israel; and

(3) the United States Embassy in Israel should be established in Jerusalem no later than May 31, 1999.

(b) OPENING DETERMINATION.—Not more than 50 percent of the funds appropriated to the Department of State for fiscal year 1999 for ''Acquisition and Maintenance of Buildings Abroad'' may be obligated until the Secretary of State determines and reports to Congress that the United States Embassy in Jerusalem has officially opened.

**SEC. 4. FISCAL YEARS 1996 AND 1997 FUNDING.**

(a) FISCAL YEAR 1996.—Of the funds authorized to be appropriated for ''Acquisition and Maintenance of Buildings Abroad'' for the Department of State in fiscal year 1996, not less than $25,000,000 should be made available until expended only for construction and other costs associated with the establishment of the United States Embassy in Israel in the capital of Jerusalem.

(b) FISCAL YEAR 1997.—Of the funds authorized to be appropriated for ''Acquisition and Maintenance of Buildings Abroad'' for the Department of State in fiscal year 1997, not less than $75,000,000 should be made available until expended only for construction and other costs associated with the establishment of the United States Embassy in Israel in the capital of Jerusalem.

**SEC. 5. REPORT ON IMPLEMENTATION.**

Not later than 30 days after the date of enactment of this Act, the Secretary of State shall submit a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate detailing the Department of State's plan to implement this Act. Such report shall include—

(1) estimated dates of completion for each phase of the establishment of the United States Embassy, including site identification, land acquisition, architectural, engineering and construction surveys, site preparation, and construction; and

(2) an estimate of the funding necessary to implement this Act, including all costs associated with establishing the United States Embassy in Israel in the capital of Jerusalem.

**SEC. 6. SEMIANNUAL REPORTS.**

At the time of the submission of the President's fiscal year 1997 budget request, and every six months thereafter, the Secretary of State shall report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate on the progress made toward opening the United States Embassy in Jerusalem.

**SEC. 7. PRESIDENTIAL WAIVER.**

(a) WAIVER AUTHORITY.—(1) Beginning on October 1, 1998, the President may suspend the limitation set forth in section 3(b) for a period of six months if he determines and reports to Congress in advance that such suspension is necessary to protect the national security interests of the United States.

(2) The President may suspend such limitation for an additional six month period at the end of any period during which the suspension is in effect under this subsection if the President determines and reports to Congress in advance of the additional suspension that the additional suspension is necessary to protect the national security interests of the United States.

(3) A report under paragraph (1) or (2) shall include—

(A) a statement of the interests affected by the limitation that the President seeks to suspend; and

(B) a discussion of the manner in which the limitation affects the interests.

(b) APPLICABILITY OF WAIVER TO AVAILABILITY OF FUNDS.—If the President exercises the authority set forth in subsection (a) in a fiscal year, the limitation set forth in section 3(b) shall apply to funds appropriated in the following fiscal year for the purpose set forth in such section 3(b) except to the extent that the limitation is suspended in such following fiscal year by reason of the exercise of the authority in subsection (a).

**SEC. 8. DEFINITION.**

As used in this Act, the term ''United States Embassy'' means the offices of the United States diplomatic mission and the residence of the United States chief of mission.

## NOTICE OF HEARING

COMMITTEE ON INDIAN AFFAIRS

Mr. MCCAIN. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will hold a hearing on S. 1341, the Saddleback Mountain-Arizona Settlement Act of 1995, a bill to transfer certain lands to the Salt River Pima-Maricopa Indian Community and the city of Scottsdale, AZ. The hearing will take place on Thursday, October 26, 1995, beginning at 9:30 a.m. in room 485 of the Russell Senate Office Building.

Those wishing additional information should contact the Committee on Indian Affairs at 224–2251.

## ADDITIONAL STATEMENTS

### AGRICULTURAL APPROPRIATIONS BILL

● Mr. ABRAHAM. Mr. President, on September 20, the Senate passed the Agriculture appropriations bill. I would like to take this time to explain some of the votes I cast during debate on this bill.

I voted for several amendments related to reducing the scope of the Market Promotion Program including an amendment which would reduce funding for the MPP's and limit potential users to small U.S. businesses.

While many businesses have benefited from this program, in these times of extreme budgetary austerity, we must prioritize Federal Government spending. These are tough choices, but if we don't make them now, the results will be devastating for future generations.

One of our goals in this Congress has been to free citizens from unnecessary burdens and excessive taxation of bureaucracy. In doing so, some Government programs which support businesses also must be reduced. It is my hope, however, that in the long run, we will allow individuals and businesses to keep more of the money they are now paying in taxes so that they are able to create programs like the Market Promotion Program without Government involvement.

I also voted against an amendment which would have eliminated from the bill a provision to provide assistance to cotton farmers whose crops were devastated by tobacco bud worms, beet army worms, and other pests. This amendment was accepted without my support.

Many farmers were told that the newly created Catastrophic Crop Disaster Insurance Program would provide the same level of protection as previous Federal disaster programs. These farmers, therefore, relied on the new program for help in disasters such as this. Unfortunately, the level of protection is not the same as previous disaster programs. The provision to assist cotton farmers was included in the bill because the Catastrophic Crop Disaster Insurance Program is not sufficient to help these farmers.

Mr. President, recognizing the extreme losses these farmers are experiencing through no fault of their own and over which they had absolutely no control, I feel it is appropriate that the Federal Government, assuming that the Secretary of Agriculture deems the losses disastrous, step in to provide these low interest loans to cotton growers who have been economically devastated by this disaster.●

### DRUNK DRIVING PREVENTION ACT

● Mr. LAUTENBERG. Mr. President, I am joining Senator DORGAN in introducing the Drunk Driving Prevention Act of 1995. I urge my colleagues to lend their support to this important piece of legislation.

The Drunk Driving Prevention Act of 1995 would require States to take a commonsense approach to preventing drunk driving accidents and deaths. The legislation would require the transfer of certain Federal highway funds to a State's highway safety program if a State fails to prohibit open containers of alcoholic beverages and consumption of alcoholic beverages in the passenger's area of motor vehicles. Sanctions under the bill would not go into effect until fiscal year 2000, so States will have ample time to comply with this law.

I have always been a strong supporter of efforts to eliminate the needless slaughter of innocent men, women, and children on our Nation's highways. I sponsored the legislation that established the 21 minimum drinking age law. That legislation has been credited with saving some 9,000 lives and 120,600 injuries over the last 10 years.

Even with efforts like the ''21'' bill, the killing continues. Last year, nearly 17,000 people were needlessly killed in alcohol-related traffic accidents. That amounts to one alcohol-related death every 30 minutes. The repercussions of impaired driving continue to cost our society some $46 billion each year in direct costs, with approximately $5.5 billion allotted for medical care.

Mr. President, we all know that mixing alcohol and driving is a deadly combination. Unfortunately, 26 States in this country allow the consumption of alcohol in motor vehicles. This is an open invitation to disaster and an outrage that must be stopped.

I commend my friend from North Dakota for his tenacity on this issue and I am proud to join him in his effort to make our Nation's roads safer.●

### RETIREMENT OF SENATOR SAM NUNN

● Mr. DODD. Mr. President, I want to take a few moments to reflect upon the recent announcement of our esteemed colleague from Georgia that he will not seek reelection at the conclusion of his current term. I must of course, accept his decision, but I am also personally saddened by it.

SAM NUNN has given much to this body, and given even more to the people of Georgia. Early in his career, SAM NUNN quietly impressed his colleagues with his thoughtful and well-reasoned speeches on the future of our national defense. And as the former chairman of the Senate Armed Services Committee, he helped shape that future with strong leadership and keen intellect.

SAM NUNN let one of this body's most important committees during a time of enormous, it not tumultuous, global change. His foresight about events in the Russian Republic led this body to create one of the world's most important mechanisms for ensuring the peaceful disposal of former Soviet weapons. To this day, the Nunn-Lugar initiative on security assistance leaves a legacy of peace in the post-cold-war era—a peace that stands as a fitting tribute to the efforts of its author.

But SAM NUNN's commitment to peace has been matched, if not surpassed, by his commitment to a strong defense. For nearly a decade, SAM NUNN has helped crystallize the standards by which we examine our national defense. It was SAM NUNN who pushed for the American research initiatives that have resulted in today's stealth technologies. Likewise, it was SAM NUNN who ensured those technologies were available to those serving in our Armed Forces, giving them the edge they needed to defend our country.

Finally, it should be noted that SAM NUNN always put first the needs and the safety of America's service personnel. Over the past 23 years, SAM NUNN has consistently fought for our service members and their families. Whether it was funds for better housing, or expanded opportunities for better medical care, SAM NUNN has always been there guarding the interests of our dedicated troops. The dozens upon dozens of tokens of appreciation that adorn his office wall are proof of SAM NUNN's commitment to people.

SAM NUNN is a gentleman and a scholar. He has graced these halls for more than two decades with his quick wit, commitment to public service, and personal passion for the affairs of our

Nation. I wish my friend well, and I shall miss his service in this body.●

## DECLINING CARIBOU HERD/ARCTIC NATIONAL WILDLIFE REFUGE

● Mr. LAUTENBERG. Mr. President, later this week, the Senate will be voting on amendments to the budget reconciliation bill, which the Senate Budget Committee approved today. One of those amendments will be to strike the provision that opens up the Arctic National Wildlife Refuge to oil and gas drilling.

I strongly oppose drilling in ANWR and will support that amendment. If we allow drilling in the coastal plain, we are destroying what the Fish and Wildlife Service calls the biological heart of the only complete Arctic ecosystem protected in North America. We will be destroying that resource for a one in five chance of finding any economically recoverable oil in the coastal plain. And, even worse, we will destroy that biological heart in an effort to recover what many experts suggest will be only 200 days worth of oil for the Nation.

Mr. President, I do not intend to argue all the issues surrounding the decision to drill in ANWR, or to keep it as it is. Instead, I want to only focus on one issue: caribou.

On Saturday, the Anchorage Daily News reported that a new State survey produced by the Alaska Department of Fish and Game revealed a sharp decline in the central Arctic caribou herd, which calves and ranges in the Prudhoe Bay and Kuparuk oil fields, from 23,400 animals in 1992 to about 18,100 this summer. The census also revealed that the herd that stays away from the oil and gas development has not suffered as much decline.

The State and Federal wildlife biologists do not know what caused the decline, but one thing is sure. The article paraphrases a State wildlife biologist.

[A]lmost all of the decline has occurred in that part of the herd that ranges near the oil fields. It could be due to noise, traffic or some other disruption of caribou grazing, or to some natural cycle.

Mr. President, I raise this because there has been some dispute involving the effects of the proposed drilling on wildlife, and particularly on caribou. Supporters of drilling in ANWR contend that caribou are flourishing and the caribou may even benefit from development. Opponents of drilling contend that the impact will negatively affect caribou, particularly the porcupine caribou, which calve on the 1002 area and on which the Gwich'in people depend for their food and culture.

Two herds occupy ANWR: the porcupine herd and the central Arctic herd. There are significant differences between the two herds, but, according to industry, the basic features of the ecology are similar. Industry publications boast that the central Arctic herd caribou are healthy and increasing in the Prudhoe Bay region, and that oil development has not adversely affected caribou. Opponents of drilling believe otherwise.

Reasonable people can and do differ on this point. However, this recent study raises some serious questions as to the health of the central Arctic herd. More importantly, the fact that the herd is declining on those lands where there is current oil and gas development, raises critical questions about the effects of proposed oil and gas drilling in the Arctic National Wildlife Refuge.

Environmentalists have contended that the effects will be severe to the caribou herd. This survey suggests that they may be right. The Anchorage Daily News article cites recent research by a University of Alaska Fairbanks biologist, which found that caribou living near the oil fields have far fewer calves.

And, a Federal Arctic National Wildlife Refuge biologist is paraphrased as saying:

If oil activity is to blame, such impacts would be magnified in the wildlife refuge. There, the porcupine herd is much larger—about 150,000 animals—but there is less coastal habitat and the calving grounds are much smaller.

Mr. President, when the Senate votes on the fate of the Arctic National Wildlife Refuge, every Member should put politics aside and vote on facts. This report is serious. We ought not take a chance on the pristine ecosystem and its wildlife by drilling in ANWR.

I ask that the text of the article be printed in the RECORD.

[From the Anchorage Daily News, Oct. 21, 1995]

### OIL FIELD CARIBOU DECLINE—STATE FINDS FEWER IN ARCTIC HERD

(By Steve Rinehart)

A new state caribou survey has found a sharp decline in the Central Arctic caribou herd, which ranges in and around the Prudhoe Bay oil fields.

State and federal biologists said they don't know what caused the decline but said it could have been brought on by interference from the oil fields, or by some unknown natural cause. In any case, the caribou count released late Friday by the Alaska Department of Fish and Game may strengthen arguments against opening the Arctic National Wildlife Refuge just east of Prudhoe to oil drilling.

The effect of oil development on caribou is one of the core issues in the statewide and national debate over drilling in ANWR. There, the much larger Porcupine caribou herd calves in areas that are thought to be hot oil prospects.

The Central Arctic herd has dropped from about 23,400 animals in 1992, the most recent prior survey, to about 18,100 this summer, according to the count released late Friday. Low calf production brought on by undernourished cows is thought to be the cause of that 23 percent decline, but the reasons behind it are not known, according to state Fish and Game biologist Ken Whitten of Fairbanks, who conducted the survey.

However, Whitten said, almost all of the decline has occurred in that part of the herd that ranges near the oil fields. It could be due to noise, traffic or some other disruption of caribou grazing, or to some natural cycle, he said.

The department's first accurate count, coinciding with the early days of oil production in 1978, placed the herd at about 6,000 animals. The herd more than doubled in the next five years, then climbed steadily to its peak.

The most recent survey was scheduled to be conducted in 1994, but was delayed until this year by bad weather. In a memo dated Friday, Whitten said the census was based on ''high quality'' aerial photographs taken July 15.

''Weather conditions and carbou behavior were ideal for the photo-census effort,'' Whitten wrote. ''It is unlikely that many caribou were missed.''

The kind of change noticed in the Central herd is not extraordinary for cribou, Whitten said in an interview. ''The fact that it is happening around the oil field is what is drawing attention,'' Whitten said.

Biologists for the major oil producers could not be reached for comment Friday evening. However, at a wildlife conference in Fairbanks this summer, before the census was completed, British Petroleum scientist Chris Herlugson said his observations indicate the Central Arctic caribou may benefit from some oil field improvements.

Thousands of caribou ''come right into the fields on sunny, calm days when the mosquitoes and flies are abundant,'' he said at the time, ''Those gravel roads and pads will provide a little bit of relief.''

Arco spokesman Ronnie Chappell said his company would ''delay comment until we have had an opportunity to talk to the biologists who conducted the census.''

Fran Mauer, a federal Arctic National Wildlife Refuge biologist who has worked with state Fish and Game on caribou studies, said he was not surprised by the findings. Recent research by a University of Alaska Fairbanks biologist found that caribou living near the oil fields have far fewer calves, he said.

''There are a myriad of potential factors,'' he said, but one part of the census stands out: The part of the Central Arctic herd that keeps away from Prudhoe has not suffered near as much decline,

If oil activity is to blame, he said, such impacts would be magnified in the wildlife refuge. There, the Porcupine herd is much larger—about 150,000 animals—but there is less coastal habitat and the calving grounds are much smaller, he said.

The census got plenty of attention late Friday. For, although the biological significance of the new caribou count is uncertain, the political weight may be considerable.

In lobbying to open ANWR to drilling, the Knowles administration, the oil industry and development groups have made much of the fact that the Central herd has grown dramatically during the 20-year history of Prudhoe Bay. Oil exploration ''will not hurt the wildlife or the land,'' declared an advertisement in a Washington, D.C., newspaper this week, placed by the state- and industry-funded group Arctic Power.

The new census does not contradict that, said Arctic Power director Debbie Reinwand.

''We could still say that the number of caribou have tripled since Prudhoe Bay,'' she said. ''I think if (oil development) was going to hurt the caribou we would have seen it in that 20-year period.''

She said she did not think the new information would sway Congress, which is days away from voting on a major budget bill that includes the ANWR drilling provision.

ANWR drilling opponents, though, said the census supports their arguments, and could affect the debate.

''It makes an opening for people to listen who were not inclined to listen before,'' said Bob Childers of the Gwich'in Steering Committee, which represents some Interior Alaska Natives who oppose drilling.

''Senators and congressmen have been assured by everyone that the herd is growing and all is nifty-keen. This raises a caution flag,'' he said.

Teri Camery of the Alaska Wilderness League said, ''This demonstrates that oil and wilderness don't mix.'' If the experience of the Central herd is applied to the Porcupine herd, she said, ''we're likely to see an even more severe decline.''

''It is really interesting in that the state has denied there is a conflict between caribou and oil development,'' said Pam Miller of the Alaska Coalition.

A spokeswoman for Gov. Tony Knowles, Claire Richardson, said Knowles would not comment until reviewing the report, which was released after the close of business Friday at the request of the Daily News.●

## TRIBUTE TO RETIRING SENATOR BILL BRADLEY

● Mr. DODD. Mr. President, I rise to pay tribute today to our colleague BILL BRADLEY, who has announced he will be leaving the Senate following the conclusion of his term. He will indeed be missed, as Senator BRADLEY's tenure in this body has been one of true statesmanship and outstanding public service.

Mr. President, a Renaissance Man is, in this day and age, a rare individual. Not many people distinguish themselves in numerous and varying pursuits. But BILL BRADLEY is one such person. From his academic record, to his Olympic basketball competition and probasketball career with the New York Knicks, to his service here in the Senate, BILL BRADLEY has excelled in every endeavor.

Here in the Senate, BILL BRADLEY has shown himself to be an insightful thinker and policymaker, painstakingly studying the nuts and bolts of many ideas far before the pundits and the politicians recognized an issue's prominence. He has persistently worked with colleagues to facilitate agreement, standing tall—quite literally—even when his ideas were unpopular.

The 1986 tax overhaul was one such time. For more than 4 years, BILL BRADLEY labored to construct the tax law that still governs most of our present Tax Code. At first, many dismissed his plan, but Senator BRADLEY's persistence paid off, and it eventually gained momentum. although we disagreed over the substance of that plan, I admire and respect Senator BRADLEY's perseverance in crafting it.

More recently, I was pleased to work with Senator BRADLEY in support of NAFTA. An unyielding proponent of free trade, BILL BRADLEY and I served on a small group that worked within both the House and Senate to bring about passage of that important trade agreement. As I'm sure he remembers, that was no easy task. But, with Senator BRADLEY on the team, I was confident as we buckled down to do that job that we would succeed, and we did.

But, Mr. President, this body and this country have also reaped the benefits, of BILL BRADLEY's lesser-known contributions. Senator BRADLEY understood that encouraging democracy in the former Soviet Union would require United States involvement and argued vehemently for both aid dollars and cultural exchanges. He has championed legislation to expand access to college education, including direct lending for student loans and the Student Right-to-Know Act. And he has been an ardent supporter of civil rights, strongly supporting affirmative action while denouncing racism and race-biting. These few examples illustrate but small battles in the larger fight for freedom and equality in which BILL BRADLEY has been engaged throughout his career.

And that, Mr. President, will be BILL BRADLEY's legacy. We may not be able to retire his jersey in tribute, but we have a long string of impressive legislative accomplishments by which to remember him. BILL BRADLEY has been as skillfully aggressive on the Senate floor as he was on the basketball court. Whether a member of the New York Knicks or the U.S. Senate, BILL BRADLEY has constructed the game plans, covered the court, and could be relied upon when he went to the line. His contributions to the Senate have earned him a reputation as one of our most valuable players, and I wish him the very best in his future endeavors.●

## ORDER OF BUSINESS

## IN MEMORY OF REUBEN ''RUBY'' COHEN

Ms. SNOWE. Mr. President, a candle went out late one night recently at the Bangor Rye Bread Co. as Reuben ''Ruby'' Cohen—father of my friend and colleague Senator BILL COHEN—passed away while working late at night in the bakery he founded and owned.

I was deeply saddened to learn of his passing, and my thoughts are with his wife Clara, his three children and his seven grandchildren. Ruby was laid to rest in his beloved town of Bangor with many friends and family members at his side. I joined them to bid my own farewells to this remarkable American.

Ruby Cohen was an exceptional human being by living his life in a traditional manner: he worked hard, he worked late, he held strong values, and he raised a family.

But these are traits that have made Ruby Cohen a legend in Bangor.

At age 86, he had seen it all. The First World War, the Great Depression, the Second World War, the cold war, Korea and Vietnam, Kennedy and King, Nixon in China, Reagan in Russia, and the fall of the Iron Curtain.

To Ruby Cohen, what mattered were the timeless ideals of hard work, good business, a strong family, and straight, honest talk.

And he lived it to the hilt. He worked 18 hours a day, 6 days a week, for 70 years. His days began as everyone else's day was ending. And even when everyone else's day was beginning, Ruby was on the road delivering bagels, rye bread, French bread, Italian sandwich bread, and—last but certainly not least—his trademark Cohen rolls.

That diversity of his produce was matched only by the ethnic collage for which Bangor is known. Ruby Cohen himself was a product of immigrants who hailed from Russia, and married an Irish girl named Clara in 1937. His accomplishments and his stamina shine brightly as yet another example of the rich foundation millions of immigrants and their children have laid down for future generations.

As was always the case with his father and then with his children, work at Ruby Cohen's bakery was nothing short of a family affair right up until his very last day.

In January 1989, I was honored to be a part of an 80th birthday celebration party for Reuben Cohen in the Queen City—Bangor. As always, time spent with Ruby was full of laughs, smiles, and stories about his wit and his candor—all of which will be sorely missed by us all.

His son and their senior Senator from Maine, BILL COHEN, said yesterday that is father ''worked to live and lived to work''. In the process, Reuben Cohen added light and color to the lives of so many of us who knew him, so many of us who took pride in being able to call him ''Ruby''.

There is a richness by which you can measure the success of one's life. It can be found in the satisfied love and companionship of your spouse, the abiding love of your children, and in the admiration and friendship of those who have known you across the years. By all these measures and so many others, Reuben Cohen was a very rich man.

Ruby, we know you are still putting in those late hours—only in a different place. But it just won't be the same without you. God bless.

## HARRY KIZIRIAN

Mr. CHAFEE. Mr. President, later in the evening or possibly tomorrow the Senate will approve H.R. 1606, a bill to name the post office at 24 Corliss Street in Providence, RI after a renowned Rhode Islander and a proud American—Harry Kizirian. Senator PELL and I introduced the bill earlier this year, and Representatives JACK REED and PATRICK KENNEDY introduced identical legislation in the House of Representatives, which also has been approved.

I greatly appreciate the help of Senator STEVENS, chairman of the Governmental Affairs Subcommittee on Post Office and Civil Service, in helping to obtain approval of our proposal in an expeditious manner.

Harry Kizirian is a household name in Rhode Island because of his lifelong career in the Postal Service but, even more so, because of his involvement with and commitment to his community. He has served on the board of directors of Butler Hospital, Big Brothers of Rhode Island, the Providence

Human Relations Commission, Rhode Island Blue Cross, and the Rhode Island Heart and Lung Associations.

Over the years he has earned countless awards and citations for his community involvement. He was inducted into the Rhode Island Hall of Fame and received the Roger Williams Award. He served on advisory boards for Rhode Island College, Providence Heritage Commission on R.I. Medal of Honor Recipients, the Disabled American Veterans, and the Marine Corps League.

The lessons learned from Harry Kizirian are lessons of fortitude, valor, strength of character, and perseverance.

While Harry was just a boy in school, at Mt. Pleasant High School in Providence, he went to work part time as a postal clerk. He was 15 years old and his father had died, so Harry took responsibility for supporting his family. He did so while keeping his grades up and participating in athletics. Twenty years later, at 35, Harry was named postmaster of Rhode Island, a position he held for more than 25 years.

Like many young men at the time, Harry's job was interrupted by World War II. The day after high school graduation Harry enlisted in the Marine Corps. He fought on Okinawa with the 6th Marine Division. He was awarded the Navy Cross—the second highest honor a marine can receive—for his valor on Okinawa.

Harry and a group of marines were pinned down by a Japanese machine gunner. Harry got up and ran toward the machine gun. He was shot in the legs. Despite his injuries, he pulled himself forward and eliminated the enemy position. This extraordinary act of valor sent Harry Kizirian, a teenage boy, to a hospital in Guam with the Navy Cross, a Bronze Star, and a Purple Heart with a gold star.

Harry Kizirian was seen by millions of Americans as the face of the war in the Pacific. Before he was injured, a news photographer captured his image, the image of a boy in battle, for the cover of the New York Times Sunday magazine. Last November, I was present when Harry was honored by his old Atwood-Bucci Detachment of the Marine Corps. The famous photograph was prominently displayed on the podium.

After the war, Harry returned to Providence and to his job at the post office. He was a substitute clerk. By 1954 he was made foreman. He was named assistant superintendent during the transition from the old postal system to the turnkey mechanization system. The Providence post office on Corliss Street was the first post office in the country to use the turnkey system. The turnkey system was the first fully automated system for sorting the mail. Until that point, all of the mail was sorted by hand. The new system was not easily implemented, but once again Harry rose to the challenge. In 1961, Harry was rewarded for his hard work and dedication. He was named postmaster of Rhode Island.

What better way to honor the life and lessons of Harry Kizirian than to name the post office of Corliss Street for him. I am delighted that the Senate has voted unanimously to name our historic post office in Providence ''The Harry Kizirian Post Office Building.'' Again, many thanks to Senators STEVENS and PRYOR for their help.

## THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, the skyrocketing Federal debt, now about $25 billion shy of $5 trillion, has been fueled for a generation by bureaucratic hot air; (sort of like a hot air balloon whirling out of control), which everybody has talked about, but almost nobody even tried to fix. That attitude began to change, however, immediately after the November 1994 elections.

The 104th Congress promised to hold true to the Founding Fathers' decree that the executive branch of the U.S. Government should never be able to spend a dime unless and until it had been authorized and appropriated by the U.S. Congress—money supplied by the approximately 61.4 percent Americans who pay Federal income taxes, according to the Internal Revenue Service.

So, when the new 104th Congress convened this past January, the U.S. House of Representatives quickly approved a balanced budget amendment to the U.S. Constitution. On the Senate side, all but 1 of the 54 Republican Senators supported the balanced budget amendment.

That was the good news. The bad news was that only 13 Democrat Senators supported it, and that killed the balanced budget amendment for the time being. Since a two-thirds vote—67 Senators, if all Senators are present—is necessary to approve a constitutional amendment, the proposed Senate amendment failed by one vote. There will be another vote during the 104th Congress.

Here is today's bad debt boxscore:

As of the close of business Monday, October 23, the Federal debt—down to the penny—stood at exactly $4,974,119,827,892.07 or $18,881.84 on a per capita basis for every man, woman, and child.

## THE BUDGET

Mr. DOMENICI. Mr. President, am I the one holding the Senate up here now? I do not want to do that. I thought there was something else to do, because I would very much like you to go home also, Mr. President.

I want to say how grateful I am, however, that 12 Members of the Budget Committee started this battle for a balanced budget January and February and March of this year. They have stuck together. They produced a very exciting budget resolution for America's future. It had a real chance for the first time of making America's Government decide that you could not just spend willy-nilly on anything that anybody wanted, but that you had to stop spending beyond what you were taking in in taxes so our children will have a future, so they will not be paying our bills.

This afternoon, after an hour and a half of debate, 12 Republican Senators, in spite of all of the talk across this land, much of it overstating the case on the Democrat side, voted aye to bring that budget resolution not only to the Senate, but to the American people.

Sometimes it is hard to explain the future. Everybody would like to talk about now. Or they would like to talk about the past. But I do not think you can be a leader and not talk about the future—especially when it is not 100 years. That may be too far for any of us. But the next 10, 15 years are going to bring absolute chaos to the U.S. money supply, to the value of our dollar, to interest rates and to our standard of living if we do not stop spending what we do not have.

So we are sending a very good message tonight that we are proud, very, very proud that our committee has put together this package which will get the American budget moving downward in a permanent manner. I submit, in the next few days, as we debate each component, you should not be frightened to death by those prophets of gloom who, I believe, are thinking in the present and trying to frighten you about the present while they hide their eyes and their minds from 10 years from now, when some of our children are going to be in this society.

I close by saying we are very pleased the American Revolution—not the one we are involved in now, the one that started with the Boston Tea Party—was built on a premise that is absolutely sound: No taxation without representation.

What we are doing with deficit spending is taxing the next generation, taxing the teenagers—taxing everybody that cannot vote, excluding generations yet unborn. We are taxing them without any representation for they cannot vote, and we are saying we are going to put more burden on your shoulders, on your brains, and on your productivity. You are going to just have to pay all these bills even though you did not get to vote. That is the issue.

Then a second issue is: Are the reductions fair? Mr. President, I suggest that the seniors of America, before they get so concerned and frightened by those who want everybody to worry about today and the status quo and no change, let us present our Medicare in its totality. And you are going to find that it is very fair. There will be some seniors who have money—more than Social Security—$50,000, and even more, will have to pay a little more for Medicare. But that is not really unfair.

When we unfold it and show you precisely what it is, it is very, very fair.

So, as we look at this, we want to insert a new word in the vocabulary of those who represent America. And that is what we can afford, not what we can promise—not what we have already promised, and not what we feel compelled to continue giving to people because they need, they want it, and they contend they cannot do without. Our position is we cannot do that unless we can pay for it. It is not too complicated for average folks. They are doing that every day in the United States. It is time we do it. That is what that budget resolution is going to do.

I thank the Chair for yielding time. I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, if I might for just a moment respond to the statement of the distinguished chairman of the Budget Committee, on which I sit.

I hear the intonation that we are trying to take care of our budget responsibilities so that our children in the future have not sacrificed their opportunities, that they have not been burdened with debt—and so the story goes—because of expenditures like Medicare and Medicaid.

But, Mr. President, are we burdening our children when we spend more on defense than was requested by the President, or is necessary in the judgment of many to preserve the strength of our military? Are we burdening our children, our future generations, Mr. President, when we give sweetheart leases for mineral development in the West, when there is a recent story about a sale for something less than $10,000 for a piece of property that can produce $1 billion worth of ore recovery? Do we burden our children when we give tax breaks to people of substantial means, when we give $20,000 to someone who earns $350,000? I think that is a darned burden for our children. I really do.

So the only response to the growing deficit is not simply to put a dagger in the hearts of Medicare, or to deprive Medicaid recipients of their sustenance in many cases for life.

So that is just to set the record clear from this Senator's vantage point, Mr. President. I know that we are close to, as they say, closing shop for the day. The distinguished Senator from Mississippi is on the floor, and is in the chair. I shall relinquish the floor to the Mississippi delegation.

Mr. LOTT. Mr. President, perhaps we should vote since this is an all-Mississippi presence at this time.

## ORDERS FOR TUESDAY, OCTOBER 24, 1995

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 9:15 on Tuesday, October 24; that, following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and that there be a period for morning business until the hour of 11 a.m. with Senators to speak for up to 5 minutes each with the exception of the following: Senator HOLLINGS for 20 minutes, Senator THOMPSON for 20 minutes, Senator LEVIN for 15 minutes, Senator SPECTER for 30 minutes, Senator GRAMS for 10 minutes, and Senator PRYOR for 15 minutes; and, I further ask unanimous consent, that at 11 a.m. the Senate resume consideration of S. 1322, a bill regarding the relocation of the U.S. Embassy in Israel.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. Mr. President, I now ask unanimous consent that the Senate stand in recess between the hour of 12:30 and 2:15 for the weekly policy luncheons to meet; I further ask unanimous consent that at the hour of 2:15 the Senate begin consideration of Calendar No. 208, S. 1328, regarding temporary Federal judgeships.

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

## PROGRAM

Mr. LOTT. Mr. President, for the information of all Senators, under a previous order, there will be 40 minutes of debate beginning at 11 a.m. tomorrow, to be followed by a vote on passage of S. 1322, the U.S. Embassy bill. Senators can, therefore, expect a vote on Tuesday morning at approximately 11:40.

## ADJOURNMENT UNTIL 9:15 A.M. TOMORROW

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

There being no objection, the Senate, at 6:56 p.m., adjourned until Tuesday, October 24, 1995, at 9:15 a.m.