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Senate

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, our Father, this is a new day. Banish all the gloom and darkness of worry and fear. Set us free to praise and worship You in joy and gladness. May we neither gloat over yesterday's successes nor be grim over yesterday's defeats. Help us make a fresh start and give ourselves fully to the challenges and opportunities of this day.

Grant us a vibrant enthusiasm so that we can accept each responsibility with delight and care for each person with affirmation. We know that life is an accumulation of days lived fully for Your glory or wasted on anxious care. Fill our minds with Your spirit so that we can think creatively; transform our attitudes so we can reflect Your patience and peace; brighten our countenance so that we will radiate Your joy; infuse strengths into our bodies so that we will have resiliency for the pressures of whatever the day will bring.

We look ahead to the decisions we will have to make today, and our deepest longing is that we will not miss Your best for us or our Nation. We dedicate this day to trust You all the way. Through our Lord and Savior. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT, is recognized.

Mr. LOTT. Thank you very much, Mr. President.

SCHEDULE

Mr. LOTT. Mr. President, this morning, the Senate will resume consideration of H.R. 3756, the Treasury-Postal appropriations bill. I understand there are two pending amendments, and I hope we may dispose of those amendments in short order and continue to make progress on the bill.

It is my intention to complete action on the Treasury-Postal appropriations bill this evening. That will certainly take cooperation—it always does—across the aisles. We need to help the managers by coming on over and offering amendments. Amendments are, in fact, needed so that we can be able to complete action at a reasonable hour tonight so we can then go tomorrow to the Chemical Weapons Convention.

If we do not get the Treasury-Postal Service appropriations bill completed this evening, then I am going to have to weigh exactly what we do with regard to the Chemical Weapons Convention. We made a commitment to do that. I intend to do that, but in order to do that, we are going to have to get this bill done. We are going to have to have some cooperation with that.

In accordance with the consent agreement reached on June 28, I do anticipate beginning the consideration of Executive Calendar No. 12, which is the Chemical Weapons Convention. We hope to be able to complete that in 1 day, instead of going all day tomorrow and going over until Friday. Again, with cooperation of the Members, we would like to see if we can complete that tomorrow, because we do have a Jewish holiday on Friday. We will not have any votes after 12 o'clock for sure, but if we could complete work on the CWC by tomorrow night, then Members will have more time to get to their homes to celebrate this special date for our Jewish Members.

We will probably have a 1-hour closed session at the end of the debate on the Chemical Weapons Convention, because it appears that some of the information Senators really need to have will not be declassified. If it is not declassified by noon tomorrow, we will give Members, I believe 4 hours notice is required under the rules. We will convene in the Old Senate Chamber, and then we will go to votes right after that.

Again, I urge all Senators to come to the floor if they have amendments. The smart thing to do would be to not offer a lot more amendments. Let's just go ahead and pass the Treasury-Postal appropriations bill and be done with it. Would that be all right with the chairman?

Mr. SHELBY. That will be fine.

Mr. LOTT. So go to third reading as soon as you can.

Mr. SHELBY. In 5 minutes.

Mr. LOTT. I yield the floor.

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1997

The PRESIDING OFFICER (Mr. BROWN). Under the previous order, the Senate will resume consideration of H.R. 3756, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3756) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies for the fiscal year ending September 30, 1997, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Wyden/Kennedy amendment No. 5206 (to committee amendment beginning on page 16, line 16, through page 17, line 2) to prohibit the restriction of certain types of medical communications between a health care provider and a patient.

Dorgan amendment No. 5223 (to committee amendment beginning on page 16, line 16, through page 17, line 2) to amend the Internal Revenue Code of 1986 to end deferral for

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

United States shareholders on income of controlled foreign corporations attributable to property imported into the United States.

Mr. SHELBY addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

AMENDMENT NO. 5206

Mr. SHELBY. Mr. President, I ask for the yeas and nays on the Wyden amendment.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. SHELBY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. SHELBY. Mr. President, I ask unanimous consent that privilege of the floor be granted to Paul Irving, staff of Treasury, Post Office.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SHELBY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

AMENDMENT NO. 5223

Mr. DORGAN. Mr. President, I believe that the amendment which I offered yesterday is the pending business before the Senate. Is that correct?

The PRESIDING OFFICER. The Senator is correct. The pending question is the Dorgan amendment No. 5223.

Mr. DORGAN. Mr. President, it is kind of an upside-down world out there. You look at the news from day to day. A few weeks ago we all listened to the news and discovered that, if you were roughly 7 feet tall and had basketball skills, you could sign a contract for $100 million. One 7-foot-2-inch athlete signed a contract for $115 million to play basketball for 7 years. That would employ, by the way, about 4,000 elementary school teachers for a year, that $115 million; but in our economy it is one very good basketball player. Sounds a little confusing to me that that represents the value system, but that is the system.

This morning in the paper there is an article that says credit card companies are going to end the free ride. They are going to start charging a fee for those who pay off their credit card bills. Isn't that interesting? They are going to charge a fee for those who pay their credit card bills off in full every month. Why? Because if you are paying off your credit card bill and settling your balance, they are not making money off you. So the result is they will charge a fee for that. Sound kind of like a screwball idea? It does to me.

Or how about this screwball idea. Have a provision in America's Tax Code that says to a corporation, we will give you a special little deal. We know that you are here in America. We know that you built a plant here. You hired a bunch of workers. You have made a product here for 30 years. You make profits here. But we will give you a special little deal. If you will simply shut your American plant down, fire all those workers, get rid of all that in America, and move the whole system to a foreign tax haven, open a new factory overseas, hire new foreign workers, make exactly the same product you were making in America, and then ship the product from that foreign tax haven country into America and make your profit that way, we will give you a deal. We will give you a tax break if you will do that. Close your American plant, produce overseas instead, and we will give you a tax break. Sound like a screwball idea? It is current tax law.

I have an amendment that is pending before the Senate that will lose today. We voted on this before, 52–47. I lost a year ago. We are going to vote again today, and no doubt I will lose again today. Why? Because anyone standing in this Chamber feels comfortable going home telling their folks who sent them here that it was ''my priority to decide to keep a tax provision that says let's reward people who move American jobs overseas''? No. That is not why. There is not one person who can find one good reason to have this in current tax law. Not one.

I do not stand here asking for 10 reasons why this ought to be repealed. I would like to find one sober American who can explain to me one reason why this ought to be kept in American tax law. At the very least our tax law ought to be export-neutral with respect to jobs.

Mr. KERREY. I wonder if the Senator will yield?

Mr. DORGAN. I am glad to yield.

Mr. KERREY. The Senator and I, I guess a month ago, discussed a long article that was in the New York Times, in the business section of the New York Times, describing a U.S. corporation, actually a multinational corporation, described by the operator, with $9 billion for the revenue total as reported in the paper, and $2 billion for net income as reported by the paper. And the tax rate was down to 3 or 4 percent.

One particular transaction that was under examination was shipping all the income to the Dutch Antilles so they would not have to pay any capital gains tax. When the CEO of the company, the owner of the company, was asked the question, ''Well, don't you feel bad about not paying any taxes in the United States of America?'' his answer was, ''That's what multinational corporations are for.''

Is that the sort of thing that the Senator believes that the U.S. taxpayers, basically the taxpayers of the United States are subsidizing, because they are paying the taxes? If somebody does not pay tax—if I forgive you all of your taxes and say, ''Senator DORGAN, you don't have to pay any taxes at all, somebody else is going to pick up the tax for it, somebody else is going to be subsidizing your reduction in tax''—in this case, what you are describing is a situation where not only am I subsidizing the fact that you are not paying any taxes, not only am I paying more and you are paying less, but I am paying more and you are paying less and you are moving operations abroad.

Mr. DORGAN. What I have not mentioned in discussion, because it is slightly different but probably an even more important discussion, is that 73 percent of foreign corporations doing business in America pay zero in Federal income taxes to this country—not a little, or not much, they pay zero. Mr. President, 73 percent of foreign corporations doing business in America—and those names everyone would understand and recognize instantly; they are the names on the products people are buying in this country—they do hundreds of billions of dollars of business in this country every year, and 73 percent of them pay zero in taxes to our country.

A slightly different issue but in the same general family of tax problems, in addition to the strainer through which all of this flows and through which these corporations can come in, earn billions of dollars and pay zero taxes in our country, in addition to that, we actually have a provision in this Tax Code that says, by the way, if you are an American company and you are having to compete against a foreign corporation coming into our country—what is the solution? Move your jobs, leave our country, produce in Sri Lanka, Bangladesh, Malaysia, Singapore, produce elsewhere. Hire foreign workers. Not only can you get a tax break, you can get lower wages over there. You can hire somebody for 14 cents an hour, a quarter an hour, 50 cents an hour, $1 an hour. You do not have to worry about pumping effluents into the air, dumping chemicals into the water. You can hire kids and work them 14 hours a day. Move your jobs and go overseas, our Tax Code says to companies, and then ship the product back here and compete with someone who stayed here.

I represent a State not unlike the Senator from Nebraska. North Dakota is slightly smaller in population. I toured a little manufacturing facility recently with 55 workers. They are wonderful workers who love their jobs. It is a great little company, struggling and not making a lot of money, but making it in a small community in

North Dakota. They do not have the opportunity to decide, ''I think we will move our production, we will move our manufacturing to Singapore.'' They do not have that opportunity. They do not have that luxury. They are just working every day, doing the best they can, trying to make a profit.

Assume that some other company makes the same products that compete with this little company. One of them was an arrowhead on arrows used in archery that are sold in stores around this country, little steel arrowheads for hunting and target practice. Assume another company makes that same product to compete with this little North Dakota company and they decide, ''I think we will make them overseas.'' Our Tax Code says, ''Well, good for you, good decision.'' In fact, we will reward you for making that decision. Any money you make, any income you make, as long as you do not repatriate it, keep it over there, invest it over there, you never have to pay American income taxes. Our Tax Code says, ''Yes, jump on the bandwagon. Move jobs overseas.''

The fact is, our manufacturing job base is diminished. It used to be 24 percent in 1979. Now it is down close to a 15 percent manufacturing job base.

The Senator from South Carolina said yesterday, and I agree with him, no country will long remain a strong world economic power unless it retains a strong manufacturing base. The Senator from South Carolina went far afield yesterday talking about a wide range of trade issues. There is nothing wrong with that because that is also part of the global discussion. But this is a very simple, modest amendment. We are not talking rocket science here. I am not talking about global strategies, the global economy, or international trade. I am talking about a simple proposition: Should this country, under any condition, decide that in its Tax Code it should subsidize moving U.S. jobs overseas? If this Congress cannot stand up and take the first small baby step in deciding that we should no longer subsidize moving jobs overseas, then Lord help a legislative body that cannot make that fundamental, small decision on behalf of a country.

The Senator from South Carolina, in discussing trade yesterday, talked about protectionist, and ''protectionist'' has a very specific meeting for a lot of people debating the global economy. Should anyone in this Chamber, at least when it comes to this issue, this simple little tax provision that now rewards those who move American jobs overseas, should anyone in this Chamber deny they are interested in protecting America's jobs, deny their interest in standing up for this country's manufacturing base? No, I am not suggesting putting up barriers, but I am suggesting deciding we will put an end to an insidious, perverse tax provision that rewards those who do the wrong things moving American jobs overseas.

Mr. KERREY. Will the Senator yield?

Mr. DORGAN. I am happy to yield to the Senator.

Mr. KERREY. The opponents are not up here to engage in a discussion.

One of the arguments I have heard against the Senator's amendment is that it is effectively a tariff. I wonder if the Senator could pretend I am an opponent of the amendment and talk to the American people a bit about this issue of whether or not the change in Tax Code that you are proposing would result in a tariff?

Mr. DORGAN. That is an absolutely absurd contention. It makes no sense at all for someone to say, ''Well, this is a tariff.'' This has nothing to do with tariffs, nothing to do with international trade.

I would love to offer, incidentally, some amendments on trade, but I shall not. This has to do, simply, with a tax subsidy that now tilts the playing field and says to a company, ''If you move those jobs from Akron, from Toledo, from Bismarck, from Lincoln, to some tax-haven company, we will reward you.'' How much is the reward? Well, I come from a town, as I said yesterday, of 300 people, a high school class of nine, a wonderful community in southwestern North Dakota. The reward here is not giant in the context of our Federal budget. It is $2.2 billion in 7 years.

Now, that may not sound like much to people here who would chair a Budget Committee, for example. Go to my hometown and talk about $2.2 billion that the Federal Government asks other Americans to pay effectively as a subsidy to companies who would move their jobs overseas, and then see what kind of reaction you get from people who think with a bit of common sense.

Now, how does this perversity occur in the Tax Code? This is called deferral, a fairly common concept in tax law. It has been there a long while. There also are many antideferral provisions in the Tax Code. In fact, the Senate voted a couple of decades ago to eliminate all deferral altogether. Deferral means a U.S. company does business overseas, makes profits and, therefore, does not have to pay tax on their profits because they can defer it indefinitely—in fact, until and unless they bring the money back to the United States.

The Senate at one point voted to eliminate all deferral. The House of Representatives, when I served in the House, voted to eliminate a narrow portion of deferral, which is exactly what I am proposing we do. Eliminate deferral when a company moves their jobs to tax havens overseas, produces a product with those jobs and ships the products back into our country to compete against other companies whose jobs and production are here.

Again, this is not rocket science. I am not proposing something that is hard to understand. I expect in the next couple of hours I will lose. I expect those who are now concerned about this and who do not want to debate it apparently on the floor of the Senate are strategizing how they will offer something that prevents an up-or-down vote on this. They will either offer to table it, or they will offer some other device, and they will try to ricochet the vote because the last thing in the world they want to do is deal with this.

We have organizations in this town formed and financed by the largest corporations in America and the world whose job it is to protect this tax subsidy—2.2 billion dollars' worth. So you have all kinds of lobbyists across this town who have done an enormous amount of work here in the Senate to make sure that this will not pass. That is the way the system works.

However, in my judgment, it is not much of a system that allows us to ever make an excuse for a Tax Code that on behalf of the American people says our interest is served by paying those who diminish America's economic strength, who move America's economic production abroad.

Let me make a couple of other brief points. I do not propose to object if a U.S. corporation decides that it is going to compete in Japan or Korea or Europe, and in order to do that, because Japan is locating its production facilities in Thailand or Indonesia, the U.S. corporation says, ''Well, I will open up a plant in Indonesia to produce products to be sold in Korea.'' I would prefer they not do that. I prefer they put those jobs in North Dakota, as a matter of fact, or in Colorado. But if they decide they have to have offshore production to compete with others with offshore production, fine, I am not interrupting that. My amendment says, however, if you are going to create offshore production facilities to create products to ship back into America to compete against American firms, then you are going to obey the same tax laws. You can't defer anything. If you make a profit, you pay taxes on the profit. You made the profit by making a product and selling it in the American marketplace. So you pay the same tax that the American producer pays, who stayed here and produced here. That is all my amendment says. It is very narrow.

Now, the second point I want to make is this: Some say—and they will say it with gusto, if only they will come out and debate this amendment—and I fully understand why they don't want to debate this amendment—but they would say, ''You don't understand; we are dealing with a global economy. You don't have the foggiest understanding of what on Earth is going on in this world. If you did, you would not offer this nonsense and you would not talk the way you do about the trade deficit.''

Well, the global economy has changed. Our economy in the United States has changed our economic circumstances. That is certainly true. We for 75 years fought in this country about some fundamental issues—minimum wage, safe workplaces, pollution,

environmental standards, issues with respect to child labor—and we came to some conclusions on all of them. Then some economic enterprises—the largest in the world, in fact—found a way to pole vault over all of those issues and say: You don't understand. Those fights did not mean anything. We can hire kids—oh, not in America, but we can hire kids and we can go to other countries and hire 14-year-olds, and we can work them 14 hours a day and pay them 14 cents an hour, and they can make whatever they make, and we can ship that back to the United States, and we can sell it in supermarkets and in the discount stores. We can do that in the name of profit because it is part of the global economy.

Well, that might be the way they have described the global economy, but it is not fair competition. Free trade ought to mean fair trade. This is not fair competition. Those who describe the global economy as working in that way are describing a system that is now being discussed in the Philadelphia Inquirer. I think they are doing 10 or so segments that are wonderful segments on this entire issue. The one in Monday's newspaper deals with exporting jobs again. It describes a couple—Lynn and Ed Tevis—who worked for a company for 20 years and were discarded like a wrench that was used up. Human capital now is like a wrench or a hammer or a pair of pliers. When they are done with it, they throw it away. They are told: We are sorry. You worked for us 20 years. This job is now in Singapore, or this job is now in Bangladesh. Your job with us is over.

That is what is happening in this country.

My suggestion is not that we decide that we are not part of the global economy. We are. My suggestion is that we decide, as a country, what the rules are for access to our marketplace. Is there a rule about accessing America's marketplace with labor from 14-year-olds who are paid 14 cents an hour? Is there or isn't there? If there is, let's start enforcing it. Should there be a rule that at least the American taxpayers should be assured that the Tax Code is not subsidizing the movement overseas of American jobs? Should there be that assurance made to the American taxpayer? The only way we will give them that assurance is to step up now and vote.

The desk I sit at in the U.S. Senate was a desk that was occupied at one point by a man named La Follette from Wisconsin, Senator La Follette. For those that don't know the tradition of the Senate, the tradition has always been to carve your name inside the desk drawer of the Senate desk. It has been a longstanding tradition in the Senate. If you pull out the desk drawer, the bottom drawer—the only drawer in the desk—you will find a list of names of Senators who sat in that desk.

I was told a story by Senator BYRD, who is the preeminent historian of the U.S. Senate, about Senator La Follette. He was once speaking from this desk many, many decades ago, I believe he said, in a filibuster. He ordered down for a turkey sandwich and a glass of eggnog. Senator BYRD, as he told the story, said that the eggnog was delivered at this desk to Senator La Follette, and he was trying to take a sip of eggnog as he was speaking. He took a mouth full of this eggnog and spit it out and hollered, ''It's poison, it's poison.'' Some days later, back then, they got the analysis of the eggnog and discovered, indeed, there had been poison put in that poor Senator's eggnog. So I have not had an urge to filibuster from this desk since the recitation of that wonderful story about another occupant of this desk, Senator La Follette. I did not ever hear the conclusion of that story, whether they found out who laced the eggnog. But I am not ordering eggnog today, and I am not intending to filibuster. I do expect that there are a whole lot of folks in this town—hired by enterprises that will benefit from this $2.2 billion—who think this is real poison. Oh, they think this is awful. God forbid that we should pass something like this amendment. What an awful thing to do. Senator DORGAN just doesn't understand.

Well, the point is, I do understand. What we are doing is fundamentally wrong. What we are doing weakens this country. What we are doing in our Tax Code says to multinational corporations that you can make a choice about where to put your jobs, and you can put them elsewhere, move them out of America, because jobs are not the issue. Well, jobs are the issue. Good jobs that pay well and provide real security for American workers are the issue. American workers are not tools. They are part of a group of people who help make these companies the great companies they are.

I am going to finish with one short story. Just after Christmas this past year, I was on an airplane, Northwest Airlines, traveling from North Dakota back to Washington, DC. I read a story in the Minneapolis Star Tribune that brought tears to my eyes. It was a story about a businessman and his wife. I believe his name was Mr. Nagle. He was a fellow who started a company in the early 1980's and was incredibly successful, made an enormous amount of money. It was a very simple idea. The company's name is Rollerblade, which many Americans will recognize. He began, as I recall, in a circumstance where hockey players wanted something to practice skating on when it wasn't wintertime up in our part of the country, Minnesota and North Dakota. So there was invented something that was the early version of what we now know as ''Rollerblades.'' The Rollerblade company, I believe, was probably the pioneering company. This fellow ran the company and he turned this tiny little company into something extraordinary. It grew and blossomed and prospered and made enormous profits. What a wonderful success story for this fellow and his workers and his corporation. Then he sold Rollerblade Corp. He and his wife moved to Florida. I was on the plane that morning after the Christmas season, and I read the story about what this fellow had done. Just before Christmas, this company, that had some nearly 300 employees in the company out in the manufacturing plants making rollerblades and in the production, control, finance, and various places, these employees began to receive Christmas greetings from this fellow and his wife, who used to own their company but who had sold it a couple of months previous. As these employees opened up their Christmas greetings at home, they discovered a Christmas card and a check from this man and his wife.

The check equaled a certain amount of money multiplied times the months that each of those employees had worked for that company. Some checks were as much as $20,000 to the people out on the manufacturing line.

But there is more. This fellow not only sent them a check, but he told them that he had prepaid the taxes on the checks. So this was theirs. The taxes were paid, and he was sending this money to them because he ran a very successful company, sold it, made an enormous amount of money. And he said, ''I know that part of the reason, a major reason, this company succeeded was because you people worked for it. You people that made those rollerblades, those skates out on the manufacturing line, made this company what it was. I made a lot of money as a result, and I want to share some of that with you now that I have left this company.''

Out of the blue, a check for $20,000 with the tax prepaid. I got back to Washington, DC, after I read that story. I called him down in Florida. I said, ''You know, at a time when so many in American business believe that workers have no value, they are just wrenches and tools and things that you either hire or throw away at will, it is so nice to see someone who once again believes that part of what made that company successful were the men and women who worked for that company.''

It was such a wonderful story. That ought not to be the exception. One would hope that would be the rule in our country. But this man is such an exceptional man. Everyone else does it differently. Everyone else now says people do not matter; they are expendable; get rid of them. For the jobs in Kansas City, ''If you can put more money in Bangladesh, move it to Bangladesh. It does not matter.''

Here is a picture of two people. And I have lots and lots of pictures that I will not show today. Lynn and Ed Tevis moved 1,200 miles for a company they had worked 12 to 14 years for already. They downsized and moved 1,200 miles. Two years later they downsized again,

and said, ''You are done. It is all over; nothing more.'' It is just human capital that is expendable.

My point is this: I do not believe the U.S. Senate can make decisions about jobs for international businesses and for U.S. corporations. But I believe that this Senate can make decisions about whether our Tax Code rewards those people who do the wrong things about jobs. I do believe our Tax Code could stand on the side of American businesses who stay here and have jobs here and compete here. When we find that our Tax Code says to others, ''Go away, ship your products back, and we will give you a competitive advantage over the people who stayed here,'' I believe that our Tax Code can be changed to decide that is unfair, and that we will not allow that to happen anymore.

I offered this yesterday. The Senator from South Carolina spoke. I assume that we will have someone come and procedurally offer a motion to try to avoid the debate on this. I would love to have the debate. I would love to find one person who will give me one reason that we ought to reward anyone with tax breaks that move jobs overseas; just one. I am not asking for a dozen. I am not asking for the impossible. One person give me one reason; just come, stand, and give me one reason. The last time we had someone come and say, ''Well, we will hold hearings on this. This is not the place. This is not the time. This is not the way.'' They will come today again. They will say, ''This is not the place. This is not the time. This is not the way to hold hearings.''

I have heard all of that before. Just give me one reason that this country ought to have a Tax Code that says we encourage moving American jobs abroad. If anyone can do that, alert me that you are coming so we can spend a little time visiting about it, and I would love to have the American people hear the other side of this debate.

I have spoken twice now at some length. The American people have not had the advantage of having someone else come, and stand up and say, ''Count me in. My name is X, Y, and Z, and I believe we ought to have in our Tax Code an incentive to move jobs overseas.'' Is there anyone who will do that? Anyone?

Well, I doubt it. But it is now in current law, and we must take it out at some point. A lot of folks don't want it taken out. Those are the folks who will benefit by the $2.2 billion. That is the way the political system works. But if we keep prodding, agitating, one of these days we are going to get this Congress to do the right thing.

I tried to break the cement in the driveway one day, and it reminded me that it is a lot like legislating. If you take a 16-pound mallet and try to break cement in a driveway, you wind up hitting the driveway as hard as you can with this giant mallet, and nothing happens. You hit it again, and nothing happens. You hit it again, and nothing happens. About the 15th time you hit this big slab of cement, the whole darned thing collapses.

That is the way legislative activity is as well. You don't always get it the first time. You don't always see a discernible result. But one of these days we will change this provision in the tax law. It is not the biggest issue in the world. But it is something that ought to be changed, and something this Congress ought to remedy. This will not be the end of the debate.

But I appreciate the indulgence of the Presiding Officer, and I appreciate also the patience of the Senator from South Carolina.

I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, let me try to answer why there will not be one come and join the debate. It is easily understood. It is the result, of course, of our affirmative action policy after World War II of trying to rebuild the industrialized nations. It spread capitalism in Europe, and out into the Pacific rim. And our affirmative action policy called for various things to induce American investment overseas. We put in, as you can find in the early morning news now on the front of the business page, the Overseas Private Investment Corporation, subject to assault because it is no longer needed. It was needed at that time. Industry had to be ensured against expropriation and the loss of their investment overseas.

So we passed the Overseas Private Investment Corporation [OPIC]. Then we found that we could subsidize, give inducements by way of actual subsidy for export overseas, with the Export-Import Bank. And we put in various tax deferrals.

The reason the distinguished Senator from North Dakota in our amendment is not going to win, as he says, today as you can only look at the Republican screen at Channel 2. And it says new taxes. Once it is labeled as new taxes, that crowd will run in the other direction because we live in this symbolic poster world of true-false, up-down, ''I am for the families, and against taxes; I am for jobs, and against crime.'' And that is all you get out of them—is symbolic nonsense. So they will not really get to the guts of the issue.

It is not a new tax. It just says those who are paying taxes for production here should be on an equal footing and not penalized with American investment and corporations overseas for producing overseas. We are trying to cut out that deferral.

As a result of our affirmative action policy and spreading capitalism after World War II—I am not debunking it, or regretting it. It has worked. The Marshall plan is one of the great success stories of all history by way of people taxing themselves. They think. They didn't have pollsters running around loose in the late 1940's to get these children to come to the U.S. Senate—true-false. Just look at the polls. I will go back home, and, ''I am against taxes.'' In fact, only 17 percent of the people in one poll taken at that time, Gallop, said at that particular time—that only 17 percent favored the Marshall plan. But we had division as they all talked to. Everybody wants to use the buzzwords, and they come on with their little 20-second sound bite, and said, ''we have the vision.'' There is not any vision in any of this stuff going on about gay marriages and everything else. They are not national problems whatever. When you get to a real national problem, as it is about the economic security—and I emphasize ''economic security''—you can find the Senators want it.

I would amend the idea of just jobs because jobs appeals to the polls. You are for jobs, or against jobs. And it makes it just a little political nuance of a campaign. The truth is the security of the United States of America is an issue here with respect to this particular amendment. The passage of the amendment is not going to ensure the security. It is going to begin as a wake-up call, and a trend backward.

I have described that the success of the United States, the strengths that we have as a nation, the security that we have as a nation, rests, as it were, on the three-legged stool: The one leg, the values of a nation. That leg is strong, and unchallenged. We sacrificed to feed the hungry in Somalia.

We sacrificed to build democracy in Haiti. We sacrificed to build peace in Bosnia. Everyone the world around as we travel knows the great contributions and sacrifices made by American taxpayers for its values.

The second leg is that, Mr. President, of course, of our military strength. That is unquestioned.

But that third leg, that economic leg, without which we cannot foster values or protect ourselves militarily—and I emphasize in World War II we won on account of Rosie the Riveter; our industrial might overwhelmed Hitler; there is not any question about that—has become somewhat fractured and enfeebled, if you might, as a result of the affirmative action.

Now, what was the affirmative action? As I said, not only the subsidies, the insurance, the deferrals, but get out of here, just scatter, let us get industry, get American investment abroad and spread capitalism. As I say, it has not only been successful but it has become unfairly competitive.

When I say unfairly competitive, I mean that the other competitors in the Pacific rim do not practice free trade. Oh, they use the rhetoric of free trade, but I can tell you here and now, try to get into some of the markets. Our textile industry tried to get into Korea. They have got to get a vote of the Korean textile folks before they can come into Korea. Try to get into Japan. Oh, they talk a little here about Motorola is doing a little bit; Intel will come in a little bit. But really in trying to open

up the markets, we have had a dismal record over some 50 years trying to get into the country that we saved that does not practice free trade. Come on. Everybody knows that.

(Mr. ASHCROFT assumed the chair.)

Mr. HOLLINGS. What happens is that now we are confronted—and that is why you do not find them in the Chamber—with the opposition. You might call them the enemy here, the fifth column in this economic war. Let us start and list the soldiers in that particular opposition or enemy, that fifth column.

The soldiers in that fifth column begin, of course, with the State Department. The State Department had an affirmative action of sacrificing the industrial might for friends. Fortunately, Secretary Christopher has changed that. Secretary Brown changed that to some extent. And we are beginning to change that. But that is the way it started. That was the best of diplomacy: ''Oh, don't worry; we are fat, rich and happy back in America.'' We have seen it over the 30 years I have served in the Senate.

We started with these corporations that we induced overseas as nationals that became multinationals. They found out that they could produce more economically, make a profit for their stockholders, and as a natural development the nationals became multinationals.

And the banks—Chase Manhattan, First Citicorp, all the big banks as of 1973—I remember back in the 1970's we found out that our large American banks were making the majority of their profits outside of the United States, so they were not really American banks. They were multinationals or had their, let us say, loyalty and nationalism, profitwise at least, outside of the United States, certainly not in the United States of America.

So you have the State Department; you have the multinationals; you have the banks, and then, of course, with that money they developed the consultants and academia. All the consultants are not paid by those who are coming along talking about jobs and the economic security. You go to any of these conferences, these particular institutes all over this city are just rampant with these consultants who are talking, ''Free trade, free trade, free trade,'' shouting, ''Smoot-Hawley, Smoot-Hawley. We are going to end the world and go into a global depression.''

And otherwise academia. I do not have that booklet with me. There was a very sharp economist, Miss Jacobsen, who put out the booklet here some 10 years ago showing how academia had been taken over by the foreign entities and the multinationals. You go up east to the Ivy League and find out their investments up there to bring about the thought and get a free ride into dumping their goods back here in the United States and they will not allow us into their markets.

So you have academia; you have consultants; you have the multinationals; you have the multinational banks and, of course, the State Department. Then when we debated back when I first came here—I will never forget it—and we passed the textile bill—it did not get past the House but we passed one here in the late 1960's, early 1970's—at that particular time we found out the real opposition that gears up the votes in this Chamber. And that is the retailers. In order to bring it to the attention of our colleagues, we went down into the stores here in Washington, DC, and we got a shirt that was manufactured in Taiwan—well, a ladies blouse, I remember correctly, one made in Taiwan for $32 and the one made in New Jersey was also $32. We found a catching glove made in Korea at $42 and one made in Michigan at $42.

We went down the list. We piled the desk up to show that the retailers were not by way of global competition reducing the price. They were making a bigger profit. So the retailers are really geared up and they call their stores around and everything else of that kind and they intimate to us as politicians, U.S. Senators, and they come in and zoom in on us and we have to be for ''free trade, free trade. Let's don't Smoot-Hawley, start a worldwide depression.''

So you have then the retailers. Then, of course, you have the Washington lawyers, and none other than now the Reform Party Vice-Presidential nominee, Dr. Pat Choate. In his book ''The Agents of Influence,'' he took one country, the country of Japan, and listed out how they had over 100 Washington firms, lawyers, consultants, paid over $113 million to represent the people of Japan here in the Capitol, where the 100 Senators, the 435 congressmen, the cumulative salaries of the 535 is $73.1 million. By way of pay, the people of Japan are better represented here in Washington, DC, than the people of the United States of America. You have a powerful force.

Chair the Commerce Committee, which I have for years and am now the ranking member, and get these trade measures and others to come up, and they zoom in immediately with the Washington lawyers, and I mean powerful ones, Mr. President. They are no more powerful than the Special Trade Representative. Heavens above. We saw my good friend, Bob Strauss, we saw my good friend Bill Brock, all representing the foreigners after they had been the Special Trade Representative. It was like Colin Powell going over to represent Saddam. And what did we have to do? Put a rider in the bill of the Special Trade Representative; they could not do that after 5 years. It caught Mickey Kantor—he was the first one—now Secretary Kantor, the Secretary of Commerce, when he was Special Ambassador Kantor, but we had to finally put it in there to stop that. But we had the best of the best trained, the best of the best friends and influence, ambassadorial rank, coming around, and after you are talking ''free trade, free trade, Smoot-Hawley.''

I will be glad to yield for a question.

Mr. BROWN. I notice the Senator is the No. 2 sponsor on the bill. Perhaps he might respond to a few questions that I have with regard to it?

Mr. HOLLINGS. Yes, sir.

Mr. BROWN. I notice, reading through the amendment, it gives a special exemption for oil. Everybody is subject to this special tax except the oil companies. Why was the decision made? What is the reasoning for giving the special treatment to oil?

Mr. HOLLINGS. The principal author could respond more accurately, but I am convinced we did that to try to get votes. I hope agriculture——

Mr. BROWN. That is without precedent.

Mr. HOLLINGS. Yes. Agriculture, that crowd there, I will never forget when I went out campaigning in the Presidential race, ''Dutch'' Reagan's special station in Des Moines, IA, you get on there at 5 o'clock for questions. They said no Democrat would appear. So, you know, if it was for free—I did not have any money—I got on there, and they said, ''Senator, you come from a textile State and you want all this protectionism and subsidies and everything else. How do you expect to get a vote out here in agricultural Iowa?''

I said, wait a minute, let me correct the record. No. 1, I happen to be for subsidies. I happen to be for the quotas and the protectionism for agricultural quotas. We have wonderful farm folks, growing soybeans, wheat, corn, everything else in South Carolina. But let me get the record clear. We do not ask for a subsidy for textiles. We do not ask for Export-Import Bank financing. We do not ask for tax deferrals. When I get to that Nebraska corn, when I get to Colorado and these agricultural States, that is the crowd that runs around hollering, ''Free trade, free trade, keep subsidizing me, keep financing me, keep deferring me.'' Because why? Our friend Wayne Andrus has all the news on Sunday. He has ''Meet the Press,'' he has ''This Week With David Brinkley,'' he has even the public television and everything else. All he talks is, ''exports, exports, exports,'' and we come in here like monkeys on a string hollering, ''exports, exports, exports.'' I mean, we have a regular drumbeat.

I would ask the Senator from North Dakota who drafted our amendment, I am sure oil is a matter of national security, and we put in special provisions, as we well know, for oil.

Mr. BROWN. The other question I had—there were several others, as I went through it. I notice the distinguished Senator from North Dakota said, ''We encourage moving jobs abroad, and we ought to take that language out of the code.''

I have looked through the amendment. I do not find ''striking'' language, other than striking the end of the period and adding additional language. Is there a section of the code

where we ''encourage moving jobs abroad?''

Mr. HOLLINGS. The tax deferral itself, obviously. Oh, yes, that encourages it.

Mr. BROWN. What section is that?

Mr. HOLLINGS. The cost and everything. IBM moved all their research overseas. We are losing not only our jobs in manufacturing, we are losing our research centers and everything else of that kind.

Mr. BROWN. The Senator talked about repealing something out of the law, yet there is nothing repealed in the amendment.

Mr. HOLLINGS. Modifying the deferral itself.

Mr. BROWN. The deferral?

Mr. HOLLINGS. Tax, income made from production overseas. There is a tax deferral for that, and this does away, partially, with that by the amount of products shipped back in and jobs lost. That is the way the amendment is worded.

Mr. BROWN. If I can put this in my own words, and maybe the Senator will correct me, we are not saying there is a section in the code that does that, we are saying it is simply not covered in the code?

Mr. HOLLINGS. We are referring to the tax deferral section.

Mr. BROWN. I do not find any repeal of that tax deferral section in here.

Mr. HOLLINGS. It is a modification of it.

Mr. BROWN. I wonder if there are other countries that have provisions like this. This, in effect, is that it taxes profits on activity outside of the United States, I take it?

Mr. HOLLINGS. Right.

Mr. BROWN. Are there other countries that do a similar thing?

Mr. HOLLINGS. Do they do it? They make sure that they do not make a profit. You ought to come and see how they highball the cost of the parts that they ship through the Port of Charleston, SC, and send up to, let us say, Nissan-Tennessee to make automobiles up there. They get a high cost for the part so Nissan-Tennessee is not even making a profit in Tennessee.

We have tried to correct that one. Oh, they have every gimmick in the book. When you get with these tax lawyers, they know how to get around anything and everything.

Incidentally, I have an article here about Nissan, and Nissan is moving to Mexico. We will get into that on NAFTA. We love to get these foreign investments, but they are just passthroughs now. An expansion of BMW that had come to Spartanburg, SC, is going into Mexico. They will follow the market, which is fine. It is a matter of taking care of your stockholders and profits and that kind of thing. Business is business.

But we have to understand that the business of the U.S. Senate is to look at the overall economy, and when we have these deficits in the balance of trade, over $1.5 trillion in the past 12 years, come, we have to do something about it.

You will get some who come here, like my distinguished friend from New York, he will get up, ''Why, America has always been a great nation on account of commerce. We are a trading nation. Are we going back on our history?''

We were a trading nation of a plus balance of trade, not a minus. Not a minus. What does the record show, heavens above? That thing goes up, up, and away. I think it was in 1992 we finally got it under $100 billion, only to a $96.1 billion deficit; in 1993, it was $132.6 billion; 1994, a $166.1 billion deficit in the balance of trade—more imports than exports. Not what my friend, Wayne Andrus from Archer-Daniels-Midland—''exports, exports, exports.'' We have to look at the overall picture.

In 1995, $174 billion? We are going up, up, and away. We are losing our shirt and enjoying it. We, as Senators, are telling the American people, ''We are fat, rich, and happy. Don't worry about your economy. All you have to do is worry about gay marriages. The States are taking care of it.''

We come up on the silliest thing. Instead of balancing the budget, we will give you a constitutional amendment so we can run on it. Come on.

Mr. BROWN. The Senator referred to the phenomenon. I think it is the game played sometimes with automobile manufacturers, where they take their profit overseas and overprice the automobile as it comes in here so they do not show any profit in the United States.

Mr. HOLLINGS. They overprice the parts and assemble them here. That is what they are doing.

Mr. BROWN. So, by manipulating the prices, they are avoiding recognizing profit in this country and thus avoid paying taxes in this country?

Mr. HOLLINGS. Oh, yes, that is right.

Mr. BROWN. Doesn't our tax law now give us the tools to go after them when they play those games with prices?

Mr. HOLLINGS. I think our tax law does. But there are some——

Mr. BROWN. It simply does not get done.

Mr. HOLLINGS. In the Treasury Department, it just does not get done. You and I know we need, for example, hundreds more Customs agents. They have told us down at Treasury there are billions of transshipments. We just got China, and there is a case right now of over $5 billion. It is really a sad case.

In the textile debate, I said, ''Wait a minute, I will withdraw this textile bill entirely if we just enforce the law.'' So you are right. If we enforced our tax laws, if we enforced our trade laws, our customs law, our import duties, we would do a lot to solve this.

If I were king for a day, I would start by abolishing the International Trade Commission. Every time they find injury, a violation of our trade laws, dumping, over at the International Trade Administration, in Commerce, then they have to buck it over to the International Trade Commission, and that crowd constantly bubbles, ''free trade, free trade, free trade,'' and finds against us.

So, the business folks in America say, ''Why even bring the case? It takes you 3 or 4 years. You go through all that gauntlet with Washington lawyers and costs, and when you finally get it, you are not going to win anyway''? So they say, ''We will just move our production overseas.'' That is the good reason for the production moving overseas and the loss of jobs here.

But, Mr. President, let me sum up that particular matter of the fifth column, so we will understand it. I would no longer include our State Department, but I could certainly start off with our multinationals, our multinational banks, the consultants, academia, the retailers, the Washington lawyers, and, of course, the Special Trade Representatives, all representing them and heading up these particular entities. When you get all of those coming in giving you a false history—free trade, free trade, Smoot-Hawley, Smoot-Hawley—that is the reason for this particular bill.

The distinguished Senator from North Dakota, I think, used the expression ''go far afield.'' That is my intent, to bring understanding. Unless we can get a grasp of our history and how we built this strong America and what is really the opposition, the fifth column that confronts us, we are not going to get a competitive economic society. We are going to just service the economy and take in wash and serve hamburgers to each other. We will have no manufacturing capabilities. When war comes, we will have no military production. We will have to depend, like Japan, on the gulf war, and that is why you panic. They say, ''No, we are going to cut it off to the United States and say no to her and she won't be able to do these things of protecting freedom the world around.''

So it is not far afield. This is to break open the door. This particular amendment is a wake-up call, and it is not a spurious one whatsoever. It is current.

I refer, Mr. President, to the article, once again, of our distinguished friend, William Grieder, former editor at the Washington Post and now the editor of Rolling Stone.

I ask unanimous consent the ''Ex-Im Files,'' an article dated August 5, 1996, be printed in the RECORD.

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

THE EX-IM FILES

HOW THE TAXPAYER-FUNDED EXPORT-IMPORT BANK HELPS SHIP JOBS OVERSEAS

(By William Greider)

WASHINGTON, DC.—As the Nation's salesman in chief, Bill Clinton looks like a smashing success. When Clinton came to office, his long-term strategy for restoring

American prosperity had many facets, but the core of the plan could be summarized in one word: exports. The U.S. economy would boom or stagnate, it was assumed, depending on how American goods fared in global markets. So the president mobilized the government in pursuit of sales.

Flying squads of Cabinet officers, sometimes accompanied by corporate CEOs, were dispatched to forage for buyers in foreign capitals from Beijing to Jakarta. The Commerce Department targeted 10 nations—India, Mexico and Brazil among them—as the ''big emerging markets.'' Trade negotiators hammered on Japan and China to buy more American stuff. And two new agreements were completed—GATT and NAFTA—to reduce foreign tariffs.

U.S. industrial exports have soared in the Clinton years, from $396 billion during the recessionary trough of 1992 to around $520 billion last year. And as this administration has said time and again, more exports means more jobs—usually good jobs with higher wages. In his fierce commitment to trade, Clinton is not much different from Ronald Reagan, who (notwithstanding his laissez faire pretensions) also played hardball on trade deals and, in some cases, intervened with more effective results. George Bush, too, bargained on behalf of corporate interests and played globe-trotting salesman. Promoting exports and foreign investment is not a new idea; it has enjoyed a bipartisan political consensus for decades.

What does seem to be new in American politics are the thickening doubts among citizens and a rising chorus of critics, informed and uninformed, who question Washington's assumptions about exports. The conventional strategy, the critics argue, may help the multinational companies turn profits, but does it really serve American workers and the broad public interest? The new realities of globalized production play havoc with the old logic of exports-equal-jobs. Sometimes it is the jobs that are exported, too.

This contradiction, usually covered up with platitudes and doublespeak in political debate, becomes powerfully clear when you look closely at the dealings of an obscure federal agency located just across Lafayette Park from the White House: the U.S. Export-Import Bank with only 440 civil servants and a budget of less than $1 billion—small change as Washington bureaucracies go.

Yet America's most important multinational corporations devote solicitous attention to the Ex-Im Bank. Their lobbyists shepherd its appropriation through Congress every year and defend the agency against occasional attacks. Why? The Ex-Im Bank provides U.S. corporations with hundreds of millions of dollars each year in financial grease that smooths their trade deals in the new global economy.

This year, Ex-Im will pump our $744 million in taxpayer subsidies to America's export producers, financing the below-market loans and loan guarantees that help U.S. companies sell aircraft, telecommunications equipment, electric power turbines and other products—sometimes even entire factories—to foreign markets. Since the biggest subsidies always go to the largest corporations, skeptics in Congress sometimes refer to Ex-Im as the Bank of Boeing. It might as well be called the Bank of General Electric—or AT&T, IBM, Caterpillar or other leading producers. Ex-Im's senior officers call these firms ''the customers.''

But the banker-bureaucrats at Ex-Im see their main mission as fostering American employment. ''Our motto is, Jobs through exports,'' says James C. Cruse, vice president for policy planning, ''Exports are not the end in itself, so we don't care about the company and the company profits.'' That was indeed the purpose when the bank was chartered as a federal agency back in 1945 and the reason it has always enjoyed broad support, including that of organized labor.

At this moment, the tiny agency is under intense pressure from influential U.S. multinationals to change the rules of the game. Specifically, the companies want taxpayer money to subsidize the sale of products that aren't actually manufactured in America. They want subsidies for products that are not really U.S. exports, since companies ship them from their factories abroad to buyers in other foreign countries. If the rules aren't changed, the exporters warn, they will lose major deals in the fierce global competition and may be compelled to move still more of their production offshore.

''Global competitiveness, multinational sourcing and the deindustrialization of the U.S.'' wrote Cruse in a policy memo for the bank, ''were the three most common factors that exporters cited as reasons to revise Ex-Im Bank's foreign content policy. . . . U.S. companies need multisourcing to be able to compete with foreign companies. Foreign buyers are becoming more sophisticated and they are expressing certain preferences for a particular item to be sourced foreign . . . [and] U.S. suppliers may not always exist for a particular good.''

In plainer language, foreign is usually cheaper—often because the wages are much lower—and sometimes better. As U.S. producers have begun to buy more hardware and machinery overseas, the capacity to make the same components in the United States has diminished or even disappeared. What the companies want in Cruse's bureaucratic parlance, is ''broadly based support for foreign-sourced components.''

As the complaints from American firms swelled in the last few years, Ex-Im officials agreed to convene the Foreign Content Policy Review Group to explore how the U.S. financing rules might be relaxed. The review group's members include 11 major exporters (General Electric, AT&T, Boeing, Caterpillar, Raytheon, McDonnell Douglas and others) plus several labor representatives from the AFL–CIO and the machinists' and textile-workers' unions.

The Ex-Im Bank must decide who wins and who loses—a fundamental argument over what is in the national interest, give globalized business. The review group discussions are couched in polite police talk, but they speak directly to the economic anxieties of Americans. If young workers worried about their livelihood could hear what these powerful American companies are saying in private, there would be many more sleepless nights in manufacturing towns across this Nation. The information below is taken from confidential Ex-Im Bank members that were recently leaked to me. What these executives have to say is not reassuring, but it's at least a more accurate vision of the future than anything you are likely to hear from this year's political candidates.

A decade ago the rule was simple: Ex-Im would not underwrite any trade package that was not 100 percent U.S.-made. Then and now Ex-Im scrutinizes the content of very large export projects, item by item. to establish the national origin of subcomponents. Any subcomponents produced offshore must be shipped back to American factories to be incorporated into the final assembly. If Caterpillar sells 10 earthmoving machines to Indonesia all 10 of them have to come out of a U.S. factory to get a U.S. subsidy, even if the axles or engines were made abroad.

By the late 1980s, however, as major manufacturers pursued globalization strategies that moved more of their production offshore. Ex-Im, with labor approval opened the door. In 1987 it agreed to finance deals with 15 percent foreign inside content. Partial financing would also be provided for export deals that involved at least 50 percent U.S. content.

Now the multinationals are back at the table again, demanding still more latitude. The bank's rules, they complain, have created a bureaucratic snarl that threatens U.S. sales. These regulations are oblivious to the complexities of modern trade which multinationals routinely ''export'' and ''import'' huge volumes of goods internally—that is among their own fur-flung subsidiaries or foreign joint ventures.

The flavor of the company complaints is revealed in Ex-Im Bank minutes of the review group's first meeting last year, where various company managers sounded off about the new global realities. David Wallbaum, from Caterpillar, urged the bank to be ''more flexible in supporting foreign content,'' according to the minutes, General Electric's Selig S. Merber said GE needs ''access [to] worldwide pricing.'' Merber proposed that instead of insisting on American content item by item, Ex-Im look only at the U.S. aggregate.

Lisa DeSoto of Fluor Daniel, one of America's largest construction engineering firms, suggested in a follow-up memo that Ex-Im subsidize ''procurement from the NAFTA countries,'' Mexico and Canada as if the goods were from the U.S.

But it was Angel Torres, a representative for AT&T, who spoke more bluntly than the others. AT&T's foreign content has grown in the last 10 years because the U.S. is becoming a ''service-oriented society,'' Torres said, according to the minutes. ''AT&T's priority,'' he declared, ''is to increase the allowable percentage of foreign content.''

When I rang up these corporate managers and some others to ask them to elaborate on their views, all of them ducked my questions. The one exception was David L. Thornton, a manager from Boeing, whose newest jetliner, the 777, actually involves 30 percent foreign content in the manufacturing process (mostly from Japan). It still qualifies for full Ex-Im financing. Thornton explained, because Boeing's original investment in research and development also counts in the sales price. ''Our general view of 75 percent is we can live with it for the time being,'' Thornton said, ''but over time it probably won't be adequate.''

The labor-union representatives, not surprisingly, choked at the ominous implications of such comments—especially the matter-of-fact references to America's de-industrialization. Corporate leaders and politicians, after all, have been celebrating the ''comeback'' of American manufacturing in the 1990s. Exports are booming, and U.S. competitiveness has supposedly been restored, thanks to the corporate restructurings and downsizings. Stock prices are rising, and shareholders are happy again.

The private corporate view is not so cheery for the employees. A memo from one multinational corporation (its identity whited-out by Ex-Im bureaucrats) made it sound like the demise of American manufacturing is already inevitable. ''We believe the current policy does not reflect the de-industrialization of the U.S. economy and the rise of the Western European and Asian capabilities to produce high-tech quality equipment . . .'' the memo states. ''Location is no longer important in the competitive equation, and where the suppliers of components will be [is] wherever the competitive advantage lies.''

The more that labor heard from the companies, the more hostile it became to any revision. ''We have been presented with no credible evidence that current bank policies have cost companies sales, thereby reducing

U.S. employment,'' the labor representatives fired back in a jointly signed letter in April. ''While we understand that global corporations might prefer fewer restrictions—even the provision of financing regardless of the effect on jobs in the United States—that desire simply ignores the very purpose of extending taxpayer-based credit.''

If Ex-Im agrees to finance more foreign content, the labor reps asked, won't that simply encourage the multinationals to move still more U.S. jobs overseas, thus accelerating deindustrialization? When I put this question to Ex-Im officials and corporate spokesmen, their answer was a limp assurance that this isn't what the bank or the companies have in mind.

But can anyone trust these assurances? The massive corporate layoffs have sown general suspicions of the companies' national loyalties, and the ''outsourcing'' of high-wage jobs has already boiled up as a strike issue in major labor-management confrontations. The United Auto Workers shut down General Motors earlier this year over that question. The UAW lost a long, bitter strike at Caterpillar when it demanded wage cutbacks, threatening to relocate production if the union didn't yield. The International Association of Machinists and Aerospace Workers closed down Boeing's assembly lines for two months last fall, demanding a stronger guarantee of job security as Boeing globalizes more of its supplier base.

''Ex-Im financing is corporate welfare with a fig leaf of U.S. jobs, and now they want to take away the fig leaf,'' says Mark A. Anderson, director of the AFL's task force on trade. ''They want to be able to ship stuff from Indonesia to China and use U.S. financing, I said to them, 'You're nuts. If you go ahead with this, you're going to be eaten alive in Congress.'''

George J. Kourpiss, president of the machinists' union whose members make aircraft at Boeing and McDonnell Douglas, and jet engines at GE and Pratt & Whitney, put it more starkly: ''The American people aren't financing that bank to take work away from us. If the foreign content gets bigger, then we're using the bank to destroy ourselves.''

EXPORTS—JOBS

According to the government's dubious rule of thumb, each $1 billion in new exports generates 16,000 jobs. By that measure, Bill Clinton's traveling salesmen brought home 2 million good jobs. So why is there not greater celebration? The first, most-obvious explanation is imports. Foreign imports soared, too, albeit at a slower rate of growth, and so America's trade deficit with other nationals actually doubled in size under Clinton, despite his aggressive corporate strategy. Thus a critic might apply the government's own equation to Clinton's trade deficit and argue that there was actually a net loss of 11 million good jobs.

Bickering over the trade arithmetic, however, does not get to the heart of what's happening and what really bothers people: the specter of continued downsizing among the nation's leading industrial firms. In fact, globalization has created a disturbing anomaly. U.S. exports multiply robustly, yet meanwhile the largest multinationals that do most of the exporting are shrinking dramatically as employers. It's important to note that about half of U.S. manufacturing exports comes from only 100 companies, and 80 percent from some 250 firms, according to Ex-Im's executive vice president, Allan I. Mendelowitz. The top 15 exporters—names like GM, GE, Boeing, IBM—account for nearly one quarter of all U.S. manufactured exports. Yet these same firms are shedding American employers in alarming dimensions. The 15 largest export producers with few exceptions have steadily reduced their U.S. work forces during the past 10 years—some of them quite drastically—even though their export sales nearly doubled.

GE is a prime example because the company is widely emulated in business circles for its tough-minded corporate strategies. In 1985, GE employed 243,000 Americans and 10 years later, only 150,000. GE became stronger, then Executive Vice President Frank P. Doyle said. But, he conceded. We did a lot of violence to the expectations of the American work force.

So, too, did GM, the top U.S. exporter in dollar volume (though the auto companies are not big users of Ex-Im financing). GM has shrunk in U.S. work force from 559,000 to 314,000. IBM shed more than half of its U.S. workers during the past decade (about 132,000 people). By 1995, Big Blue had become a truly global firm—with more employees abroad than at home (116,000 to 111,000). Even Intel, a thriving semiconductor maker, shrank U.S. employment last year from 22,000 to 17,000. Motorola has grown, but its work force is now only 56 percent American.

The top exporters that increased their U.S. employment didn't begin to offset the losses. The bottom line tells the story. The government's great substitute for America's major multinational corporations has not been reciprocated, at least not for American workers. The contradiction is not quite as stark as the statistics make it appear, because the job shrinkage is more complicated than simply shipping jobs offshore. Some companies eliminated masses of employees both at home and abroad. Others, like Boeing, reduced payrolls primarily because global demand weakened in their sectors. Some jobs were wiped out by labor-saving technologies and reorganizations. But virtually all of these companies offloaded major elements of production to lower-cost independent suppliers, both in the U.S. and overseas. If the jobs did not disappear, the wages were downsized.

This dislocation poses an important question, which American politicians have not addressed. Does the success of America's multinationals translate into general prosperity for the country or merely for the companies and their shareholders? The question is a killer for politicians—liberals and conservatives alike—because it challenges three generations of conventional wisdom. That's why most Democrats or Republicans never ask it.

When these facts are mentioned, the exporters retreat to a few trusty justifications. First there is the ''half a loaf'' argument. Yes, it is unfortunately true that companies must disperse an increasing share of the production jobs abroad, either to reduce costs or to appease the foreign customers. But if this were not done, there might be no export sales at all and, thus, no jobs for Americans. Next, there is the ''me, too'' argument. All of the other advanced industrial nations have export banks that provide financing subsidies to their multinationals. The export banks in Europe do allow greater foreign content than the U.S.—but only if the goods originate from an allied nation in the European community. France supports German goods and vice versa, just as Michigan supports California. The U.S. Ex-Im Bank, as Mendelowitz has pointed out, actually provides greater risk protection and generally charges lower premiums.

Japan's Ex-Im bank is indeed more flexible than America's, but Japan's industrial system also operates on a very different principle; major Japanese corporations take responsibility for their employees. That understanding creates a mutual trust that allows both the government and the firms to pursue more sophisticated globalization strategies. Japanese jobs are regularly eliminated when Japan's manufacturing is relocated offshore in Asia or in Europe (and sometimes in the U.S.), but the companies find new jobs for displaced employees and only rarely, reluctantly, lay off anyone.

''The situation that our companies see,'' Ex-Im's Cruse explains, ''is that Japan is willing to finance as much as 50 percent foreign content, and [the companies] say to us, 'You're not competitive.' But an important difference is that the Japanese government doesn't have to worry about the workers because the Japanese companies worry about them. . . . If GE subcontracts work to Indonesia, it tends to lay off a line of workers back in the U.S.''

BAIT AND SWITCH

In April 1994, AT&T announced a $150 trillion joint venture with China's Qingdao Telecommunications to build two new factories, in the Shandong province and in the city of Chengdu, in the Sichuan province, that will manufacture the high-capacity 5ESS switch, the heart of AT&T's advanced telephone systems. AT&T's chairman, Robert Allen, said that it will more than double its Chinese work force over the next two or three years.

Five months later, in September, the Ex-Im Bank in Washington approved the first of $87.6 million in loan guarantees to underwrite AT&T's export sales to China—switching equipment that will modernize the phone systems in Qingdao and several other cities. AT&T won the contract in head-to-head competition with Canada's Northern Telecom, Germany's Siemens and France's Alcatel Alsthom. The Clinton administration celebrated another big win for the home team.

But who actually won in this deal? A Telecom Publishing Group article provided a different version of what AT&T's victory meant for the United States. ''While some equipment for AT&T's network projects in China will be built in this country,'' the article reported, ''the Chinese are demanding that eventually the bulk of the equipment in their system be built in their country, the carrier [AT&T] said.''

An AT&T public-affairs vice president, Christopher Padilla, denies this, but then Padilla also denies that AT&T is prodding the Ex-Im Bank to relax its foreign-content rules. Further, he assures me that despite their proximity, there was no explicit quid pro quo and no connection between the two transactions, the taxpayer-financed export sales and AT&T's agreement to build new factories in China.

''It's a reality of the marketplace,'' Padilla says. ''If we tried to pursue a strategy of just making everything in Oklahoma City''—where the 5ESS switch is now manufactured—''we wouldn't have any market share at all.''

The White House also led cheers for Boeing because Boeing was also stomping its competitors in the Chinese market. In 1994 alone, Boeing sold 21 737s and seven 757s to various Chinese airlines and obtained nearly $1 billion in Ex-Im loans to finance the deals. When President Clinton hailed the news, he did not mention that Boeing had agreed to consign selected elements of its production work to Chinese factories. The state-owned aircraft company at Xian, for instance began making tail sections for the 737, work that is normally done at Boeing's plant in Wichita, Kan. The first order for Xian was for 100 sets, but that was just the beginning. In March 1996, a China news agency boasted that Boeing had agreed to buy 1,500 tail sections from Chinese factories, both for the 737 and the 757. The deal was described as ''the biggest contract in the history of China's aviation industry.''

Unlike AT&T and some others, Boeing is relatively straightforward about acknowledging that it's trading away jobs and technology for foreign sales. China intends to build its own world-class aircraft industry, and Boeing helps by giving China a piece of the action, relocating high-wage production jobs from America to low-wage China, as well as relocating some elements of the advanced technology that made Boeing the world leader in commercial aircraft. Boeing has told its suppliers to do the same. Northrop Grumman, in Texas, is sharing production of 757 tail sections with Chengdu Aircraft, in China.

''What we've done with China,'' says Lawrence W. Clarkson, Boeing's vice president for international development, ''we've done for the same reason we did it with Japan—to gain market access.'' The two transactions—the export sales and job transfers—are legally separate but typically negotiated in tandem, Clarkson explains. China always insists upon a written acknowledgement of the job commitment in the export sales contract—the same sale to China submitted to the Ex-Im Bank for its financial assistance.

Until recently, the Ex-Im Bank's operative policy on this issue could be described as ''don't ask, don't tell'': The bank officials didn't ask the companies if they were offloading jobs, and the companies didn't tell them. When I asked various Ex-Im managers if they knew about AT&T's new switch factories in China before they approved AT&T's export financing their answer was no. What about companies like Boeing doing similar deals?

''Yes, we're aware of that,'' Cruse says. It's not that the companies tell us, but it's not hard to read the newspapers.''

After prodding from labor officials, the bank last year began requiring exports to reveal whether they dispersed U.S. jobs or technology in connection with the Ex-Im-financed sales. But the federal agency still approves these deals without weighing the potential impact on future employment. In fact, Ex-Im still pretends that the export sales and corporate decisions to relocate jobs are unrelated transactions, though every company knows otherwise.

The practice of swapping jobs for sales is widespread in global trade—deals are negotiated in secrecy because such practices ostensibly violate trade rules. But everyone knows the game, and most everyone plays it. If Boeing doesn't swap jobs for Chinese sales, then its European competitor Airbus will. If AT&T doesn't move its switch manufacturing to China, then Siemens or Alcatel will (in fact, Alcatel already has). The cliché at Boeing is ''60 percent of something is better than 100 percent of nothing.''

The trouble is that nothing may be what many American workers wind up with anyway—especially if China eventually becomes a world-class aircraft producers itself. Officials at the Communications Workers of America, which represents AT&T workers, recall that Ma Bell once made all its home telephones in the U.S. and now makes none here.

Is the same migration under way now for the high-tech switches? The AT&T spokesman insists not. Anyway, he adds the assurance that the most valuable input in these switches is the software, not the hardware from the factories, and the design work is still American. This may reassure the techies, but it's not much comfort to those who work on the assembly lines. Besides, AT&T plans to open a branch of Bell Laboratories in China.

The dilemma facing American multinationals is quite real, but the question remains: Why should American taxpayers subsidize export deals contingent on increased foreign production, or even offloading portions of the American industrial base? Americans are told repeatedly that they cannot exercise any influence over these global firms, but that claim is mistaken. The Ex-Im Bank is an important choke point in the bottom line of these multinationals. Americans should demand that the subsidies be turned off, at least for the largest companies, until the multinationals are willing to provide concrete commitments to their work forces.

The gut issue is not about economics but about national loyalty and mutual trust. ''Every meeting we have in the union, we open it with the pledge of allegiance,'' machinists union president George Kouepias muses, ''Maybe the companies should start doing that at their board meetings.''

Mr. HOLLINGS. Just referring to the article, if you please, Mr. President, and everyone ought to read this article, it says:

Globalization has created a disturbing anomaly. While U.S. exports grow robustly, the corporations that do most of the exporting are the busiest downsizers.

When they fire everybody, it is a polite word, that is just downsizing so they are becoming more competitive. They are just, by gosh, getting rid of the United States worker and employing the offshore worker.

But I quote this particular sentence:

GE is a prime example because the company is widely emulated in business circles for its tough-minded corporate strategies. In 1985, GE employed 243,000 Americans and 10 years later, only 150,000. GE became stronger, then executive Vice President Frank P. Doyle said. But he conceded. We did a lot of violence to the expectations of the American work force.

Get that sentence, the vice president of GE, when they cut down to 150,000 jobs, so-called downsizing, fired them. I used to have five GE's. I had one at Irmo. I have one still at Greenville which is doing well. I have one which was brought into Florence. It made cellular radios and now MRI's. It has taken the business away from competitors. But the one I had in Charleston has gone to Brazil. We are losing good plants down there, and here is why: ''We did a lot of violence to the expectations of the American work force.''

Mr. President, I ask that our colleagues refer to the Philadelphia Inquirer of Monday, September 9, Tuesday, September 10, and again today: Endangered Label ''Made in the United States.''

It is a wonderful article of how we are losing our industrial backbone, how small businesses lose out to foreign competition.

I was asked at the Chicago convention, Mr. President, ''Senator, you Democrats, why don't you all do something for small business?''

I said, ''Oh, no, that small business crowd is organized by the National Federation of Independent Business.'' I have won recognition and awards from that group, but, generally speaking, they are not for the small business on this particular score, they are talking about free trade, free trade as retailers to make a bigger profit.

I thank the wonderful Philadelphia Inquirer. This is the headline: ''Small businesses lose out to foreign competition.'' I want the NFIB to read these series of articles.

Mr. President, referring just to one part, let's start off with the first paragraph:

In early 1980's when stainless steel knives, forks and spoons suddenly surged into the United States from Japan, South Korea and Taiwan in response to lowered tariffs and cutthroat foreign prices, the domestic industry found itself in trouble.

American producers, contending it was unfair competition, appealed to the United States trade commission to impose higher tariffs on imported flatware. The trade commission is an independent Government agency whose main job is to monitor the impact of the imports on the U.S. industries.

If the ITC agrees with the complaint, the presidentially appointed commissioners may recommend that duties be imposed. Even so, there is no assurance that the duties will actually be assessed and, in most cases, they are not. The final decision rests with the White House which historically has refused to impose additional duties.

After 5 months of study, the commission ruled on May 1, 1984, that stainless flatware was ''not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat thereof to the domestic industry.''

On the contrary, the ITC held that the ''economic data on the performance of this industry failed to demonstrate the required degree of serious injury mandated by the statute. Rather, the industry is doing reasonably well.''

According to ITC findings, nine companies produced flatware in the United States in 1982. Today—

Now listen, Mr. President—

Today, most of them are either out of business or purchasing flatware from foreign services. Except for two small plants, Oneida, Ltd., in Oneida, New York, there is virtually no stainless steel flatware production in the United States.

I could go down the list of commodities after commodities after commodities, and you can see, Mr. President, where these companies are just moving the strength—it is not just jobs—it is moving the strength of the United States. When they get to national defense, everybody comes out here on the defense authorization bill and votes overwhelmingly on a defense appropriations bill. But right to the point, they forget their history and how we got here and how we were able to maintain and sustain the strength of the greatest superpower.

Mr. President, we are the last remaining superpower. Look at them run all around. The atom bomb, the nuclear bomb cannot be used—should not be used. We do not have the manpower that the People's Republic of China has and others have that are coming along now and are going to build up their military strength. And they do not care anymore about the 6th Fleet coming in to protect them.

The name of the game is the economic warfare, and the great superpower—and if you read Eamonn Fingleton's book—''Blindside'' is the title of that book—you will find that within 4 short years, the largest economic power in this world will be the

country of Japan. Already they are a larger manufacturer. Here is a little place not bigger than California, with 125 million compared to our 260 million, and vast resources, with oil and all the natural wealth that we have here, all the talent, all the research and everything else, and they produce more in Japan today, manufacturing, than the United States of America. Economically, their GNP, their productivity, will be greater than that of the United States. Their per capita income, right now they are richer than we are. We cannot get into their markets. We still, as a result of the fifth column, keep saying ''free trade, free trade, Smoot-Hawley, Smoot-Hawley.'' We are losing our shirts. We are losing our shirts.

By the year 2015, the People's Republic of China will come along. They are producing economically. I just visited there in April, and I think they are going capitalistic. I think it will succeed. I hope. And we have our fingers crossed it will succeed.

What do we need to do? We need to really start enforcing our laws on the books. Get rid of the International Trade Commission. You can see the political cabal that comes in any time they appoint a member. They have to swear on the altar of free trade, almighty allegiance, and everything else before they go over there. That is a big part of the fifth column. We have to quit financing.

We have to actually someday repeal that GATT, World Trade Organization. We lost our sovereignty. In the Kodak case, we found out, Mr. President, we found out that we lost our sovereignty because the Japanese said, ''Go to the WTO,'' instead of really enforcing what we said on the floor of the Senate. They said, ''Oh, no, we're not going to do away with section 301.'' The Japanese have said, ''You have already done away with it when you signed up.''

You get these emerging nations and you see how they vote. Back in April we had these particular human rights violations in the People's Republic of China. We brought it up at the United Nations. The United Nations voted to have a hearing on it. Our friends at the People's Republic went down into Africa; they picked up the emerging nations' votes, and they said human rights was a nonissue. They have not even had a hearing. That is politically how that U.N. crowd works. When are we going to wake up in this land of ours and not understand the fifth column working against the American industrial worker?

So we need more customs agents. And, yes, Mr. President, we need the Dorgan-Hollings measure to cut out these subsidies of tax deferrals for those who are induced with incentives to go abroad and make more money. We need to change our tax laws, a value added tax.

If I manufacturer this desk in the State of South Carolina, I have to pay the income tax, the corporate tax, the sales tax involved, and everything else, all the taxes, and I ship it to Paris, France. If I manufactured this desk in Paris, France, they put on a value added tax of 15 percent, but when it leaves the port of Le Havre to come here to Washington, they deduct the 15 percent. That is a 15 percent disadvantage to a manufacturer in the United States of America, and we need the money.

The Budget Committee, eight of us, bipartisan, in 1987, voted to get on top of this monster with a value added tax allocated to the deficit and the debt. But these pollster-politicians running around, ''I'm against taxes, I'm against taxes, I'm against taxes; I'm going to give you a 15 percent tax cut,'' when we are broke in the Government. Growth, growth, growth—there is no education in the second kick of a mule.

How do you think this got up to a $5.23 trillion debt? We never got to $1 trillion until Ronald Reagan came to town with Kemp-Roth. And he debunked it. Senator Bob Dole debunked it. Howard Baker called it a ''riverboat gamble.'' George Walker Herbert Bush, President Bush, called it ''voodoo.'' But now we have a party running for national office on voodoo. When are we going to learn and sober up?

The Dorgan-Hollings amendment is a wakeup call here to the reality of the greatness of this Nation. Historically, we had this in the very earliest days. David Ricardo in ''The Doctrine of Comparative Advantage.'' They came to Alexander Hamilton and James Madison and Jefferson, because they all joined in with Hamilton. The Brits said, when we won our freedom in this little fledging nation, they said, ''Look, you trade with what you produce best, and we'll trade back with what we produce best''— ''The Doctrine of Comparative Advantage,'' economics 101, David Ricardo.

Alexander Hamilton wrote a little booklet, ''Reports on Manufacturers.'' It is over at the Library of Congress. Do not read the entire booklet, but in one word he told the Brits, ''Bug off.'' He said, ''We are not going to remain your colony and just ship our agricultural products, our iron, our timber, our coal. We are going to be a Nation-State, and we are going to manufacture, we are going to manufacture and produce our own products.''

When they talk of tariffs, the second bill—the first bill had to do with the seal—the second bill that passed this great Congress that we stand in, on July 4, 1789, I say to the Senator from Nebraska, the second bill that we ever passed was a tariff bill of 50 percent on 60 articles going right on down the list. We built the greatness, the economic strength, this economic giant, the United States of America, with protectionism.

We did it with Lincoln when we built the steel mills for the transcontinental railroad. We came to Nebraska under Roosevelt and said, for agriculture, we are going to put in price supports and protectionism, protective quotas that I support under Roosevelt to rebuild from the darkness of the Depression. With Eisenhower, oil import quotas, we have used protectionism. So do not come here and give me ''Smoot-Hawley protectionism. Are you for free trade?'' And everybody running around like children, hollering, ''There's no free lunch. There's no free trade.'' I yield the floor.

Mr. MOYNIHAN. Mr. President, under the amendment of my friend from North Dakota, U.S. corporations or individual investors that own 10 percent or more of the stock of a U.S.-controlled foreign corporation would be taxed currently on the foreign corporation's profits when it sells goods back into the United States. Under present law, such profits are not taxed by the United States at the time earned. Instead, taxation is deferred until the foreign corporation's earnings are repatriated, that is, returned to its U.S. shareholders in the form of dividends or gains on the sale of their stock. In many cases, the sole U.S. shareholder of a foreign corporation is the parent corporation. In other cases, several U.S. corporations or investors own the foreign corporation.

The premise underlying this proposal is that plants are being moved abroad for tax reasons. While this is a fair topic for examination, I do not believe this has been established with any certainty, and before the current rules are changed it must be. Investment abroad that is not tax driven is good for the United States. It promotes exports and enhances the competitiveness of our companies.

The evidence suggests that the decision to locate production abroad primarily depends not on tax considerations, but instead on practical business considerations, such as proximity to raw materials, access to distribution channels, lower wage rates, prospects for growth, regulatory climate and other nontax factors. Taxes are certainly taken into account, but they are not the predominant factor, since the bulk of U.S. direct investment in foreign countries is in countries with effective business tax rates in excess of, or comparable to, the United States.

Over 70 percent of assets held by United States-owned foreign manufacturers are held in high-tax jurisdictions, such as Canada, the United Kingdom, Japan, Germany, France, Italy, Belgium, and Australia. In contrast, the two low-tax jurisdictions most often cited as having runaway plants—Ireland and Singapore—have only 4.2 percent of the total assets held by United States-owned foreign manufacturers. Furthermore, excluding Canada, only 7.2 percent of total sales by United States-owned foreign manufacturers were to the United States market in 1990, with over 60 percent to local markets and the remainder to other foreign countries. Finally, according to the Departments of Treasury and Commerce, less than 15 percent

of total imports from U.S. affiliates came from low-tax countries. Thus, the weight of the evidence indicates that, at most, taxes appear to affect investment decisions only where the investor is relatively indifferent between two locations.

Would this amendment be effective in keeping production in the U.S.? It is hard to imagine that it would alter many decisions to locate plants abroad. Those producing goods abroad for the U.S. market would continue to do so for practical reasons, and simply face higher taxes. For example, the proposal would apply to a U.S.-owned company that grows bananas abroad and imports them into the United States, even though there are virtually no producers of bananas in the United States. As a result, the bill would have a negative impact on many businesses that would not be economically viable in the United States, or for which locating production in the United States would be impractical. At the same time, the vast majority of U.S. businesses with foreign subsidiaries would not be greatly affected by the proposal because their foreign operations do not produce for the U.S. market. Over 90 percent of all sales by United States-owned foreign manufacturers located outside of Canada are to foreign markets.

From the standpoint of competitiveness, other countries typically do not require their taxpayers to pay tax currently on the earnings from operations conducted abroad by a foreign subsidiary. U.S.-owned businesses must compete against foreign-owned businesses that are located in low-tax jurisdictions and are not taxed currently by their home countries. It is unlikely that many of our major trading partners would respond to enactment of this amendment by imposing current taxation on their companies.

Administrability of the amendment of the Senator from North Dakota is also a concern. Under the legislation, U.S. shareholders would be taxed currently not only on the profits from imports into the United States, but on the foreign corporation's income from sales to third parties that import the goods into the United States, if it was reasonable to expect that such property would be imported into the United States, or used as a component in other property which would be imported into the United States.

Staff at the Treasury Department and the Joint Committee on Taxation have raised questions about the administrative feasibility of enforcing the provision in the case of foreign corporations selling outside the United States to a third party importer. It would be very difficult for the IRS to identify those sales to third parties triggering taxation because the products are destined for the U.S. market, particularly given that many taxpayers could be expected to restructure their U.S. sales via third parties in an attempt to avoid the provision. Further, the recordkeeping required of taxpayers could be onerous.

Finally, this proposal conflicts with the intent of the Multilateral Agreement on Investment of the Organisation for Economic Co-operation and Development [OECD]. Since 1991, the United States has been working toward a legally binding comprehensive investment agreement in the OECD. In May 1995, the OECD Council finally agreed to negotiate a Multilateral Agreement on Investment. The objective of the United States in those talks is to reach agreement that will set high standards for liberalizing investment rules and increasing investment protection. The idea is to make foreign investing safer for U.S. companies because U.S. investment overseas promotes exports and enhances the competitiveness of our companies. Foreign subsidiaries of U.S. companies are the primary customers for U.S. exports—over one-fourth of U.S. exports go to them each year. Those exports account for more than 2 million of the 8 million U.S. jobs supported by U.S. exports. The proposal before us goes in exactly the opposite direction of our efforts in the OECD.

I am committed to doing everything possible to ensure that the U.S. economy remains strong, that decent jobs are available to those that seek them, and that American workers dislocated by the increasingly global economy are assisted in finding new opportunities. However, I believe the opening of production facilities abroad is often good news, not bad, and that this amendment would not accomplish its stated purpose.

I hope we will not act improvidently on this important matter, and I therefore urge that this amendment not be adopted.

Mr. HATCH. Mr. President, I rise today in opposition to the amendment from the Senator from North Dakota.

Mr. President, this is another one of those amendments that sounds so easy, so simple, and so straightforward, that it seems that every member of this body should be immediately jumping up on his or her feet and agreeing with what the distinguished Senator from North Dakota is saying. I only wish our world were as simple and the problems so easy to solve as the proponents of this amendment would have us believe.

However, today's world is not very simple, especially when we are discussing the world of international business and the tax law. Unfortunately, the assumptions upon which this amendment are based are just plain wrong and the result will be to punish companies for looking out for the best interests of their employees and stockholders.

First, let me make it clear, Mr. President, that I have no doubt that the Senator from North Dakota and his supporters are very sincere in their beliefs about this issue, and that the amendment is well intentioned. However, based on the real world that we live in, the amendment is both unnecessary and will prove to be counterproductive.

As I understand the amendment, it is based on S. 1597, which the Senator from North Dakota introduced this past March. This bill would deny what my friend from North Dakota calls unwarranted tax breaks to U.S. companies that set up manufacturing operations in a foreign country and export goods from those operations back into the United States.

In the floor statement that accompanied the introduction of S. 1597, the Senator from North Dakota implies that a large number of American companies are abandoning U.S. soil and removing their operations, lock, stock, and barrel, to other locations on the globe where they can find cheaper labor and lower taxes. As a result, goes the argument, American jobs are being lost in the process. And, according to the Senator from North Dakota, to add insult to injury, our tax code is rewarding such behavior with special tax breaks.

S. 1597, and the amendment before us, is designed to end what he calls unwarranted tax breaks and punish those supposedly unscrupulous companies that are allegedly taking unfair advantage of the rules to gain profit for themselves at the expense of American workers.

Well, Mr. President, at first blush, who wouldn't be in favor of cracking down on such awful practices and unfair tax breaks?

The only problem is that the scenario set out by the Senator from North Dakota does not reflect what is going on in the real world. It is an oversimplistic solution to a misidentified problem.

In the world as oversimplified by the proponents of this amendment, U.S. companies are abandoning loyal American workers to save a few dollars an hour with cheap overseas labor in tax haven countries. In the real world, Mr. President, this is simply not the case. At least two-thirds of the investment and sales of foreign subsidiaries of U.S. companies are in countries where the average labor cost is higher than in the United States. Moreover, the average tax rate paid by U.S. multinational companies is lower in the United States than it is outside the United States. More than 75 percent of all imports to the United States from U.S.-owned foreign subsidiaries is from developed nations, where taxes typically are either higher than or similar to the U.S. rate.

While it is true that some U.S. companies have set up manufacturing operations in other countries with lower labor costs, they have generally done so in order to stay competitive with other companies in the same industry that have cheaper labor costs.

We live in a global economy, Mr. President. Many products, especially those in the high technology industries, can be as easily assembled in Malaysia as in California. When U.S. companies have taken their low-skill assembly operations overseas, they have done so as a matter of survival. In

other words, any jobs lost to Americans by a move of an assembly plant overseas would most likely have been lost anyway—and probably then some.

Companies that go out of business because they are no longer competitive pay no wages and create no new jobs and pay no taxes. Companies that can successfully compete in the world marketplace most often expand employment, add security to U.S. workers, and contribute to the U.S. tax base.

In the world as oversimplified by the proponents of this amendment, U.S. companies are moving their manufacturing operations to other countries, only to export the majority of the product back to the United States. In the real world, Mr. President, again, this is simply not the case. In 1993, 66 percent of the sales of U.S. foreign subsidiaries were made to customers in the foreign country, 23 percent were made to customers in other foreign countries, and only 11 percent were exported back to the United States.

These data show that one of major real-world answers as to why U.S. companies set up manufacturing operations overseas is to be closer to their customers. Many customers demand a local presence of their supplier. Moreover, as a practical matter, local conditions often dictate that the U.S. company manufacture locally in order to be able to take advantage of the business opportunity in that country. For example, how could U.S. software manufacturers sell their products abroad without local operations to customize and service the software? We have seen the same thing happen in the United States, where foreign automobile manufacturers have moved their operations here in order to be closer to their markets.

Contrary to what the Senator from North Dakota is asserting, there are often a number of benefits to the domestic job market when a U.S.-based multinational company sets up a subsidiary in a foreign country. The 1991 Economic Report of the President notes that ''. . . U.S. direct investment abroad stimulates U.S. companies to be more competitive internationally, which can generate U.S. exports and jobs. Equally important, U.S. direct investment abroad allows U.S. firms to allocate their resources more efficiently, thus creating healthier domestic operations, which, in turn, tend to create jobs.''

I would also note, Mr. President, that the overseas business operations of U.S.-based multinational companies contributed a record net surplus of $130 billion in 1990 to our balance of payments. This number has very likely gone even higher in the years since 1990. In addition, these U.S.-based multinational companies have been responsible for significant employment in the United States. Much of this employment is generated by the foreign operations of these corporations. For example, in most cases, the research and development work that leads to the assembly operations overseas is performed right here in the United States. Let's look again at the software industry, which is very important to my home state of Utah. Additional sales in foreign countries, generated by subsidiaries of U.S. software companies, lead to increased employment in the United States to support those sales and to continue the research necessary to improve those products.

Now, Mr. President, let's discuss just exactly what this amendment would do. At the heart of the so-called tax break that the Senator from North Dakota is trying to partially eliminate is the long-standing tax principle that says a taxpayer doesn't have to pay tax on income until that income is received. One example of this concept that individuals run into every day is the fact that we do not have to pay taxes on unrealized capital gains on property until we sell that property. For instance, if a taxpayer holds 100 shares of stock that he or she bought 20 years ago at $10 per share, and that stock is now worth $100 per share, our tax code does not tax that individual until he or she actually sells the stock and realizes the gain.

We have a similar principle in place that applies when a U.S. company sets up a subsidiary in another country. Under the tax law, with some exceptions, the U.S. company does not have to pay tax on the earnings of the foreign subsidiary until the money is actually returned to the U.S. parent. This principle is commonly known as deferral because the tax is deferred until the earnings are repatriated to the United States, much the same as the tax is deferred to an individual on a capital gain until the sale is accomplished and the gain is realized.

What the amendment before us would do is to end deferral to the extent that income is earned on goods shipped back into the United States. What, one might ask, is wrong with this? Wouldn't this be effective in preventing U.S. companies from uprooting their domestic manufacturing operations and moving them overseas?

Mr. President, I submit that there are several major problems with this proposal and that it would not be effective. Indeed, I believe this proposal would be counterproductive and result in fewer U.S. jobs. The amendment goes way beyond the problem being described and applies where there is no indication of alleged abuse. For one thing, there is no provision in the amendment to limit the loss of deferral to those situations where actual U.S. employment has been displaced. Indeed, the amendment doesn't even require that there be a showing of increased foreign investment or reduced U.S. employment. Thus, any U.S. company with existing foreign operations could be penalized, even if no U.S. plants closed and even if the U.S. employment actually increased.

In addition, this amendment would add a great deal of complexity to an already mind-numbingly complicated part of the Internal Revenue Code. The determination of ''imported property income'' as required by the amendment would require a whole new set of assumptions and recordkeeping, all of which adds to the huge compliance burden already faced by all taxpayers. Moreover, the Internal Revenue Service would have to add more trained personnel to audit this provision, and this at a time when Congress and the American people are demanding cuts in IRS funding. The provisions in the amendment calling for a new foreign tax credit basket would also add more complexity and unfairness from possible double taxation. The administrative expenses of complying with these provisions could easily outweigh the amount of revenue collected from this amendment.

Finally, Mr. President, this provision is not likely to achieve its goal of retaining U.S. jobs. Many countries with wages lower than those in the United States also have high corporate income tax rates. Loss of deferral in these countries would not result in any extra U.S. tax liability because the U.S. tax would be offset with the foreign tax credit for income taxes paid in the foreign country. Additionally, because this amendment does not affect the major reason that U.S. companies establish foreign subsidiaries, which as I mentioned is to be closer to its customers, this change would only punish companies that try to better compete in a world market. These firms will still take whatever action is necessary to compete globally. But, if the U.S. begins to punish them for being responsive to world competition and for taking advantage of international business opportunities, the result might be that some companies could move all operations out of the United States to reduce the onerous results of this amendment. At the very least, the increased cost of complying with these unnecessary provisions would leave less money available for companies to expand and create more U.S. employment.

In the real world, Mr. President, multinational companies are making business decisions based on a number of economic factors, only one of which is the tax consideration. This amendment tries to simplify a complex world and solve a problem without realizing the real causes of the problem. As a result, the solution doesn't fit and it simply will not work.

As a final note, Mr. President, it is important to note that this amendment does not belong on this bill. As my colleague from North Dakota well knows, this is a tax provision that can only be considered, under the U.S. Constitution, on a revenue measure originating from the House of Representatives. The underlying appropriations bill is not such a measure. Therefore, if the Senate were to make the mistake of passing this measure, the House would undoubtedly exercise its prerogative and send this bill back to the

Senate under the so-called ''blue slip'' procedure. This, of course, would only delay in getting an important appropriations bill passed.

I urge my colleagues to oppose this perhaps well-intentioned but seriously misguided amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. 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. GORTON. Mr. President, this amendment is bad policy from top to bottom. If enacted, it would hurt U.S. companies and destroy jobs. It is, I am afraid, motivated more by political considerations than anything else.

Under generally accepted tax principles in the United States and around the world, income is taxed when it is realized by a taxpayer. When income is earned but not received until some future date—say, for example, income in a pension plan or an individual retirement account—then taxation is normally deferred.

Eliminating or even limiting deferrals would put American companies at a competitive disadvantage in the global marketplace. This amendment does not—as it purports to do—eliminate a privilege; rather, it imposes a penalty, and a severe one at that. It will not increase revenues for the U.S. Treasury. It will, however, hurt American companies that are trying both to run their day-to-day operations and to compete with foreign businesses.

What does this amendment do? It assumes that allowing U.S. multinationals to defer taxes on the income of their foreign subsidiaries is a tax break. That is a false assumption, because deferring only means that taxes are not due until the time that income has actually been received, or in the case of multinationals, repatriated back to the U.S. parent company. This amendment not only taxes income before it is realized, it carries with it the potential to tax income that is never realized at all.

Since none of our trading partners subject their companies to such a burden, our companies would suffer. No other country in the world denies deferral on active business income as extensively as the United States, now, with respect to passive income, for example. According to a 1990 white paper submitted by the International Competition Subcommittee of the American Bar Association Section of Taxation to congressional tax writing committees, France, Germany, Japan, The Netherlands, and others, do not tax domestic parent companies on any earnings of their foreign marketing subsidiaries until such earnings are repatriated. The earnings are deferred without additional tax penalties.

No one can doubt the importance of the global economy to American jobs and American economic strength. If we are to provide good jobs for our citizens, it is important that we stay competitive. Already, current tax rules create a disadvantage for U.S. businesses that operate overseas and compete in foreign markets. Recent data demonstrate that U.S. multinationals are already taxed more heavily on their foreign income than on their domestic income. The current U.S. Tax Code has a strong bias against U.S. multinationals. Its sourcing rules and strict limitations on foreign tax credits expose the foreign investments of U.S. companies to double taxation. It also gives less favorable treatment to foreign affiliates by making them ineligible for the R&D tax credit or accelerated depreciation, and denies them the ability to include losses in the U.S. parent's consolidated income tax return. Current law does not, as the sponsors of this amendment assume, reward U.S. corporations with offshore operations.

Clearly, imposing more taxes on American companies weakens U.S. international competitiveness, hurts American companies and American jobs, and gives our foreign competitors a greater advantage—just the opposite of what the amendment's sponsors say they want.

Not only will this amendment increase direct taxes on U.S. companies, it will also increase regulatory costs associated with compliance and enforcement. The proposal will add enormous complexity to the already onerous and complicated U.S. Tax Code in the area of international taxes. The changes will be difficult for businesses to comply with and virtually impossible for the IRS to administer and enforce. For example, a U.S. multinational may manufacture a component—say, a computer chip —that eventually finds its way into a finished product that is ultimately imported into the United States by a foreign company, without the U.S. multinational's knowledge or consent. The IRS, in this case, would have to trace potentially long chains of unrelated parties that may alter a product or incorporate it into another product in order to enforce the requirements of this proposal. Similarly, businesses would have to employ complicated and tedious procedures to determine if their products could potentially ever be imported back into the United States. That, Mr. President, is just one reason that proposals like this need careful study by the Finance Committee, not an instant debate on the floor.

This amendment means more taxes, more regulations, and more power to the IRS—powers which, I can assure my colleague, the country hardly needs.

Today, U.S. companies face intense competition in both domestic and international markets. Nothing can be worse for our companies struggling to compete in the global economy than to burden them with more government regulations and taxes.

There are several mistaken premises in this amendment, and I would like briefly to address some of them.

First of all, the amendment's underlying premise is that when American companies open factories, plants and offices overseas, they reduce American jobs. That's simply not true. U.S. firms establish operations abroad primarily in order to penetrate foreign markets and take advantage of foreign business opportunities. In many cases, U.S. manufacturers cannot sell to foreign customers unless they have local plants in those foreign countries. For example, under the Canadian auto pact, United States companies must manufacture in Canada to export into the Canadian market. Without United States operations in Canada, the United States would lose the current $44 billion of sales in Canada. Were that to happen, the consequences to America would be serious indeed—not only in terms of economic damage, but in terms of lost jobs —American jobs—as well.

Another misperception is that American companies move their operations overseas so that they can procure cheap labor. Again, not so. Most multinational companies' foreign investments are in other industrialized countries where labor costs are often higher than in the United States. In 1993, two-thirds of the assets and sales of United States-controlled foreign corporations were in seven countries: the United Kingdom, Canada, France, Germany, Japan, the Netherlands, and Switzerland. The average annual compensation paid by these corporations in 1993 was $49,005, 15 percent higher than the average $42,606 compensation paid in the United States. U.S. firms do not go abroad for cheap labor, they go abroad because their business demands it. For example, industries that rely on natural resources must develop them in the geographic locations in which those resources are found.

This amendment also assumes that overseas operations cost U.S. jobs. Wrong again. American operations overseas produce American exports. Exports support and create American jobs. Consider this: The Department of Commerce has calculated that every $1 billion dollars in manufactured exports creates—directly—14, 313 manufacturing jobs in the United States Clearly, U.S. companies that have operations overseas are a benefit to, not a detraction from, American jobs and the American economy.

The amendment incorrectly assumes that U.S. companies invest offshore to export back to the U.S. market. But a look at the facts shows the reverse. In 1993, 66 percent of U.S. multinational sales were within the foreign company of incorporation, 23 percent of sales went to other foreign locations, and only 11 percent represented exports to the United States. If anything, multinationals are boosting the U.S. trade

balance. According to 1993 Commerce Department data, U.S. multinationals decrease the trade deficit by $11.5 billion per year.

I must say that it's too bad the sponsors suspect the worst motives in our American companies, rather than supporting them as they look for new opportunities to boost the American economy and create new jobs in the United States.

While few would disagree with the stated goals of this amendment—preventing U.S. job loss and encouraging U.S. competitiveness—it is clear that in practice this amendment would have exactly the opposite effect. Let's call a spade a spade. This is not a proposal to stimulate employment or to strengthen America's position in the international arena. It is a protectionist, antitrade measure that attempts to exploit the fears and insecurities that Americans feel today due to the real degree of economic uncertainty. But the American economy is not being hurt by U.S. trade or by U.S. businesses expanding their presence overseas. Rather, trade and overseas investment strengthen and expand our economy.

When American businesses go overseas, it is a sign of American economic strength and expanding opportunities. It means that American companies are competitive throughout the world. We should be happy to see our companies doing so well, instead of fearing international growth. We are the world's economic superpower, and should be encouraging international development and promoting trade, not discouraging it as this amendment does.

The entire argument of the Senator from South Carolina can be summed up by one of his own lines: ''This country is going out of business.''

If you believe that statement, then support this amendment and every other protectionist idea that comes down the pike. But if you believe, as I do, that we are the most successful and competitive economy in the world and with the most free and fair competition, vote with me and table this amendment.

And one other point in reflection of the Senator from South Carolina: Boeing believes that the Chinese commercial aircraft market over the next 20 years will reach $185 billion. Obviously, it will go to those suppliers who will allow some of the work to be done in China. As Larry Clarkson, Boeing's top official for international development says: ''If we hadn't moved work to China, we wouldn't have gotten orders.''

I think he knows more about Boeing's business than the Senator from South Carolina—and Boeing is now hiring—in the United States.

Mr. HOLLINGS. Mr. President, the people of the Republic of China characterize me as the ''Senator from Boeing.'' I realize that the French airbus was competing with us, and we are proud of Boeing and we are proud of its products. I am a competitor and I want to see the United States win at all costs.

However, when we debated our textile bills and I passed one vetoed by President Carter, two vetoed by President Reagan, one vetoed by President Bush, get them to pass it, keep knocking on the door, I kept watching our colleagues from the State of Washington who opposed us with the free trade, and how wonderful to have trade overseas, which nobody denies. Everybody believes in trade. Instead of abolishing the Commerce Department, I am standing on this side of the aisle trying to defend commerce and to defend the department and trying to defend trade. But what you have to do is emphasize this flow of imports into the United States and find out why.

Let me read from this article one little paragraph about Boeing. In the article, ''The Ex-Im Files,'' by William Grieder. It was previously printed in the RECORD:

> The White House also led cheers for Boeing because Boeing was also stomping its competitors in the Chinese market. In 1994 alone, Boeing sold 21 737s and seven 757s to various Chinese airlines and obtained nearly $1 billion in Ex-Im loans to finance the deals. When President Clinton hailed the news, he did not mention that Boeing had agreed to consign selected elements of its production work to Chinese factories. The state-owned aircraft company at Xian, for instance began making tail sections for the 737, work that is normally done at Boeing's plant in Wichita, KS. The first order for Xian was for 100 sets, but that was just the beginning. In March 1996, a China news agency boasted that Boeing had agreed to buy 1,500 tail sections from Chinese factories, both for the 737 and the 757. The deal was described as ''the biggest contract in the history of China's aviation industry.''

Now, Mr. President, one, that is in violation of the Export-Import Bank law. So it is not partisan guilt or liability or misunderstanding. The President of the United States, hailing it under the Export-Import Bank, is for production in the United States, not to finance production in China. You ask what to do, how to wake them up. ''Free trade, free trade. It is wonderful for trade and you don't lose jobs and it is good for the economy.'' Here are the facts. As I warned 25 years ago, or almost 30 years ago, in that debate, I said, wait until it hits you.

Last year, to Mexico we lost 10,000 textile jobs. We said in the NAFTA debate that we were going to lose them. Now we know from NAFTA, we have gone from a plus balance of $5 billion exports, exports, exports—how about the imports?—to a deficit of $15 billion. And those who oppose us will admit we have lost at least 300,000 jobs.

Point: Boeing is having it happen to them. If you are going to lose your textiles, you are going to lose your flatware, you are going to lose your steel industry, your manufacturers and industrial strength. You are going to lose one thing we are preeminent in, airplane manufacturing, and finance it in violation of the Export-Import Bank. Then if we haven't done anything else, I say to the Senator from North Dakota, we have at least awakened them, given them a wakeup call for what is going on, because it's going to happen in Washington and in Wichita, KS, where they make the wonderful planes we are so proud of. But they are going to be losing the jobs. Airbus is taking over. I opposed the Ex-Im contract with Japan. Wait until the Japanese and Chinese start manufacturing aircraft. Then I want to see this crowd here. We will come in coveralls when we can't afford decent clothing, hollering ''free trade, free trade, free trade.''

This country is going out of business. We need to wake up. These are the kinds of things to debate. Let's take that Dorgan-Hollings amendment and vote it up, and don't say this is an amendment against trade. This is just an amendment to put the foreign manufacturer on the same basis as American manufacturers for American corporations.

I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. I will not further delay this, with the exception of making two points. I was off the floor. My understanding is that a couple of points were made in opposition to this legislation that I want to respond to. One is that this would prevent an American company from establishing offshore production with which to compete against a foreign company that is producing offshore and selling in some foreign country. This bill doesn't affect that at all. If you are opposed to this bill for that reason, smile; this bill doesn't affect that. This bill only affects U.S. producers who move offshore to produce for the purpose of sending the production back into our country. That is the only purpose.

Second, this would be enormously complex, we are told. A wonderful article was written by Lee Sheppard recently. She says something about that. She wrote:

> Complexity never seems to bother corporate tax managers when it flows in their favor, such as in transfer pricing or the design of nonqualified deferred compensation plans. Surely no one wants to add materially to the complexity of America's already complex foreign tax provisions, though no one is seriously suggesting simplifying them in business's favor. The Dorgan bill proposes a destination-based tax liability; other provisions, like the foreign sales corporation provisions, grant destination-based benefits.

My point is that those who stand up and use the corporate arguments being offered around town in ample quantities are using arguments that largely don't apply to this. So, as I said previously, if you believe our Tax Code ought to be neutral on the question of whether you export American jobs, just to make it neutral, then vote for this amendment. If you believe we should continue doing what we are doing, subsidizing the export of jobs, then vote against the amendment, and then let's

have a further discussion at some later point. I hope Members of the Senate will decide to support this.

With that, I yield the floor.

Mr. ROTH. Mr. President, this tax amendment is not appropriate at this time.

This appropriations bill is not a revenue bill. If this amendment passes, this appropriations bill will be potentially subject to a blue slip by the House. A blue slip would in effect kill this bill and the Senate would have to start anew.

Therefore, a tax amendment at this time would unnecessarily jeopardize the appropriations process. Amending an appropriations bill is not the proper way to make fundamental changes to international tax policy.

The international area is a very complex section of the Tax Code. No one is happy when certain companies move abroad and manufacture products that are sold back to the United States.

At the same time, it is important to understand that American companies are players in the global economy and that expansion abroad means more jobs back home. In fact, by 1990, manufactured exports of American companies with operations overseas created over 5 million jobs in the United States.

If we are to continue to provide good jobs for our citizens, it is important that we stay competitive in this emerging global economy by expanding our presence abroad.

American companies with overseas investments have been waging a hard fight, but a successful one to keep exports flowing from the United States.

American companies operating overseas also help the balance of trade for the United States.

According to the Department of Commerce, in 1993, American companies operating overseas helped reduce our trade deficit by $11.5 billion.

A study by the National Bureau of Economic Research found that manufacturing by foreign affiliates of American companies increases exports from the American parent company located in the United States.

This amendment attacks the tax rule known as deferral and would materially increase the cost to many American companies engaged in business overseas.

This increase in costs will make it more difficult for American companies to compete with foreign manufacturers that are not subject to these additional costs.

This amendment is based on the assumption that if companies don't build plants abroad, they will automatically build plants in the United States. In fact, many companies would probably just decide not to expand at all.

If additional production facilities are not added, American companies would lose economies of scale that help them compete in the global marketplace.

These economies are particularly crucial in the commodities business where price really matters.

American companies would also be hurt in their efforts to expand in foreign markets.

Our companies are motivated to invest abroad in order to penetrate markets otherwise commercially inaccessible to American firms and then expand that market share.

The absence of American companies abroad would limit our ability to sell to foreign customers.

There is a positive relationship between investment abroad and domestic expansion.

Leading American corporations operating in both the United States and abroad have expanded their employment and sales in the United States, their investments in the United States, and their exports from the United States at substantially faster rates than industry generally. During the 1980's, American exporting companies had a better record on employment than the typical large American manufacturing firm.

The contention that American manufacturing companies are harming our economy by shifting jobs abroad and importing cheaper products into the United States simply does not bear up under scrutiny.

Rather, the exact opposite is true. Investment abroad by American exporting companies provides the platform for growth in exports and creates jobs in the United States.

Overall, this amendment would hurt our economy. It would decrease the activities of domestic exporters and decrease jobs in the United States.

This misguided amendment would give foreign-owned companies a huge competitive advantage and help them provide economic and job benefits for their home countries at the expense of the United States.

We do not need to adopt legislation that hurts companies who go abroad for the legitimate purpose of becoming competitive in the international market.

Overall, this area is one of extreme complexity and of greatest importance to our economy and the creation of jobs in America.

The major international tax policy changes which would result from this amendment are within the jurisdiction of the Senate Finance Committee. It would be inappropriate and dangerous for such significant changes to the Tax Code to be made piecemeal on the Senate floor.

As I have stated in the past, the Finance Committee will be holding hearings to look at the international area and the kind of issues that are raised by this amendment.

For these reasons, I must respectfully oppose this amendment.

Mr. SHELBY. Mr. President, the chairman of the Senate Finance Committee is opposed to the amendment of the Senator from North Dakota. In his statement, he raises several important points that I want to share with you right now. The most important is that this amendment, the Dorgan amendment, if accepted, would potentially subject the entire bill, including funding for drug enforcement, law enforcement, to a blue slip. This would effectively kill the entire bill and, with it, funding for critical priorities such as the drug czar, drug enforcement, Customs, border guards, ATF, Secret Service, White House, IRS, civil service pensions, and so forth.

The Senator from North Dakota raises an important issue, and it ought to be debated and considered by the appropriate committee at the appropriate time. I don't believe this is the right time. It is misplaced here and it threatens to jeopardize our entire bill today. I note that the House, for the record, has blue-slipped less blatant attempts to raise revenues and change tax policy. Some of you will recall that 2 years ago the Senate adopted an amendment with regard to taxes on diesel fuel. It passed overwhelmingly here in this body, and it had strong support in the House at that time, including from the then-chairman of the Ways and Means Committee. Yet, because of the constitutional issue, he chose to utilize the blue-slip procedure over there and the Treasury bill was sent back to the Senate. In effect, had the Senate not adopted separate legislation striking that provision, the House would have had to begin the process of drafting and moving the necessary appropriations bill all over again.

I don't believe that is what we want to happen here. I don't believe we can afford such a procedure. Our Nation's law enforcement people, Mr. President, cannot afford such a procedure. Our Nation's drug policy and funding for that policy cannot afford such a procedure. This country's civil servants, who rely on this bill every year to fund their pensions and disabilities, cannot afford such a procedure here. I cannot stress enough this afternoon the important funding in this bill —and most of you are aware of this—which this amendment would jeopardize.

Mr. KERREY. Mr. President, I have cosponsored and voted for this amendment in the past, but the fact this is a tax issue put on an appropriation bill has caused me some concern. The Senator from Alabama, the chairman, is quite right. In this instance, as a consequence of the revenue issue, we risk having this whole thing sent back over to us. Otherwise, I would be supporting the Senator from North Dakota without any reservations. I urge colleagues to consider the procedural issue here and, when Senator SHELBY of Alabama so moves, keep this concern in mind.

Mr. SHELBY. Mr. President, to reassert this amendment raises constitutional questions with regard to raising revenue, which we are all familiar with. For these reasons I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alabama to lay on the table the amendment of the Senator from North Dakota. On this question, the yeas and nays were ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

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

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 282 Leg.]

YEAS—58

Abraham	Frist	Mack
Ashcroft	Glenn	McCain
Baucus	Gorton	Moynihan
Bennett	Gramm	Murkowski
Bond	Grams	Murray
Breaux	Grassley	Nickles
Brown	Gregg	Nunn
Burns	Hatch	Pressler
Chafee	Hatfield	Roth
Coats	Helms	Santorum
Cochran	Hutchison	Shelby
Cohen	Inhofe	Simpson
Coverdell	Jeffords	Snowe
Craig	Johnston	Specter
D'Amato	Kassebaum	Stevens
DeWine	Kempthorne	Thomas
Domenici	Kyl	Thompson
Faircloth	Lieberman	Thurmond
Feinstein	Lott	
Frahm	Lugar	

NAYS—41

Akaka	Feingold	McConnell
Biden	Ford	Mikulski
Bingaman	Graham	Moseley-Braun
Boxer	Harkin	Pell
Bradley	Heflin	Reid
Bryan	Hollings	Robb
Bumpers	Inouye	Rockefeller
Byrd	Kennedy	Sarbanes
Campbell	Kerrey	Simon
Conrad	Kerry	Smith
Daschle	Kohl	Warner
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Exon	Levin	

NOT VOTING—1

Pryor

The motion to lay on the table amendment No. 5223 was agreed to.

Mr. SHELBY. Mr. President, I move to reconsider the vote.

Mr. KERREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KERREY. I ask unanimous concept to add Senators SNOWE and PRESSLER as cosponsors to Amendment 5232 regarding IRS reorganization.

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

The Senator from Alabama.

AMENDMENT NO. 5206

Mr. SHELBY. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is amendment No. 5206, the WYDEN amendment.

Mr. SHELBY. Mr. President, the WYDEN amendment contains direct spending and revenue legislation which would increase the deficit by $85 million for the period 2002 through 2006.

At this point, I raise a point of order, pursuant to section 202 of House Concurrent Resolution 67, the concurrent resolution of the budget for the fiscal year 1996. I raise the budget point of order.

Mr. WYDEN. I move to waive the point of order and ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak on my amendment at this time.

The PRESIDING OFFICER. The motion is debatable.

Mr. WYDEN. Mr. President, the Senator from Alabama is raising a point of order on a revenue issue that simply does not apply to this amendment. I believe the Senator from Alabama is talking about a Congressional Budget Office report that was done on the House legislation on this matter, and I would just like to inform my colleagues that this amendment contains a change from the House legislation, a change that was added at the direct request of a number of managed care organizations, that deals with this question of revenue.

If I could briefly engage the Senator from Alabama on this matter? The Senator from Alabama, I know, is trying to juggle a number of matters, but I would like to ask the Senator from Alabama, does he have a Congressional Budget Office report at this time that specifically cites this revenue projection on my amendment which is pending before the Senate?

Mr. SHELBY. If the Senator from Oregon will yield?

Mr. WYDEN. I am happy to yield.

Mr. SHELBY. We have an oral statement from the Budget Committee staff that this violates the concurrent resolution and will cost $85 million. They scored it that way.

Mr. WYDEN. Mr. President, the Senator from Alabama told me that he does not have an official report from the Congressional Budget Office with respect to revenue on it. The Senator has said that the majority staff projects that it will cost $85 million.

Mr. SHELBY. If the Senator from Oregon will yield for a correction?

Mr. WYDEN. I am happy to yield.

Mr. SHELBY. The CBO, not the majority staff, is where this number comes from, $85 million that is a violation of the rule. Not the majority staff but the Congressional Budget Office itself.

Mr. WYDEN. If the chairman of the subcommittee would provide me a copy of that, I would very much like to see that. Because the fact is, and let us go to the discussion of this matter, this has nothing to do with the Federal budget. What I am seeking to do is to make sure that managed care plans, the fastest growing part of American health care today, are not allowed to impose gag rules that impede patients from getting all the information that they need with respect to medical services and medical treatments.

I come, Mr. President, from a part of the country that has pioneered managed care. The Portland metropolitan area that I represented, first in the House and now as a Senator, has the highest concentration of managed care in our country. We have seen good managed care, and there is plenty of it in Oregon.

Unfortunately, there are managed care plans that have cut corners and that have kept a patient from a full range of those who provide necessary services. There are plans in the country where there have been oral communications where a plan says to a particular provider: ''We're watching the number of referrals that you are making out of the network. We don't want you to refer to that particular specialist.''

This is going on in our country. It is not right, and that is what this issue is all about. This is not a budget issue, I say to my colleagues. This is a matter of right and wrong. This is a matter of whether you are going to stand up for consumers, stand on the side of patients, or whether you are going to see those gag rules that keep patients from getting the information that they need and deserve.

Mr. President, the preamble of the Hippocratic oath, which guides so much of American health care, is a statement to physicians: ''First, do no harm.''

The message of these gag restrictions, these gag clauses that we are seeing in managed care plans all across the country is not ''First, do no harm.'' Their message is, ''First, support the bottom line.'' That is the issue that we are debating. That is not good health care. That is certainly not good managed care.

Several months ago, the Washington Post cited a startling example involving the Mid-Atlantic Medical Services health plan, a large Washington metro area provider. This plan wrote a letter to network practitioners informing them that ''effective immediately, all referrals from (the plan) to specialists may be for only one visit.'' And in bold type, the letter stated: ''We are terminating the contracts of physicians and affiliates who fail to meet the performance patterns for their speciality.''

That is the kind of gag rule, that is the kind of constraint that is being imposed on patients in the American health care system today by some managed care plans. Certainly, not all the managed care plans, and it is certainly not representative of what we are seeing in Oregon, but it is happening across the country. We have even seen it in a State like mine that has good managed care, and this is a bad deal for patients all around.

First, patients end up not getting the kind of health care that they need.

Second, the plan may restrict the provider, the physician, from informing

the patient about referral restrictions so that the patient doesn't even know that they are being medically shortchanged via the plan's policy.

So what you have, stemming from the gag clauses, is a situation where our patients are in the dark in the fastest growing sector of American health care. These gag clauses keep the patients from even knowing, from even being in a position to understand that they are being medically shortchanged via a plan's policy.

Let me mention a couple of providers who have brought this to my attention in Oregon.

One orthopedic surgeon faced a situation where his managed care plan demanded he diagnose problems in patients apart from the ones for which they were referred. He, in effect, was told he had to keep his mouth shut and instead re-refer those folks back to their primary care physician.

This physician wrote me: ''This is extremely disappointing to patients, as you might imagine. This requires more visits on their part to their primary care physician and then back to me, which is extremely inefficient.''

Another physician, a family practitioner in a rural part of the State, wrote that antigag legislation was needed because ''when a physician recommends medical treatment for a patient and a plan denies coverage for that treatment, patients and physicians need an effective mechanism to challenge the plan.''

So what we find is that these kinds of communications, communication between a plan and a provider, such as an oral communication, are getting in the way of the doctor-patient relationship, and that is why consumer groups and provider groups all across this country are up in arms and have weighed in on behalf of this particular amendment.

There are some protections. A handful of States do offer some protections for the patient, but they vary widely from State to State. So that is why I bring this matter to the Senate's attention.

Senator KENNEDY joins me in this effort to set a national standard for what has become a national problem, but I would like to emphasize how bipartisan this effort is. Senators need to understand that if they vote against my amendment, they are essentially voting against the amendment that Senator HELMS has also filed. It is a little bit different. It has not been formally addressed in the Senate, but it is essentially what Senator HELMS has sought.

In the House, Dr. GREG GANSKE, a Republican, a physician, has done yeoman work on this matter, with Congressman ED MARKEY of Massachusetts, a Democrat. They have held voluminous hearings in the House where this has been a problem documented on the record.

The Commerce Committee dealt with this issue—I would like all my colleagues to know this, as we move to a vote on this matter—the House Commerce Committee dealt with this on a unanimous basis, on a bipartisan unanimous basis, and I simply want my colleagues to know that while Senator KENNEDY joins me formally in this effort, Senator HELMS has filed what amounts to almost an identical amendment to what I offer today.

Dr. GANSKE and ED MARKEY, on a bipartisan basis in the House, have engineered committee approval of it, so this is not a partisan issue that comes before the Senate today.

This amendment is rifle-shot legislation prohibiting only gag provisions in contracts or in a pattern of oral communications between plans and practitioners which would limit discussion of a patient's physical or mental condition or treatment options.

I want to emphasize that health plans would still be able to protect and enforce provisions involving all other aspects of their relationships with practitioners, including confidentiality and proprietary business information. The reason that is important, Mr. President, is obviously it is not in the interest of the American people or this body to have the U.S. Senate fishing about in the proprietary records of health plans.

What this is all about is making sure that patients get information about health services, about their physical or mental condition, about treatment options. They deserve the right to information about health services and not face these gag clauses that keep them from getting the information that they deserve.

I want my colleagues to know that I have worked hard with leaders in the managed care community, as well as practitioners and consumer advocates in crafting this legislation. The amendment specifies that State laws which meet or exceed the Federal standard set out here would not be preempted by Federal law.

The bill has been endorsed by a wide variety of provider groups, physician groups, as well as by consumer organizations. The endorsements for this particular amendment include the Association of American Physicians and Surgeons, the American Association of Retired Persons, the Center for Patient Advocacy, Citizen Action, the Consumers Union, the American College of Emergency Physicians, and a number of other organizations.

Here is what the Association of American Physicians had to say with respect to this amendment. They said:

> Restrictions on communication with our patients not only undermine quality of care, but are a blatant violation of the Hippocratic oath. Prohibition of gag rules is a crucial step toward protecting patients.

The Center for Patient Advocacy said:

> It has become common for insurers to incorporate clauses or policies into providers' contracts that restrict their ability to communicate with their patients. Such gag clauses seriously threaten the quality of care for American patients.

So what we have, Mr. President, and colleagues, is essentially a pattern across the country with these gag rules that turns the Hippocratic oath on its head. A Hippocratic oath that tells physicians, ''First, do no harm,'' has become all too often, ''First, think about the bottom line.''

So I am very hopeful that on a bipartisan basis the Senate will pass, hopefully without opposition, my amendment. As I say, a vote against my amendment is essentially a vote against what Senator HELMS has filed in this body. It is a vote against what Dr. GANSKE has sought to do in the House. And most importantly, it is a vote against patients and consumers all across the country.

If you vote against this amendment today, which will undoubtedly be the only chance the Senate gets to go on record on it in this session, then you are sending a message to managed care plans across the country that if you want to stiff the patients, if you want to stiff those who are vulnerable and those who need health care in America, it is all right. You can keep from them information about their physical and mental options and alternatives. You can keep information from them about treatment and kinds of services. I cannot believe that is what the U.S. Senate would want to do.

I think what the U.S. Senate would want to do is what Senator HELMS has sought to do, what Dr. GANSKE has sought to do, what Congressman MARKEY and Senator KENNEDY and I have sought to do, and that is to stand up for the rights of the patients.

So I am hopeful that this will be supported widely by Senators today. We should not let these gag rules between plans and an individual physician get in the way of the sacred doctor-patient relationship. These plans are the fastest growing part of American health care today. And we ought to go on record as being on the side of patients, as being on the side of the vast majority of doctors and providers in this country who want their patients to know all their treatment options, all the services that are available to them. I hope that Senators on a bipartisan basis will support this effort.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KENNEDY] is recognized.

Mr. KENNEDY. Mr. President, first of all, I want to commend Senator WYDEN for providing leadership in this very, very important area of health policy. I welcome the opportunity to join with him on an issue that really affects, in a very significant and important way, the quality of health care that is being practiced in this country. I commend him and others who have been involved with this legislation.

I would like to address the Senate just very briefly on this issue and also make a comment about the procedural situation that we find ourselves in at the present time.

As Senator WYDEN has pointed out, one of the most dramatic changes in

the health care system in recent years has been the growth of managed care programs. In many ways, this is a positive development. Managed care offers the opportunity to extend the best medical practices to all medical practice, to emphasize health maintenance and to provide more coordinated care. Numerous studies have found that managed care compares favorably with the fee-for-service medicine on a variety of different quality measures.

Many HMO's have made vigorous efforts to improve the quality of care, to gather and use systematic data to improve clinical decisionmaking and assure an appropriate mix of primary and specialty care. But the same financial incentives that can lead HMO's and other managed care providers to practice more cost-effective medicine also can lead to undertreatment or inappropriate restrictions on specialty care, expensive treatments, and new treatments.

In recent months, the spate of critical articles in the press has suggested that too many managed care plans place the bottom line ahead of their patients' well-being—and are pressuring physicians in their networks to do the same. So these abuses include failure to inform the patients of particular treatment options; excessive barriers to reduce referrals to specialists for evaluation and treatment; unwillingness to order appropriate diagnostic tests; and reluctance to pay for potentially life-saving treatment. In some cases, these failures have had tragic consequences.

In the long run, the most effective means of assuring quality in managed care is for the industry itself to make sure that quality is always a top priority. I am encouraged by the industry's recent development of a philosophy of care that sets out ethical principles for its members, by the growing trend toward accreditation, and by increasingly widespread use of standardized quality assessment measures. But I also believe that basic Federal regulations to assure that every plan meets at least minimum standards is necessary.

So, with this amendment, the Senate has a chance to go firmly on record against a truly flagrant practice—the use of gag rules to keep physicians from informing patients of all their treatment options in making their best professional recommendations.

Gag rules take a number of forms. This amendment targets the most abusive and most inappropriate type of gag rule: gag rules that forbid physicians to discuss all treatment options with the patient and make the best possible professional recommendation, even if that recommendation is for a non-covered service or could be construed to disparage the plan for not covering it.

Our amendment forbids plans from prohibiting or restricting any medical communication with a patient with respect to the patient's physical or mental condition or treatment options. This is a basic rule which everyone endorses in theory but which has been violated in practice. The standards of the Joint Commission on Accreditation of Health Care Organizations requires that ''Physicians cannot be restricted from sharing treatment options with their patients, whether or not the options are covered by the plan.''

Dr. John Ludden of the Harvard Community Health Plan, testifying for the American Association of Health Plans, has said: ''The AAHP firmly believes that there should be open communications between health professionals and their patients about health status, medical conditions, and treatment options.''

Legislation similar to this amendment passed the House Commerce Committee on a unanimous bipartisan vote. President Clinton has strongly endorsed the proposal.

The congressional session is drawing to a close. Today the Senate has the opportunity to act to protect patients across the country from these abusive gag rules, and I urge the Senate to approve the amendment.

Mr. President, I just want to make a very brief comment about this point of order. Mr. President, this making of a point of order is an abuse of the budget system. Basically, what we are talking about, for those that are trying to hide behind the point of order, is that the costs that are affected come from the most egregious abuses in the health care system by systems which are shortchanging and endangering the health of the American people.

You cannot hide behind this procedural vote on this issue, Mr. President. You just cannot hide. This is not about involving additional burdens or costs to the Federal Government. What you are basically talking about is providing protections to the sleaziest operators in this country that are endangering the health of the American people, and every consumer will know it.

Make no mistake about it. Make no mistake about it. We are talking about trying to get the best health care. That means that the best information that the best doctors in this country can provide ought to be provided to patients. Patients deserve to have that information.

We are seeing an abuse of the budgetary system by raising the point of order on this particular measure. Make no mistake about it, every consumer is going to know what this is about. This is not about procedure; this is about substance. This is about substance. You can have a technical point of order, but it is about substance, about quality of health.

We only have the opportunity to offer it on this particular measure. I commend Senator WYDEN for providing the initiative. We all ought to be very clear about what is involved in a technical point of order. It is an abuse of the budget system in every sense of the word. It involves the most important issue regarding health and that is the quality of health for American consumers.

The idea that the Senate, after we have had unanimous and bipartisan support over in the House of Representatives, is going to try and hide under a technical amendment, will be a shameful day here in the U.S. Senate.

Mrs. KASSEBAUM. Mr. President, I say, first, this is not an effort to hide behind a technical point of order. I care just as much as the Senator from Massachusetts or the Senator from Oregon about the quality of health care. We all do in this Chamber. There is a process, unfortunately—or fortunately—under which we operate around. That process requires us to do some things to assure that issues are considered with some thoroughness, and I believe that is appropriate.

I agree in many ways, in all ways, actually, on the principle to which the Senator from Oregon and the Senator from Massachusetts are speaking. Patients should have access to complete and accurate information regarding their health care. None of us here in this Chamber disagree with that concept, or with the concept that doctors should be allowed to share that information with their patients. Patients' communications with their doctor should be protected. I think we would all feel this is a prime concern. It is a vital part of the health care process.

I have a great deal of sympathy for the motivations behind the amendment that is offered by Senators WYDEN and KENNEDY. However, I believe it would simply be irresponsible to approve it in the absence of any review or discussion of its provisions at any level in the U.S. Senate. The legislation upon which the amendment is based was introduced barely a month ago on July 31 and no committee hearings have been held.

I have visited with Senator WYDEN because, as chairman of the Labor and Human Resources Committee, I have wanted to hold hearings on this legislation since we came back from the August recess. It has not been possible to find a time that we were able to put a hearing together. That does not mean that it is not going to happen, and certainly it should be a priority of the next Congress. However, just as so often happens here when we begin to run out of time, we want to add everything that we can to the appropriations bills that are moving.

In this instance, as has been pointed out, a similar proposal was approved by the Commerce Committee in the House of Representatives. It is a bipartisan measure. There is nothing partisan about this. It passed unanimously in committee. It has not been considered by the full House of Representatives. I believe that, when we are looking at aspects of a very important and yet complex piece of legislation, we do have to go through the procedures and processes that are part of our operation here, whether we want to or not.

It certainly is not unprecedented to have extraneous amendments offered at the last minute. However, the Senate's being asked to decide a highly

complex issue without the benefit of any review at all is, I suggest, Mr. President, a mistake. It is a mistake. Our procedures may delay consideration of legislation we support, but it protects us from legislation that we do not support as well. We need to be able to understand what a piece of legislation is all about. For example, we are not sure what CBO's scoring of this amendment is. It might not be important, but it is a requirement we have scoring around here. We have that requirement so we can better understand the budgetary consequences of our actions, and—generally—we are required to provide offsets for spending increases.

As I mentioned earlier and as Senator WYDEN pointed out, the House Commerce Committee has considered this issue and has held extensive hearings. I have visited with Congressman GANSKE myself, and I have high regard for the dedication that he has given to this issue and for the time that he has spent with it. His being a doctor, I have high regard for his understanding of the issue. I have great interest in his work and feel that he is to be commended for moving forward the discussion to the point that it has progressed.

However, I point out that even the authors of the amendment before the Senate acknowledge that the work of the House committee is not the final word, as several provisions of the amendment depart from the language approved by the House committee. The reason that we have committees in the Senate and the reason that each one of us spends, or should spend, so many hours in committee work is to lend some degree of thought and expertise to public policy issues.

It can be very frustrating when legislation does not move forward at the pace we would like to see. Nevertheless, the committee system is one of the processes, and perhaps breaks, that we have here, Mr. President. That system enables us to turn out, one would hope, a finished product where we understand what the language means and which avoids the unintended consequences of the initial language proposed.

In the course of this work, I think we find that very little is as simple as it may seem at first glance. We also find our initial solutions can spawn problems just as serious as those we set out to address. Such solutions are inevitably refined and improved as additional information is gathered.

In an area as complex and dynamic as managed care, we need to give serious thought and deliberation before launching the Federal Government into the middle of private contractual arrangements. The amendment is intended to address an important issue regarding quality health care, and it is an important issue. But good intentions are not sufficient; we need to understand the consequences of the language we use and the actions we take.

In fact, President Clinton himself has acknowledged the need for a closer examination of managed care issues with his recent announcement of his plans to establish the National Commission on Health Care Quality.

As I stated when I began speaking, I am not arguing that this issue should be ignored. In fact, I think it is a very important issue for us to look at and one of the next important steps in any of our health care debates. It is a legitimate concern.

It is for this reason I intend to propose an amendment calling for action in this area early next year after there has been an opportunity to review the full ramifications of the solution proposed by the Senator from Oregon. A vote ''no'' on this motion, Mr. President, does not mean that we do not care. A vote ''no'' is not hiding behind some procedural arrangement. A vote ''no'' is simply saying we have a process that we should make work as intended in order to give us the best end result on an issue that we all care deeply about and that I believe should be of prime concern.

I yield the floor.

Mr. CONRAD. Mr. President, I think this is a fundamental issue and that we ought to address it now.

Mr. President, I come from a long medical tradition on my mother's side of the family. My grandfather and virtually all of his relatives were doctors. My grandfather was a pioneer surgeon in North Dakota and was the chief of staff of our local hospital. In many ways, I grew up in a medical family.

The notion that we would have a gag rule on doctors and what they can tell their patients is anathema to those who are medical professionals. It is not limited to medical professionals. I think it is anathema to any American. The notion that a doctor, by contract, is precluded from sharing certain information with a patient about that patient's illness is unconscionable—unconscionable.

What kind of system do we have when a doctor can be precluded from telling a patient about treatment options, about referral options in America?

Mr. President, I met yesterday with medical professionals from my State. I do not use the English language lightly. I said that I believe these gag rules are immoral, and I do believe it is immoral, Mr. President, to say to a doctor, ''You are restricted and limited in what you can say about what you know about a patient's options.'' You know, it sounds to me like another country and another time. Maybe that would go over in the Soviet Union. Maybe that would have gone over in Germany in the thirties. This is America in the nineties. No doctor should be precluded from discussing with a patient the treatment options of that patient. That is outrageous.

Mr. President, we may not be able to solve this matter completely in the days that remain in this session, but we can start, and we should start, and we have the opportunity in this amendment. This amendment has been carefully crafted. The House has gone over it, the medical community has gone over it, some of the best minds of the U.S. Senate have gone over it, and they have crafted an amendment that is a rifle shot. It says very clearly what cannot be gagged, what communications ought to be able to freely flow between a patient and the person who is responsible for that patient's care.

Mr. President, we ought to pass this amendment. We ought to pass this amendment. I can't think of a single good reason why this amendment ought to be stopped. I can just say that I have discussed this with people in my home State on my most recent trip home. They are just mystified how, in America, you can have a circumstance in which a doctor is precluded and prevented from talking to their patients about treatment options that are available to them. Well, that is just beyond description in terms of the morality of the circumstance.

Mr. President, I want to commend Senator WYDEN for coming forward with this amendment at this time. I would commend anybody on the other side of the aisle—and I would do it publicly—if they came forward with this amendment, because I feel that strongly about it. This is something we ought to pass. It ought to be bipartisan. There ought not to be a whiff of partisanship about it. I thank my colleague from Oregon, Senator WYDEN, for doing, I think, a superb job in bringing this amendment to the attention of the body. This ought to pass 100–0. I don't care about points of order and all the rest. I don't know whether people are hiding behind it or not. Frankly, I just think it is inappropriate in this circumstance to be talking about a point of order with respect to an amendment that is so totally and fully justified.

Again, I want to thank my colleague, Senator WYDEN, for authoring this amendment and bringing it to our attention. I hope this amendment passes 100–0 on the floor of the U.S. Senate. That would send a very good message across this country about what is acceptable and what is not acceptable.

I will just add this final point. If this is the direction that we are going to go in with health care in America, there is going to be an enormous reaction in this country. I predict that today. If this is the direction we are going to go in, in which patients are denied information about their coverage options, then we have big trouble in this country. We can address it right here today and pass this amendment, and we should.

I thank the Chair and yield the floor.

Mr. SHELBY. Mr. President, I will speak to this in a second.

Mr. President, I ask unanimous consent that during the consideration of the committee amendment on page 80 regarding abortion funding there be 1 hour of debate prior to a motion to table, to be equally divided between

Senators NICKLES and BOXER, and that no other action occur prior to the motion to table. This has been cleared with Senator KERREY.

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

Mr. SHELBY. Mr. President, CBO has told staff from both sides of the aisle, Republicans and Democrats, that the scoring of this amendment is the same as the scoring of the Ganske bill in the House, and they will be providing a written confirmation on this scoring to both of our staffs immediately. It could be imminent. We will present it and insert it into the RECORD as soon as we get it from CBO. It is going to be the same thing. CBO says to us that it is going to cost $85 million and it violates the Budget Act.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts, Mr. KENNEDY, is recognized.

Mr. KENNEDY. Mr. President, I will just respond very briefly to two points. One is about the consideration of this amendment. I say to my friend and colleague from Kansas, Senator KASSEBAUM, with all respect, we did not have any hearings on the mental health provision that we just passed here 82 to 15, the Domenici-Wellstone amendment. We didn't have any hearings in our committee on that particular issue. We did not have any on the Lodine patent extension, which was added by some of our majority Members to the Kassebaum-Kennedy bill. That would have been something we should have had a good deal of hearings on. We did not have any on the Mediguide amendment that was added in the agricultural appropriations bill. Hearings would have been useful. Those affect consumer information as well. So the fact of the matter is, on this issue, it has been reviewed in detail in hearings in the House of Representatives. It is a simple concept, and there is absolutely adequate justification.

Finally, Mr. President, on the budget item—and we all have the budget items here—it is my understanding that, for 1997, 1998, 1999, 2000, and 2001, the items which are listed in the budget, that may be the potential cost, can be assumed within the range of differences and estimates within the Budget Committee. What it is not is in the year 2002. Do you know what that figure is that we are going to risk denying American consumers and patients information that is vital to their health? It is $15 million. It is $15 million. Do you know how the Budget Committee gets that? They say, well, when patients actually find out that there is a better treatment for their illness, what they are going to do is get the better treatment for their illness, which means that they may very well get less wages because if they increase the cost of their health insurance, they are going to get less wages. That is the estimate. That is going to be the result—$15 million in the year 2002.

We are being asked now to allow the gag rule on doctors in this country to continue. This is a result of the pressure of the insurance company, and you are trying to tell us that this is a budget item, that this is a matter of budget process and procedure, in order to maintain the integrity of the Federal budget? It is an excuse, and it is an abuse of the budget process. It is the worst kind of abuse, because by denying this kind of information to patients, what we are doing is using the budget process as a way to provide an out for the sleaziest operators and at the same time, endangering the health of the American people. That is absolutely wrong. It was never intended in any debate or discussion of the Budget rules. This is a matter of substance.

I look forward to supporting the Wyden amendment and, again, I commend him for his leadership in bringing this extremely important measure to the Senate floor.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, first, I express my thanks to Senator KENNEDY. He has done yeoman work on so many health issues over the years. He has just been so helpful to me as a new Member of the Senate. I thank him for all of his help and that of his staff in preparing this amendment.

I think it is clear, Mr. President, that this amendment is not some sort of exotic animal that has just wandered onto the floor of the U.S. Senate to be considered, as if the Members have no awareness of what this issue is all about.

This issue has been the subject of extensive hearings in the House of Representatives. This issue has been all over the news media across the country. Suffice it to say that virtually every Member of this body has heard from constituents and from providers at home about this particular issue. I know that virtually every time I am home—I come from a part of the country which has some of the very best managed care in the Nation—that I hear from patients and consumers about this particular issue.

It really comes down to a question of whether we are going to keep faith with the Hippocratic oath of doing no harm to patients, making sure they have information about the various treatments and services that are essential to them, or to turn that Hippocratic oath on its head and in effect say the first obligations are to the bottom line.

This amendment is rifle-shot legislation. It prohibits only gag provisions in contracts that relate to patient care. It goes only to the question of whether or not patients are going to be able to get full and complete information about their physical and mental condition and about the treatment options that are available to them. It is not going to interfere with proprietary matters. It is not going to allow fishing expeditions into proprietary business information that ought to be the property of the health maintenance organizations. It goes just to the question of whether patients have a right to know.

Some may say now is not the time; that maybe next session it can be taken up. I would ask that one not substitute this kind of discussion of maybe tomorrow or maybe next year for what is simple justice and common sense for medical patients in the fastest growing sector of American health care. This has not been a partisan issue. Dr. GANSKE, a Republican, a physician on the House side, has done superb work along with Congressman MARKEY, a Democrat.

I have noted that Senator HELMS has filed an amendment which is very similar to the one that I will be seeking a vote on in a few moments. But there is a question, it seems to me, of consumer justice, of the patient's right to know, and we should not ask those patients to wait any longer given the documented record of abuses and problems.

We know that our health care system involving billions and billions of dollars is now being driven by managed care. One plan after another in the U.S. Senate has looked to managed care as the centerpiece of American health care as we look into the next century.

My view is—I come from a part of the country where there are many good managed care plans—that managed care will play a big role, a significant role in delivering quality care in a cost-effective way to the patients and consumers of our country. But let us not let a small number of plans—plans that have been cutting corners and have been found to be cutting corners from hearings that have been held in the Capitol—in effect continue those consumer abuses that take a toll on patients across this country.

This is not a vote about an arcane kind of issue with respect to the budget. This is a question of justice for patients, of the patient's right to know, and of patients needing information about the various treatment options available to them.

I hope my colleagues will in the spirit that this has been addressed in the House pass this with a bipartisan and significant vote. That is the way it was tackled in the House Commerce Committee. I hope we will send a message today to the vast majority of patients, doctors, and others who offer good medical care that we are on your side, that we are going to isolate those gag rules, that we are going to say that is not what we want American health care to look like in the 21st century, and that we would vote today to ban these insidious, unconscionable gag rules that restrict the right of medical patients in our country to know about essential services.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. The yeas and nays have already been ordered, the Chair notes.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I wish to speak briefly in order to mention to the Senator from Oregon that he has talked a couple of times about the language of the Senator from North Carolina, Senator HELMS. I just visited with Senator HELMS to ask him what he thought of the provision before us. He pointed out that his language is much more narrowly drawn. It applies only to the Federal Employees Health Benefits Plan and includes some specific criteria. He has some difficulty believing that we should expand it further without understanding more of the ramifications.

I, like everyone else, have great sympathy for what Senator WYDEN has been wanting to accomplish, and what Congressman GANSKE wants to do in the House. I just have to say, however, it may not be as easily done as we would like to believe that it could be. That is all the more reason, I think, that we ought to at least have a hearing in the Senate and take the legislation through the committee.

As I said, and as Senator KENNEDY pointed out, we have considered some major legislation which has not gone through the full committee process. But, in general, those have been instances in which we have had some fairly extensive debate.

This proposal came to us without advance warning and without benefit of prior discussion in the committee or in the Senate. We are simply not prepared to look at language regarding contractual arrangements in the private sector and make wise decisions about it overnight.

I yield the floor.

Mr. SHELBY addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, we have debated this for quite awhile today, and also, as some of you recall, fairly extensively last night.

Mr. President, this is not a Treasury appropriations issue that is before us. This debate has addressed the issue, and adopted an amendment. The amendment would cause the committee to find $85 million in the conference to stay within our allocation. We would have to take funds from the accounts that I spoke about earlier. The bill funds law enforcement, the IRS, and other basic Government functions, such as the Secret Service, and GSA. This bill does not come close to the President's budget request. The administration would like more money in this bill for law enforcement and others, not less.

This amendment would further reduce those programs, if it were adopted, $85 million. The Senator's amendment may be a worthy one, and probably is a worthy one, but the committee has an obligation, I believe, to fund the basic Government functions before the committee that we have jurisdiction over, and the Wyden amendment undermines the committee's ability to do so.

I hope that the Senate will not waive the Budget Act.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, the Senator from Indiana asked me if he could speak. We are moving to a vote. He has a clarification question. I was seeking the floor to give him an opportunity to be recognized.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. COATS. Mr. President, I thank the Senator from Nebraska for yielding for the purposes of a question.

I would like to ask the sponsor of the amendment, Senator WYDEN from Oregon, a question and see if I can get a clarification. I have just been advised that the amendment that he has offered preempts current State law; our current law. Is that correct?

Mr. WYDEN. No, that is not correct. In fact, we specifically protect the rights of States to go further.

Mr. COATS. What if States decide to go a little more narrow?

Mr. WYDEN. This is in fact a national standard. Yes, we do say—because managed care plans, many of them, operate in more than one State, we have said, you bet, we have a national problem. It is a national standard. But there are a small number of States that have dealt with this in a thoughtful kind of way. We specifically protect those States.

Mr. COATS. That is my dilemma because Indiana has, in my opinion, dealt with it in a thoughtful way. In some instances, the statute that we have is broader than the amendment offered by the Senator from Oregon and therefore I would think would be acceptable. But in other instances it is narrower. In other words, it is crafted to how Indiana best sees the need to provide information to consumers to protect them.

So that I assume then the answer is that that portion of the Indiana consumer protection and consumer information statute, which does not conform to the amendment, is preempted.

Mr. WYDEN. Well, the parts that protect the patient and protect Indiana physicians, those parts are in fact protected under my amendment. But if there are parts of the Indiana statute that do not adequately protect Indiana physicians and do not adequately protect Indiana consumers, yes, there would be a Federal standard.

Mr. COATS. If the Senator will yield further, that was not directly my question. Indiana has made a determination through its legislature, through its Governor, through consultation with consumer groups, patient groups, provider groups, about the best means of providing information and protecting consumers. And so my question is, does the Senator's amendment preempt those decisions on the part of Indiana citizens and the Indiana legislature that do not happen to conform, that would be construed by the Senator as being more narrow? In other words, they might not meet all of the Senator's criteria but they certainly meet the criteria that the people in our State believe appropriate to provide protection to patients.

Mr. WYDEN. If the Senator will let me respond, as the Senator knows—and both of us are veterans of the House Commerce Committee—not very much goes through the House Commerce Committee unanimously. Dr. GANSKE is not known as a poster child for the anti-States rights movement. This is a bill that has been worked on so as to be sensitive to the rights of States. What it does essentially is bring the same kind of consumer protections at the Federal level that we do in a number of Medicare areas. The Senator and I worked, for example, in the House on Medicare risk contracts and the like. This does say that on certain matters up to what amounts to a floor of consumer protection there ought to be a national standard. And that is how we deal with it here. That is how Dr. GANSKE dealt with it in the House.

Mr. COATS. I think I have the Senator's answer. The Senator's amendment does preempt those portions of Indiana law that do not conform with his definition of a floor or minimum standard. I believe our State has taken adequate steps to provide protections and information for consumers and therefore I will have to oppose the amendment. The Senator answered my question. I do not need to know the history of what happened in the committee or whether Mr. GANSKE is right or wrong. I am just looking out for my State of Indiana which made a determination of what is best for our consumers, and we are very happy in Indiana. I cannot support an amendment that preempts what we have done.

Mr. WYDEN. If the Senator will let me respond once more, I cannot imagine that Indiana State law allows these plans to gag Indiana doctors. I have not reviewed the Indiana law, but I just cannot believe that Indiana law does permit these kinds of gag rules. That is all we do in this legislation. If the Senator is looking for a way to vote against what physician groups and patients all across this country have been calling for, so be it. I know the Senator has done a lot of good work in health care. But I cannot believe that Indiana law is coming out in favor of these kinds of gag provisions. All we are seeking to do in this legislation is prevent them as well.

Mr. COATS. That is my last word here. I know that the Senator is very familiar with what the State of Oregon has done. The constituents of Oregon have elected him because they feel he knows what is going on in that State. It does not sound to me as if the Senator from Oregon knows what the State of Indiana has done. They elected this Senator because they know I know

what is going on in that State. So I think it is presumptuous for the Senator from Oregon to say what Indiana has done is incorrect when he does not even know what it is.

All I am saying is I want to protect Indiana's right to make a determination of what is in the best interests of their citizens, and the Senator has answered my question. He preempts that part of our law which does not conform to what he thinks is right, but obviously it has to reflect what we in Indiana think is right. So I thank the Senator for his responses.

Mrs. BOXER. Will the Senator yield to me for a question?

The PRESIDING OFFICER. The Senator from Nebraska has the floor.

Mr. KERREY. Mr. President, we have an hour of deliberation following this vote on an abortion amendment and Members on both sides that are anxious for that vote to occur have asked me to expedite it in order to be able to do other things. And so I think we have debated this. I will be pleased to allow it to go on if I have something additionally constructive, but I think people pretty well have this thing laid down.

Mr. President, I have not made a statement on this. I hope that Members actually will vote to waive in this case. We are trying to move in the direction of managed care, particularly those of us who are trying to work both sides of the aisle and get some agreement on providing incentives in Medicare to control costs, to increase choice, and allow people to purchase into managed care. The CBO does not calculate any savings that occur as a consequence of people liking managed care as a result of knowing that they are going to get all the information to purchase it and reduce taxpayer exposure as a consequence. All they do is calculate some marginal increase in costs that might occur as a result of more expensive treatments being done. They offer no savings as a result of people saying we now like managed care better because of what occurs.

This is eventually going to become law. Later on, we are going to pass an amendment with a big vote that gives Federal employees the same right. They are going to have the same right that the Senator from Oregon is now asking for all other people, especially for Medicare patients that are out there who are trying to ascertain whether or not they want to purchase into a managed care environment. So I think especially for budget reasons, CBO, with all due respect, has not calculated the increased savings that will occur as a consequence of seniors in particular saying we now have more confidence in managed care as a result of getting all the information.

The PRESIDING OFFICER. The question now is on agreeing to the motion to waive the Budget Act. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

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

The yeas and nays resulted—yeas 51, nays 48, as follows:

[Rollcall Vote No. 283 Leg.]

YEAS—51

Akaka	Feinstein	Lieberman
Baucus	Ford	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Graham	Moynihan
Boxer	Grassley	Murray
Bradley	Harkin	Nunn
Breaux	Hollings	Pell
Bryan	Inouye	Reid
Bumpers	Johnston	Robb
Byrd	Kennedy	Rockefeller
Campbell	Kerrey	Sarbanes
Conrad	Kerry	Simon
Daschle	Kohl	Smith
Dodd	Kyl	Snowe
Dorgan	Lautenberg	Specter
Exon	Leahy	Wellstone
Feingold	Levin	Wyden

NAYS—48

Abraham	Frahm	Lugar
Ashcroft	Frist	Mack
Bennett	Gorton	McCain
Bond	Gramm	McConnell
Brown	Grams	Murkowski
Burns	Gregg	Nickles
Chafee	Hatch	Pressler
Coats	Hatfield	Roth
Cochran	Heflin	Santorum
Cohen	Helms	Shelby
Coverdell	Hutchison	Simpson
Craig	Inhofe	Stevens
D'Amato	Jeffords	Thomas
DeWine	Kassebaum	Thompson
Domenici	Kempthorne	Thurmond
Faircloth	Lott	Warner

NOT VOTING—1

Pryor

The PRESIDING OFFICER. On this vote the ayes are 51, the nays are 48. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to. The point of order is sustained.

Mr. SHELBY. I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

AMENDMENT NO. 5235 TO COMMITTEE AMENDMENT ON PAGE 16, LINE 16

(Purpose: To express the sense of the Senate regarding communications between physicians and their patients)

Mrs. KASSEBAUM. Mr. President, I send to the desk an amendment to the committee amendment and ask that it be considered.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mrs. KASSEBAUM] proposes an amendment numbered 5235 to committee amendment on page 16, line 16.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

At the end of the committee amendment, insert the following new section:

SEC. . PROTECTION OF PATIENT COMMUNICATIONS.

(a) FINDINGS.—Congress finds that—

(1) the health care market is dynamic, and the rapid changes seen in recent years can be expected to continue;

(2) the transformation of the health care market has promoted the development of innovative new treatments and more efficient delivery systems, but has also raised new and complex health policy challenges, touching on issues such as access, affordability, cost containment, and quality;

(3) appropriately addressing these challenges and the trade-offs they involve will require thoughtful and deliberate consideration by lawmakers, providers, consumers, and third-party payers; and

(4) the Patient Communications Protection Act of 1996 (S. 2005, 104th Congress) was first introduced in the Senate on July 31, 1996, and has not been subject to hearings or other review by the Senate or any of its committees.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Committee on Labor and Human Resources of the Senate, taking into account any relevant findings of the National Commission on Health Care Quality and other public and private entities with expertise in quality health care service delivery, should act expeditiously in the first session of the 105th Congress to schedule hearings and executive session consideration of legislation designed to ensure that patients be given access to all relevant information concerning their health care so as to permit such patients, in consultation with their physicians, to make appropriate decisions regarding their health care, and that the Senate should promptly consider that legislation.

Mrs. KASSEBAUM. Mr. President, this amendment is very brief, if I may just explain it. It expresses the sense of the Senate regarding communications between physicians and their patients. It addresses the same issue that we have just been debating. I think we have had a good and extensive debate. My concern with the amendment on which we just voted was that its provisions had not been fully considered and had not been the subject of any hearings in the Senate. We needed to approach the issue, I thought, in a more cautious way—even though there was strong support for the concept behind that amendment.

My amendment is just saying that:

It is the sense of the Senate that the Committee on Labor and Human Resources of the Senate, taking into account any relevant findings of the National Commission on Health Care Quality and other public and private entities with expertise and quality health care service delivery, should act expeditiously in the first session of the 105th Congress to schedule hearings and executive session consideration of legislation designed to ensure that patients be given access to all relevant information concerning their health care so as to permit such patients, in consultation with their physicians, to make appropriate decisions regarding their health care, and that the Senate should promptly consider that legislation.

This amendment is consistent with the intent of the legislation offered by the Senator from Oregon and the Senator from Massachusetts, but puts the

Senate on record as supporting the use of the standard and proper procedures that I think are needed to give this issue the full and careful consideration it deserves.

Since we have had, I think, a full debate, I ask for the yeas and nays and for the immediate consideration of this measure.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I have not seen the sense of the Senate, offered by Senator KASSEBAUM, but I would like to discuss this further with her. I also might say that as a new Member of the Senate, she has been especially helpful to me. We have worked on a variety of things, Food and Drug Administration issues and the like. I want her to understand that it has not been particularly pleasant to spend the afternoon taking different positions with somebody I admire. I want her to understand that.

Again, I have not seen a copy of the sense of the Senate offered by the chair of the committee. She seeks to offer a study of this issue involving gag rules on medical patients; is that correct?

We have my amendment which passed 51 to 48, but did not get 60 votes, on a proposal that keeps these health maintenance plans from imposing gag rules that keep their patients from getting a full range of information about medical services and treatments and their health care options.

My amendment does not deal with the abortion issue. Perhaps some may have thought it did. It simply deals with all of those physical and mental health services and the treatment options that patients need to make decisions.

The Senate passed my amendment 51 to 48. Of course, it needed 60 votes. I gather now that the Chair of the committee seeks a study of this particular issue. I yield to her to find out whether this, in fact, is a study, or is this legislation with some teeth in it that actually does ban these gag rules, these insidious, offensive, anticonsumer gag rules that keep patients from knowing about their rights?

Mrs. KASSEBAUM. Mr. President, no, this is not another study. It is a sense-of-the-Senate resolution. So it does not have statutory authority as the language of the Senator from Oregon would have had.

However, it does not call for another study. It simply says that the Senate should take into account any relevant findings of the National Commission on Health Care Quality which President Clinton has said he would appoint and other public and private entities with expertise in this issue and in the quality of health care service delivery. We would consider the views of those entities at a hearing before the Labor and Human Resources Committee, the committee of jurisdiction over this legislation.

I do not think another study is important so much as gaining understanding through a hearing about what facts are known and what points of view would be expressed from different aspects of the health care service delivery industry, and then acting expeditiously.

So I assume the bill of the Senator from Oregon would be the vehicle in the next Congress. Hopefully, the bill would be introduced right at the beginning of the Congress, so that there would be time to look at it. I think that the interest in this issue is indicative of the fact there is going to be a great deal of interest in legislation regarding this subject.

So I am not calling for a study. My amendment says we should act expeditiously, but we should review all of the pertinent information that is available.

Mr. WYDEN. Mr. President and colleagues, I hope that it is understood that while I think that the Chair of the committee means well and is sincere in this effort, I think that the sense of the Senate that she offers today is very risky business.

This is September of 1996. The Senator from Kansas essentially is saying September, October, November, December, January, February, as the next Senate gets into business, that sometime 6 to 8 months from now we can talk again about the rights of patients in the fastest growing sector of American health care. I think this is risky business.

It is one thing to study an issue when it is abstract, when it may not have direct and immediate consequences, but what the Senator from Kansas is saying is that when you have patients being hurt today, being subjected to risk today when they do not have access to all the information about the physical and mental health services that may be available to them when they need that information to make decisions about their treatment, the Senator from Kansas is saying they cannot have it. I know that the Senator from Kansas does not intend it that way—putting patients at risk.

It means that today in Oregon and in Kansas and all across the country where there are gag rules that keep patients from knowing of their rights, they will not be able to have that information. It is not available to them. The U.S. Senate is saying, instead of voting for legislation or allowing me to get 60 votes on my amendment, what we will do is not give those patients the rights they need, not make sure that they can know of all the physical and mental health services that they deserve, and instead tell them that sometime next year, sometime in the future, we will go on.

I think it is a mistake. It puts patients at risk. This Member of the U.S. Senate is not willing to play that kind of Russian roulette with the well-being of patients in the fastest growing sector of American health care.

I am happy to yield to the Senator.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I suggest that we have been in the 104th Congress for 2 years. This legislation was introduced in the House some time ago. It would have been useful to us here in the U.S. Senate if this legislation had been before us prior to July 31. We would then have had time to hold committee hearings, which I think would have enabled us to make some corrections or additions or changes and to understand better the consequences of all the steps toward the goals we do support. I think it is not fair to say all of a sudden that, because a bill introduced right before the August recess has not yet been considered, that means it is something we do not care about. There was time in which the process could have moved forward, had the bill been introduced earlier.

Mr. WYDEN. Mr. President and colleagues, there is no question in my mind about the sincerity and good will of the Senator from Kansas. She, along with Senator KENNEDY, have done, I think, an especially valuable service this session with the insurance involving portability. For the first time in America, because of the work of the Senator from Kansas, we are going to make sure that workers are not going to be locked into their jobs. They are going to have a chance to enjoy the American dream because of their hard work. No one questions the sincerity and the desire of the Senator from Kansas to tackle these very real and very human kinds of problems that affect so many of our families.

I feel very strongly—and looking at the sense of the Senate, it calls for consulting public and private entities with expertise and quality health care service delivery. The fact is that the House, in hearings that were public, shown on C–SPAN and the like, did exactly that. They had extensive discussions with the very people that this sense-of-the-Senate resolution suggests we talk with.

It would be one thing if there had been no discussions with these distinguished people in the private sector. Those discussions have taken place. They have been held. That is why Dr. GANSKE, a Republican, and Congressman MARKEY, a Democrat, came together and got a unanimous vote to go forward and protect the rights of health care patients in the fastest growing part of American health care.

We have done, it seems to me, the essence of this sense-of-the-Senate resolution, No. 1.

No. 2, I think it puts patients at risk because it allows gag rules to go forward unimpeded in the months after this Congress adjourns.

I hope my colleagues and the Senate understand just how pernicious these

gag rules are. What these gag rules are all about is that a plan may say to a physician, ''You are making too many referrals outside the network, outside the health maintenance plan.'' The plan may say, ''I do not want to have a referral to an ophthalmologist or a cardiologist or another specialist.'' These are very anticonsumer provisions that are becoming a part of American health care. They have been documented. They are a matter of public record. I just think it is very risky business to say that instead of protecting the rights of the patients, instead of protecting the rights of the consumer, what we will do is study it a bit and talk to some of the same people that we already talked to, rather than protecting those rights of the patients.

So this Senator believes that we should not have another study, should not have yet another analysis. If I could just briefly engage the chair of the committee, Senator KASSEBAUM, who I know is having some discussions on several matters. But I wanted to see if it might be possible to have the distinguished chair of the committee lay aside her sense-of-the-Senate resolution at this time, and perhaps we can have some more discussion toward seeing if, on a bipartisan basis, we can come up with some piece of legislation that has some teeth in it before we conclude with this bill, and that we recognize that a majority of Senators voted to put some real teeth into this issue. It wasn't 60; it was 51. But a majority of Senators said that they didn't think these gag clauses were in the interest of American patients. They said this was anticonsumer. I would like to see—like we have done with FDA and other matters—whether the distinguished chair of the committee and I could work a bit further on this between now and the end of the day and perhaps come back to the Senate with a bipartisan proposal that really would provide a measure of relief to patients at this time.

Now, to do that, the Senator from Kansas would have to lay aside her sense-of-the-Senate proposal. I just ask if she would be willing to do that at this point, and during the interim, I ask that she and I and Senator KENNEDY and our respective staffs, on a bipartisan basis, see if we can come up with a bipartisan proposal that would really have teeth in it and protect the rights of the patients.

I yield to the Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I have no objection to setting aside the underlying committee amendment, if that is the wish of the Senator. I thought, actually, we could voice vote the sense of the Senate. There are many other amendments that will require lengthy debate. If we want to set aside the entire amendment, that is fine. I am happy to do so, so the debate can proceed on other amendments.

Mr. WYDEN. If I might say further, I was asking the chair of the committee to lay aside, for the moment, her sense-of-the-Senate resolution so that, hopefully, the next time this comes up in the Senate—hopefully, later today—we would have a bipartisan proposal that would have some real teeth in it that would protect the rights of patients. Is that acceptable to the chair of the committee?

Mrs. KASSEBAUM. Mr. President, no. As I stated, I am happy to lay aside the underlying amendment. Otherwise, my sense of the Senate is open to being amended. I feel that would not be a good position in which to be placed at this point. I am happy to do so and proceed with other amendments to the bill and see what we can work out. That is the position I take.

Mr. WYDEN. Reluctantly, I will have to oppose the sense-of-the-Senate resolution. I want to take a few more minutes to tell the Senate why I am going to oppose the sense-of-the-Senate resolution.

You pass the sense-of-the-Senate resolution and you are playing Russian roulette with consumers in our health care system. We have patients and consumers who are being denied the information they need with respect to medical services for their physical and mental problems and the treatment options that are available to them. You pass this sense-of-the-Senate resolution and what you say to those patients, in the fastest growing sector of American health care, is, ''We are not on your side. We don't want you to have any rights now. We are not going to do anything about these pernicious, offensive gag rules that exist today. Instead, what we will do is go out and talk to a whole bunch of the same people that the U.S. Congress has already talked to.''

I think that is unfortunate. I think it is risky business. I think that when you have patients who are in jeopardy—and make no mistake about it, that is what happens when you have these gag rules. These patients are in jeopardy. They are not being told what they need to know as it relates to essential health services and the information they need.

I will tell you, I am just absolutely baffled at how the U.S. Senate can say, at a time when patients hunger for information about health care services, at a time when they want to get it on the Internet, at a time when they can go to special programs offered by health care providers, just to know about new treatments and options, I can't understand how the U.S. Senate would then say that we are going to stiff those patients, we are not going to give them the information they need, we are not going to tell them what they need to know to make the essential decisions about the treatment and the services that they think are best for them.

So I think that this sense-of-the-Senate resolution puts patients at risk. It means that we are not going to get any help for patients who need it now, who can't wait 6, 8, 10 months, or whenever it might be until the Senate might take this up again. It is not completely clear to me what the timetable of this might possibly be. But I think that this sense-of-the-Senate resolution puts patients at risk. I think it jeopardizes the well-being of vulnerable people. I think it is the antithesis of sensible health care policy, which ought to be built on the patient's right to know—the right to know everything, not just those things that might be in a planned financial interest. I just can't believe that this Senate wants to wrap up the discussion of this topic by telling patients that we are going to be on the side of the gag rules, we are going to be on the side of those who want to keep you from having information. But that is what this sense-of-the-Senate resolution does.

Unfortunately, it says we won't protect patients now. We are not going to stand up for them when they face these gag rules that limit their right to know. I want it understood that this Senator is going to oppose this sense-of-the-Senate resolution, because it puts patients at risk. It sends the message—and perhaps some may desire to do this—that the U.S. Senate is doing something to help patients when, in fact, it is not. The earlier amendment, the amendment that banned these gag clauses, helped patients. It helped them now, because it made sure that they could have access to all the information they need to make informed and thoughtful choices.

I can tell my colleagues that I come from a part of the country that has managed care, that has had managed care perhaps longer than any other. We pioneered it. We have good managed care. We still have some of these abuses. But I can assure you that your communities and your States have a whole lot more of these problems than we do.

I think it is going to be very, very hard to go home and explain to patients, explain to doctors—because doctors have endorsed this effort to eliminate the gag rules—how it is in the public interest. I cannot possibly believe that you can stand up at a community meeting of physicians, patients, or citizens and say we are not going to give you the information you need about medical services and medical treatments. But instead of giving you the information that you need we are going to have a gag rule, and you can't find out about your rights.

Mrs. BOXER. Will the Senator yield to me for a question?

Mr. WYDEN. I will, and I want to yield to Senator KERREY who has been helping me for the better part of 24 hours.

Mrs. BOXER. I will be very brief. I wonder if the Senator knows that before he happily came to this body we made an incredible contribution to the whole country when we passed a Sense of the Senate on this subject. That happened to be a Boxer amendment that was endorsed by Senator KENNEDY

which put the Senate on record as saying that patients have a right to know the treatment options that are available to them. It was very straight forward. Unfortunately, what happened as a result of some of the games that are played around here is that Sense of the Senate was dropped from the conference after everybody voted for it.

I think the time has come to do what the Senator from Oregon has suggested, and I think the fact that the Senator from Oregon got 51 votes shows that the Senate is ready to move forward on his amendment and not study this to death. Because frankly, if you study this to death people are going to die. We heard stories in California where people did not know their treatment options, and tragedies flowed from that.

I want to underscore what the Senator is saying. I say to my friend from Oregon that I am glad that he is being tough on this. I think there are a lot of people around here that want to vote for meaningless things so they can go home and say, ''Yes, I didn't vote for the Wyden amendment but I voted for the sense of the Senate.'' And I think what the Senator is doing by being, I would say, very strong although very respectful and very aware of the way he has presented. He is saying that the time for these meaningless studies has come and gone, and we need to get to the business of saving lives.

I wanted to thank the Senator. I again repeat my question: Was the Senator aware that we did go on record several months ago on this issue?

Mr. WYDEN. I very much appreciate the Senator from California making me aware of this. I was not. It just seems to me, as the Senator has indicated, that it is time to act. Before I came to the Congress and served in the House where we served together, I was head of a senior citizens group, a great panel. I had not run for public office before. I had never been involved in public office. When we started that senior citizens group we said we are going to focus on the good ideas that help people. We do not care whether they are Democrat. We do not care whether they are Republican. We are just going to focus on the ideas that help people. I think that is what Dr. GANSKE did when he took this up in the House, a Republican physician, who said that what we need to do is help people. We certainly are not helping people by having these gag rules that keep people from knowing about their rights much.

So the House, as we have discussed, and in the committee on a unanimous basis, said we are going to stand up for the patients, we are going to stand up for the providers, the vast majority of doctors who are honest and ethical, and want to tell their patients about their rights. And it made great bipartisan progress.

That is what I want to do here. I know the Senator from Nebraska has been trying to help me for the better part of 24 hours. I want to yield to him.

Mr. KERREY. Mr. President, I wanted to ask the Senator from Oregon if he would be willing to allow the underlying amendment to be set aside so we can proceed to the next item of business under the unanimous consent agreement and come back to the amendment. We have an hour agreement for the next amendment, and we can come back to it.

Mr. WYDEN. The Senator from Nebraska has been very helpful. I appreciate it. That is acceptable to me.

Mr. SHELBY. Parliamentary inquiry. We set aside the committee amendment, and then the Kassebaum amendment which is the second degree, then we go under the UC to the pending committee amendment, as I understand it. Is it the committee amendment, and then the Kassebaum amendment in the second degree. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. SHELBY. If we set aside the committee amendment and the Kassebaum second degree, at the end of the hour of debate, which we have already gotten a UC on, we would automatically come back to the committee amendment and the Kassebaum amendment. Is that correct?

The PRESIDING OFFICER. That is correct. Once the next committee amendment is disposed of, then we would return to the underlying committee amendment which also has the Kassebaum amendment on it.

Mr. SHELBY. I ask unanimous consent to set aside the committee amendment and the second-degree amendment to it, the Kassebaum amendment, so we can go forward.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

EXCEPTED COMMITTEE AMENDMENT BEGINNING ON PAGE 80, LINE 20 THROUGH PAGE 81, LINE 4

The PRESIDING OFFICER. The clerk will report the next committee amendment.

The bill clerk read as follows:

Beginning on page 80, strike line 20 through page 81, line 4.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Who yields time?

Mrs. BOXER. I wonder if we could hear what the unanimous consent exactly was.

The PRESIDING OFFICER. The unanimous-consent agreement would be to set aside the underlying committee amendment, which is the second committee amendment which also contains the Kassebaum second-degree amendment. We would then go to the third committee amendment. With that amendment, 30 minutes are under the control of the Senator from California, and 30 minutes under the control of the Senator from Oklahoma at which time the motion to table would be in order.

Mrs. BOXER. Mr. President, I think it would be appropriate for the opposing side, the side that wishes to strike the committee language, to go first. Clearly the Senator from California and the Senator from Nebraska are very pleased with the action of the committee and support the committee. I think it is most appropriate for those wishing to strike the committee language to proceed at this time. Then we can respond.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I yield myself such time as I need.

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

Mr. DEWINE. Mr. President, let me first say that this very same issue was debated by this body last year in our consideration of the Treasury-Postal Service appropriations bill.

Mr. President, at that time this body voted 50 to 44 to accept the very language that the amendment before us asked us to strike. So this Senate has already voted in this same context to restrict Federal funds for abortion, specifically to restrict the use of Federal funds for abortion coverage of the Federal health care plans to cases of rape, incest, or the life of the mother.

Mr. President, I wanted that noted out front so that we all realize that we are not covering any new ground. This is something that should not take, frankly, very much of the Senate's time.

Mr. President, the issue of abortion is an important matter of conscience to millions of Americans. We tried to promote our views in the democratic arena. We seek to embody these views in our Nation's laws. As someone who is pro-life I worked, obviously, to promote the value of and protect the innocent human life. But, Mr. President, the discussion of this amendment is much more narrow. The discussion of this amendment does not need to reach that moral level of debate. The key question in regard to this amendment that we have to answer simply is this: Should taxpayers pay for these abortions?

Again, I emphasize the Senate spoke last year by a vote of 50 to 44 and said no.

I believe that we should not ask the taxpayers to promote a policy of abortion on demand. This amendment that I am going to move to table after we conclude our debate would strike the House language on this subject and would change current law. Our position, my position is to retain current law, to retain what the Senate did last year by a vote of 50 to 44, and to retain the current House language. I believe we should retain this language that permits Federal employee health plans to cover abortion only in the cases of rape, incest, and threats to the life of the mother. In essence, this is a Hyde amendment-type debate.

The vast majority of Americans, 69 percent, in a 1992 ABC-Washington Post poll said they opposed taxpayer

funding for abortions for low-income individuals.

If that many people oppose subsidizing abortions for poor people, I think there would be even more opposition to subsidizing abortions for higher income Government workers. The reality is that in every single poll I have ever seen done, the vast majority of Americans, whatever their position on the issue of abortion, say no taxpayers funding.

We should make no mistake about it. This is a taxpayers subsidy. In 1995, the Federal Government paid an average of 74 percent of the cost of a Federal employee's health premium. That is taxpayer money. I suggest it is wrong. I think we should leave the taxpayers out of the whole debate and out of the whole issue. Therefore, I believe we should support the House language, that we should support current law, and that would mean tabling this amendment.

In summary, then, this matter has been debated time and time again on this floor. The issue is a narrow one, a very narrow one, and it is simply this: Should taxpayers' dollars, all taxpayers in this country, be taken by the Federal Government and used to subsidize and fund abortions? Current law says no. Current law limits abortion availability in Federal employee health care plans to cases of rape, incest, and to save the life of the mother. That is current law. That is what the Senate voted for last year. That is the House position, as well.

I might add that when we went through this debate last year, ultimately the House acquiesced in the Senate's three exceptions. These were our exceptions from the Senate. They acquiesced, and that is where we are today. My motion to table would simply restore current law.

At this point, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. I yield myself 7 minutes.

The issue as presented by my friend and colleague from Ohio is quite different, in my view, from the way he put it forward to the American people. To me, the question is clear: Should women Federal employees or their dependents be treated the same as other women in the work force or should they be singled out, punished, have their rights taken away from them and be treated differently?

We get into a lot of debate in the Senate on very important issues. None could be more important than this, regardless of the way you view the issue on abortion. And we know in the Republican platform, the platform committee adopted a platform which would criminalize abortion, urging adoption of a constitutional amendment which would deny women the right to choose even in matters of rape or incest, and we know that many here who speak out on this issue and that is really their whole desire.

The fact is, abortion is legal in this great land.

My friend and colleague says we are trying to stop abortion on demand. There is no such thing as abortion on demand in this country. There is a Supreme Court case called Roe versus Wade. Yes, a woman has the right to make this personal, private decision without a U.S. Senator telling her what to do in the first 3 months of her pregnancy. She has the right to make that decision with her doctor and her God without the Senator from Ohio or another State who holds an opposite view essentially saying, no, we do not think that is right.

She can make that choice under Roe versus Wade. After that, the State has an interest, and rules apply to that abortion. So there is no such thing as abortion on demand.

The bottom line is, this is a tough, personal, private matter, and I really think it is about time we trusted women to make that choice. Why should we say that a woman who happens to work for the Federal Government or her dependents should not have this right?

My friend says we disposed of this matter on a vote before. Yes, we did. As a matter of fact, in 1993, in this Senate, before my friend got here, we restored the rights of women in the Federal Government to be treated equally. I really do not think women are asking for much here other than to have equal treatment, to be respected for the choices that they make, and, unfortunately, what this amendment will do by disagreeing with the committee of the Senate is to tell a woman who happens to work for her Government, she cannot use her own insurance to exercise a perfectly legal right.

My friends in the Senate, I have to say, if there was an amendment to stop a man who happens to work in the Federal Government from getting a perfectly legal medical procedure, one that might protect his health, there would be an uproar around here. They would say, how could you do that to the men of this country? Why not treat the men who work for the Federal Government the same way we treat men who work in the private sector?

The answer, in this particular case, with this particular amendment, is you cannot win your point with the American people. You do not have the votes in this country to put Government in the middle of this personal, private decision. And so what do you do? Every chance you get, I say to my colleagues on the other side of this issue, you chip away and you chip away and you chip away at the right of women to choose.

If you are a woman today, what this Congress has done in its extremism, I say, is to tell a woman who is willing to die for her country by serving in the military that she cannot go to a hospital, a military hospital, and have a safe and legal abortion which could potentially save her life—that right has been taken away. This Congress has been chipping away at a woman's right to choose.

I am so proud of this committee which took a stand against the extremism of the House of Representatives and restored the rights of women who are Federal employees to use their own insurance for which they pay a percentage, to exercise a perfectly legal right.

Mr. President, I should like to reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. I yield myself 1 minute.

Let me just briefly respond. This is not an issue of equal treatment. This is not an issue of that at all. It does not tell anyone what to do. I think we need to keep our eye on the ball and discuss not the whole issue of abortion here today. I think it is important we discuss what is in front of us. What is in front of us is a very narrow issue, and that simply is, are we going to use Federal tax dollars to subsidize, pay for abortions?

The vast majority of the American people say, no, we see absolutely no reason to do this. On an issue as contentious as this is and where there are good people on both sides of the battle, why in the world we would say, this Congress would say we are going to take Federal tax dollars to subsidize abortions makes absolutely no sense.

Let me at this point yield to my colleague from Indiana 10 minutes.

Mr. COATS. Less than that, 5 minutes.

Mr. DEWINE. I yield 5 minutes.

The PRESIDING OFFICER. The Senator from Indiana is recognized for up to 5 minutes.

Mr. COATS. Mr. President, the Senator from Ohio essentially made the points I was going to make in response to the Senator from California, who I think has mischaracterized the issue before us. The issue before us has nothing to do with a woman's right to have an abortion. It has nothing to do with an amendment that, in her words, denies the choice of women, takes away a woman's right to choose. It is not an amendment to stop anyone from getting a perfectly legal procedure accomplished. So I think it is important for our colleagues to understand what the amendment does and what it does not do.

This is not a debate on whether or not a woman has a right to an abortion. I have suggested for a number of years, ever since I have been in the Senate, that we ought to have that debate. We have had that debate on occasion. But this is not the debate we are having today. The debate we are having today is on the amendment offered by the Senator from Ohio, which simply restores to the Senate bill the language that was incorporated in the

House, that says, except in the cases where the life of the mother is in jeopardy or in cases of rape or incest, the taxpayer will not be asked to fund abortions chosen by a woman under the Federal Employees Health Benefits plan.

There are a number of perfectly legal procedures, medical procedures, that are not covered by the health insurance plan. Not every health insurance plan covers every procedure. I do not know what percent of private insurance policies cover the cost of abortion, but that is not an issue either. The question is whether or not the Federal Employees Health Benefits plan, which every Federal employee participates in, will cover abortion. There are, as I said, a number of procedures that are not covered. That is a matter of determination by the organization that provides the insurance. We have the ability to select from a number of different insurance plans. But the issue is whether or not the taxpayer will be asked to pay for it.

This is not just another medical procedure. This is a procedure that is extraordinarily controversial, where American opinion is divided, where taxpayers, for religious reasons, moral conscience reasons, and other reasons feel they should not have to use their tax dollars to pay for something they believe fundamentally violates their religious beliefs, their moral convictions.

This is a debate we have had now for 20 years, and pretty consistently over the last 20 years, with a couple of exceptions, the Congress, whether it has been a Democrat-controlled Congress or a Republican-controlled Congress, has pretty consistently supported the proposition that taxpayers should not be coerced into paying for a procedure which many of them feel violates some of their most deeply held beliefs. That has been, as I said, supported by both Democrats and Republicans. Democrats controlled the House throughout the decade of the 1980's and the early 1990's, and the Hyde amendment, which is essentially what the Senator from Ohio was offering, was supported by both parties. It has been supported here in the U.S. Senate. It says that, except in those instances of rape, incest, and protecting the life of the mother, we will not ask the taxpayer to pay for it.

Since the Federal Government subsidizes our insurance costs—up to about 74 percent, I think is the latest figure—clearly, the cost of an abortion would be subsidized and paid for, at least three-fourths of it would be subsidized and paid for, by the Federal taxpayer. That is why the amendment is being offered.

So I think it is important we focus on the amendment that is here. We can reserve time—I am sure both sides would be willing to accommodate it at some point—to discuss the larger issue of abortion: the meaning of life, when life begins, what restrictions if any should be placed on abortions, the whole idea of Roe versus Wade, the Supreme Court decision. Those are all issues that are legitimate issues but have nothing to do with this amendment.

So let us make sure that we focus on what the amendment seeks to do and what the amendment does not seek to do. I have more I can say in this regard, but I think in the interests of time here, since my 5 minutes is up, I will cease at this point and then we will talk about it, but let us keep the discussion focused on what the amendment is all about.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I will take 1 minute and then I will yield 5 minutes to one of the leaders on this issue, Senator MIKULSKI. Let me just respond briefly.

To hear Senators say this has nothing to do with a woman's right to choose, makes me think sometime that we are in never-never land around here. Of course it has something to do with a woman's right to choose. You are telling more than a million women, more than 1 million women, who happen to work for the Federal Government or rely on the FEHBP for health insurance that they should be treated differently when it comes to their right to choose. They work hard. They ought to be trusted. So, it is all fine to stand here and say it is being mischaracterized, it has nothing to do with the right to choose, but if you are a Federal employee and, let us say, you earn $20,000 a year and you pay for a percentage of your health insurance and you cannot get an abortion with that health insurance, even if your doctor says you might be paralyzed for life—because there is no exception for that—I assure you we are talking reality. We are not talking something that does not really exist. This is a real threat to a woman's right to choose if she is a Federal employee.

Mr. COATS. Will the Senator yield on that point for a question?

Mrs. BOXER. I cannot yield on my time, but if you use your time I will be glad to, because I do not have enough time.

Mr. DEWINE. I yield my colleague 1 minute.

Mr. COATS. I understand. We will use our time. I would like to ask a question.

The Senator from California said we are denying women who work for the Federal Government the same rights that all other women have.

Are you saying that every insurance policy in America has coverage for abortion and therefore every other woman in America has the right to have an abortion paid for under her insurance policy? Or, are there different policies, some that offer it, some that do not offer it?

Mrs. BOXER. The vast majority of plans do offer abortion, and in the private sector most women have the opportunity to find a plan that would, in fact, cover that if they so chose. Whereas in this particular amendment we are saying no one, no one who works for the Federal Government, through the Federal Employees Health Benefits plan, can get such a policy. We are restricting the freedom of the women who work for the Federal Government.

Mr. COATS. We checked with Planned Parenthood and asked them that question. They disagreed with what you just said. They said there is no way, they do not have specific information about the availability of abortion coverage, how many insurance policies cover it, how many do not.

The point is, it is not an accurate statement to say we are denying women who work for the Federal Government the opportunity that all women have. That is not an accurate statement.

Mrs. BOXER. Maybe my friend would appreciate we know that 78 million women——

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

Mrs. BOXER. On my time, if I might respond, we know for sure that 78 million women in the private sector do affirmatively have this choice. So we have 78 million women that we know of who have this choice but the 1.2 million women who work for the Federal Government or are dependents of Federal employees do not have the choice and cannot have the choice if the Senators on that side of the aisle prevail.

Mr. President, I yield 5 minutes to our leader on this committee, along with Senator KERREY, Senator MIKULSKI.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 5 minutes.

Ms. MIKULSKI. Mr. President, I rise in very strong support of the committee amendment and in opposition to the Nickles amendment.

As a member of the Senate Appropriations Committee and a member of the Subcommittee on Treasury and Postal Services, we made very clear in the committee the dominant view in the committee is that we wanted the women of the United States of America to be able to have abortions where medically appropriate in their health insurance legislation. This bill was reported by the Senate Appropriations Committee, and it would enable Federal employees whose health insurance is provided under the Federal Employees Health Benefits plan to receive coverage for abortion services, subject to all the traditional laws of the land.

The Nickles amendment would reinstate the language from the House bill which prohibits coverage for abortion except in the case of life endangerment, rape, or incest. It would continue a ban which has prevented Federal employees from receiving the health care service which is widely, if not totally, available for private sector employees.

We think limiting it to life of the mother, rape, or incest is medically

dangerous. We believe the decision should be made by the mother, with the consulting physician, using whatever is her religious conviction to be able to proceed with something that is deemed by the physician as medically appropriate. We leave that decision to be made not on the floor of the Congress but in a doctor's office.

The 104th Congress has been a tough one to support a woman's right to choose in that most private of matters not to have a child. Bill after bill after bill after bill, we have faced votes on women's reproductive rights.

In the 104th Congress, between the House and the Senate, this Congress has voted 51 times on this issue. The 104th Congress has been unprecedented in its assault also on Federal employees—their pay, their benefits and their livelihoods. What we have with this amendment is a vote on abortion and also on the basic benefit package for Federal employees.

I represent over 280,000 Federal employees in the State of Maryland, the Social Security Administration that makes sure the checks go out on time, the National Institutes of Health that right now are doing research to ensure the saving of lives.

We want the very people who are able to do research on fertility and reproduction to be able to have access to what is medically necessary in terms of the relationship of abortion.

Federal employees have faced assault after assault in these last 2 years. They face tremendous employment insecurity, downsizing, and so on. I view this amendment as yet another assault on these public servants. It goes directly after the benefits of Federal employees.

Health insurance is part of the compensation package to which they are entitled. The cost of insurance coverage is shared by the Federal Government and by the employee. I know that the proponents of continuing the ban on abortion coverage for Federal employees say they are only trying to prevent taxpayer funding of abortion, but that is not what this debate is about. This is about prohibiting the compensation package of Federal employees from being used for a legal and sometimes vital medical service. Health insurance is part of the Federal employee's pay. The decisions related to health care should be made between the patient and the physician.

If we were to extend the logic of those who favor the ban, we might next prohibit Federal employees from using their own paychecks to pay for an abortion. No one is seriously suggesting that Federal employees ought not to have the right to do what they want with their own money. We should not be also placing unfair restrictions on the type of health insurance that Federal employees can purchase under their own Federal Employees Health Benefits plan.

Over 1.2 million women of reproductive age depend on the FEHB for their medical care. We know that access to reproductive health services is essential to women's health. We know that restrictions that make it more difficult for women to obtain early abortions where medically appropriate increase the likelihood that women will put their health at risk by being forced to continue a high-risk pregnancy. If we continue to ban the abortion services and leave only these very narrow exemptions, these 1.2 million women of reproductive health age who depend on FEHB will not have access to abortion even when their health is seriously threatened. We are going to be replacing the informed judgment of medical practitioners with that of politicians.

Let me conclude by reiterating that decisions on abortion should be made by the woman in close consultation with her physician. Only a woman and her physician can weigh her unique circumstances and make the decision as to what is medically necessary and medically appropriate. It is wrong for Congress to try to issue a blanket prohibition.

I will vote ''no'' on Nickles and up on the committee amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I yield myself such time as I may consume.

Very briefly, let me say, again, this is not a debate about abortion. This is not a debate to determine what a person can do or cannot do. That is not what is at issue here. What is at issue here is what will be covered. What is at issue is whether or not Federal tax dollars taken from all Americans, many of whom find this procedure to be abhorrent, whether or not we will involuntarily take their money to pay for abortions.

Congress has voted time and time again not to do that. The vast majority of the American people in every public opinion poll anyone has seen indicate they do not want that done. It is a very, very narrow issue.

Let me read the current law. Our position is the current law simply should be sustained:

> No funds appropriated by this act shall be available to pay for an abortion or administrative expenses in connection with any health plan under the Federal Employees Health Benefits program which provides any benefits or coverage for abortions. The provision of this section shall not apply where the life of the mother will be in danger if the fetus were carried to term, or the pregnancy is the result of an act of rape or incest.

Mr. President, let me yield to my colleague from Oklahoma.

Mrs. BOXER. Will the Senator yield for a question? I will be happy to do it on my time.

Mr. DEWINE. On your time, fine.

Mrs. BOXER. My colleague keeps reiterating, as do my other colleagues on the other side, that this is about Federal funds and people oppose spending Federal funds.

Would my friend support an amendment that said that women Federal employees who do, in fact, exercise their right to choose and use their insurance could be reimbursed for the portion of the premium which they paid themselves which, in this case, is about 28 percent? Would my colleague work with me on such an approach so at least they can get reimbursed for the portion of their share of the premium?

Mr. DEWINE. I am not sure how that will function, how that will work or how to mechanically get that done. The bottom line is, in fact, you can buy riders, you can, in fact, buy separate policies.

All we are saying is, when the latest study shows 74 percent of the premiums are paid by other taxpayers, it is a legitimate issue.

Mrs. BOXER. I say thank you to my friend and take back my time. I think this points out for all the American people to see that this is not about Federal funds, because I just made a very reasonable proposal that since women pay approximately 28 percent of their premiums out of their own pocket, why not allow them to get this coverage and reimburse them for 28 percent of the cost of the procedure? My friend says he doesn't know how it would work. We figure out a lot tougher things around here.

Mr. President, I yield 5 minutes to my friend——

The PRESIDING OFFICER. The Senator from Ohio had not relinquished the floor. He responded to a question from the Senator from California.

Mrs. BOXER. I am sorry. I reserve the remainder of my time.

Mr. DEWINE. I yield to my colleague from Indiana.

Mr. COATS. Mr. President, I would like to address the question just asked by the Senator from California.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. I say to the Senator from California, who asked would we be willing to accept an amendment which would allow reimbursement for an abortion for that portion of the premium which is paid for by the Federal employee, again, I think the Senator misses the point here.

From one standpoint, she is saying these women have no other place to go, they can't get an abortion. One-fourth the premium is $62, if it is a $250 abortion. I have been told that is the going rate for an abortion. So are you telling me that an employee of the Federal Government who has a job, a full-time job, who is working for the Federal Government is unable to come up with $62 in order to pay for an abortion?

Mrs. BOXER. May I respond on my friend's time? I will be brief.

Mr. COATS. I would like you to respond on my time, but you did not let me respond on your time.

Mrs. BOXER. I will tell you what I will do for my friend, I will respond on my time.

Mr. COATS. That is what you asked me to do. That is appropriate.

Mrs. BOXER. The Senator is right. I should respond to him on my own time. He is perfectly correct.

I say to my friend from Indiana, he says I miss the point. I say, those on the other side of the aisle, who are trying to deny Federal employees their equal rights, miss the point. If your argument is that taxpayers do not want their funds used, I am giving you a way out of this, in fairness. If my friend thinks $62 is not a lot of money, let me point out to him a fact. Twenty-five percent of the Federal employees earn less than $25,000, and 18,000 Federal employees are at or below the Federal poverty level.

I say to my friend, $62 is a lot of money for those people. But let us face the fact, you do not even want to go that far and allow them to get that reimbursement. My question, I think, really smoked out the true attitude on the other side of the aisle. This is not about Federal taxpayers' dollars; this is about chipping away at a woman's right to choose. It is very clear. You know, at the convention in San Diego, we saw what the goal is. This is chipping away wherever you can.

I yield 5 minutes to my friend from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized for 5 minutes.

Ms. MOSELEY-BRAUN. Thank you very much, Mr. President. I thank the Senator from California.

In spite of the fact that the majority of the American people embrace the freedom of reproductive choice, the efforts to use Government intervention as a bar to the right to choose continues. Every year that I have been in the Congress, and 9 years before that, we have had to consider whether or not female Federal employees should be able to choose a health plan that includes abortion as part of its reproductive health services.

We have not been considering whether or not these women have the right to abortion. The Supreme Court affirmed they do over 20 years ago. This issue, the one we are considering, is whether or not we should prevent their insurance from covering the procedure.

In reality, we are considering whether or not we should put barriers in the way of our own employees exercising their constitutionally protected rights. I do not—and this is a matter of public record—I do not personally favor abortion. My own religious beliefs hold life dear, and I would prefer that every potential child have a chance to be born.

I do, however, believe fundamentally in the right of every woman to make her own private decision concerning her pregnancy. I cannot fathom telling my employees, or any employee in the Federal Government, that they cannot fully exercise their constitutionally protected right to choose because Congress was playing politics with their health insurance plans.

We are debating whether or not Congress will, for yet another year, deny Federal employees a benefit available to most women who work in the private sector. It is common practice in the health insurance industry for private health care plans to cover complete reproductive services, including pregnancy, childbirth, and abortion. This is because most women want the right to choose. It is also because it is better medicine, as Senator MIKULSKI pointed out in her statement.

In addition, this motion would restrict access to earned benefits. I think this is a very important point. Federal employees pay a portion of the cost of their health care benefits. A Federal employee chooses a Federal health benefits package and then pays a monthly fee to their chosen health care plan. Employees are free to choose from some 342 plans, 178 of which would not cover abortion even if they could. The employee chooses a plan and then pays for part of it.

The balance of the premium is an earned benefit, which is compensation. It is part of their pay, their compensation. Let me repeat for those who may not understand this point. It is not a gift from the Federal Government to its employees. It is earned by those employees, including women employees.

Approximately 9 million Federal employees, their dependents, and Federal retirees depend on Federal benefits for their health insurance. This includes 1.2 million women of reproductive age who rely on the Federal Employee Health Benefits program. The restrictions that this amendment would renew would prevent 1.2 million women from receiving the full reproductive health services that their doctors might want to provide for them.

Since 1983, Mr. President, Congress has changed the rules in this area not once, not twice, but four times. We have literally been playing political ping pong with women's reproductive health. I urge my colleagues to just put this issue to rest and allow women full access to health benefits and full access to the constitutionally protected right to choose.

Most women who choose to have an abortion do not use their insurance coverage to pay for it. Most women want to keep the matter private. But even if most women do not use the benefits, there is a matter of principle that the benefits should not be denied to them. We should remove the intrusion of politics from earned Federal employee benefits and from the private health decisions of our employees. This Congress should not continue to play politics with women's lives and women's health.

In conclusion, Mr. President, I would say, as I mentioned in another debate, for those who urge smaller Government, I would point out that here is another instance in which those who tell us that the issue and the objective is smaller Government, only say so when it does not relate to people's personal liberty and their private lives. This is yet another intrusion in the private lives and private liberties of women, in terms of the exercise of their Federally constitutionally protected rights. I suggest that this amendment ought to be denied. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DEWINE. Mr. President, I yield to my colleague from Oklahoma 5 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 5 minutes.

Mr. NICKLES. Mr. President, first, let me compliment my colleague from Ohio and also my colleague from Indiana for their statements. Let me kind of try to put this in perspective. Senator DEWINE raised a concern about a committee amendment. At some point he will have a motion to strike the committee amendment or to table the committee amendment.

What is he doing? What does this mean? Well, last year the House and the Senate agreed to language that said we are not going to use Federal taxpayers' money to include abortion as a fringe benefit in health care plans except in cases of rape and incest and to protect the life of the mother.

One of my colleagues mentioned, well, we should be consistent. That was the policy of the Federal Government, frankly, from 1984 to 1993, until Bill Clinton became President. He changed it. That lasted in 1994 and 1995. We changed it last year. We had a vote. We actually had a kind of unusual session. We had a Saturday session. We had three votes on it and basically ended up with the policy that the Senator from Ohio is trying to maintain.

What is that policy? That policy is the same thing that was in the House language, that being that Federal taxpayers' moneys will not be used to provide abortions for Federal employees unless necessary to protect the life of the mother or in cases of rape or incest. That was last year's policy. That is what the House is trying to maintain. That is what the Senator from Ohio and Indiana and myself are trying to maintain, to continue last year's policy.

The committee had an amendment to strike the House language. That would open it up and that would allow Federal employees to receive taxpayer subsidies to pay for abortion. We did not agree with that last year. We did not agree with it for 10 years, 1984 through 1993. Bill Clinton wanted to change it. We changed that back last year. We are trying to maintain last year's policy. We had two or three votes on it, as I mentioned, in an unusual Saturday session.

I remember my colleague from Ohio stayed here. He had a very important family meeting in Ohio, and he stayed here to vote on this because he felt that it was important. I will never forget that, because we literally are talking about, do we want abortion to be a

fringe benefit in health care plans? Some people say, well, you are attacking a woman's right to choose. We are saying, no, it should not be a standard fringe benefit.

Abortion is not another standard health procedure. It happens to be taking the life of an innocent, unborn child. Do we really want the Federal Government to subsidize that? A lot of people think, well, maybe that should be a woman's right, but we should not be subsidizing it. If this amendment does not pass, we are going to be subsidizing it. Taxpayers pay for about three-fourths of it.

So when I think of that and I think of what kind of protections we give to unborn endangered species, thousands of endangered species—we have significant protections. As a matter of fact, if you destroy their unborn, you can be subjected to prison, you can be subjected to $50,000 fines—but not for unborn children. We are not even trying to elevate unborn children to the protected status of endangered species; but we are trying to say: Taxpayers, you should not have to subsidize the destruction of innocent, unborn human beings.

That is what the DeWine amendment or the DeWine resolution is, to strike the committee language. I believe the Senator from Ohio is exactly right. Abortion should not be a fringe benefit. It should not be included as a standard option. If Federal employees want to purchase it, they certainly can. The cost is minimal. It is $250 or $300.

We should not include it as a standard fringe benefit and say, look, if the Federal Government does it, why should not all health care plans in America? Not all health care plans do. A lot of health care plans do not. We should not have an item in our standard health care package for Federal employees that actually results in the destruction of an innocent human being.

I compliment my colleague from Ohio. I hope our colleagues will support that and remember how they voted last year when we had an extraordinary Saturday session and we adopted the present policy. The present policy being, again, that for Federal employees, we will not include abortion as a standard fringe benefit unless it is necessary to save the life of the mother or in cases of rape and incest.

I thank my colleague. I yield the floor.

Mrs. BOXER. Mr. President, might I say that the more I listen to this debate the more I compliment my friends, the Senator from Nebraska, Senator KERREY, and the Senator from Maryland, Senator MIKULSKI, who argued this eloquently in the committee—to treat Federal employees the same way, the way more than 75 million American women are treated in the private work force.

We hear from the Senators from Oklahoma, Ohio and Indiana saying this has nothing to do with the right to choose, yet we hear a speech about destroying an innocent life. Let me say this is very much about the right to choose and the right of a woman to make a private personal decision with her own physician, to be able to use her insurance that she pays for, and yet when I offer to my friends to talk about a way to at least reimburse her for the portion that she pays out of her own pocket, he says no, there are excuses and reasons why we could not do that.

This is, frankly, an attack and assault on a woman's right to choose. It is aimed at Federal employees. My friends would love to aim it at every woman in America. They cannot do it. They do not have the votes to do it. So they chip away.

I yield 4 minutes to the Senator from Rhode Island, Senator CHAFEE.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Rhode Island is recognized for 4 minutes.

Mr. CHAFEE. Mr. President, I will take a few minutes to speak in favor of the committee amendment. What this committee amendment would do is allow the Federal employees health program to resume coverage for abortion services. Unfortunately, and I believe it was unfortunate, last year, Congress voted to prohibit the Federal employees health program from covering abortions for our female employees and our female dependents.

If this committee amendment were not adopted—in other words, if it were rejected —we will be responsible for continuing a lower standard of health insurance for our female employees than they could get if they worked in the private sector. In the private sector you can get this. What this says is you cannot offer this service.

Now, there is nothing that says these programs have to include coverage for abortion services. Not at all. Indeed, before that amendment last year was passed, out of the 345 health plans that are all put under the Federal Employees Health Benefits program, 345 of them—about half; 178—offered some form of abortion coverage. In other words, a woman could choose this if she wanted; if she wanted a plan that did not cover it, fine, she could choose that. But it seems to me terribly unfair for us to say, no, no, none of those programs can offer this benefit to women who might want to have it. Indeed, if they are in the private sector, they could get it.

Now, some say this is a gift of the Federal Government to these women. No, it is a benefit. It is a benefit that comes with the health package that our Federal Government offers. It is like saying that a woman could not use her private funds, her earnings, her salary, her wages from the Federal Government to obtain an abortion. Nobody is suggesting that, because the Constitution says the woman has a right to go out and buy this procedure—it is a legal procedure, a medical procedure—and the right is held up by the Supreme Court.

Mr. President, I think what is being attempted here is a very, very, unfair move against employees of the Federal Government.

Last, here is a notice that came out last year after this prohibition was passed in the Congress.

> Dear Blue-Cross and Blue-Shield benefit plan member:
>
> On November 19, 1995, public law [so and so] was enacted which limits the Federal Employees Health Benefit plans coverage of legal abortions.

And then it says to the whole of the plan that they no longer can cover that. You are out of luck. If you are in the private sector, as I said, you can get this, but you cannot get it any longer if you are a Federal employee. There are 345 plans and none of them can be permitted to offer it. I think it is very, very unfortunate, Mr. President.

I hope the attempt to defeat the amendment is not successful.

Mrs. MURRAY. Mr. President, I rise today in opposition to the motion by the Senator from Ohio, and in support of full access to reproductive health care, including abortion services, for civil servants.

Last year, as my colleagues know, this Congress denied women who are civil servants from participating in health insurance plans which cover abortion services. This overturned previous policy, which allowed these women—like millions of women employed in the private sector—access to complete reproductive health care.

Mr. President, major health insurers such as Blue Cross/Blue Shield provide this coverage for women in private sector jobs across the country. It is approved of by a majority of the American public. By denying the same options for Federal employees, we set a different standard for millions of women. Nine million Americans are covered by the Federal Health Benefits Program, and none of them should be denied access to complete reproductive health care services. It sends the message that public servants do not have the same rights as private sector workers, and that is wrong.

Civil servants are no different that any other American. They are regular people: secretaries, engineers, maintenance workers, and caseworkers. Why should they be treated any differently than other workers? They pay for their premiums and deductibles like everyone else, and they should be allowed the same options as other women in this country. Civil servants are being asked to do tougher and tougher jobs with the downsizing of our Federal government—and are stepping up to the task. They should not be required to make further sacrifices simply because they are an easy target for those in Congress who would outlaw abortions all together.

Mr. President, we have all heard the stories of women who were forced into very difficult situations as soon as this policy was enacted this year. We heard

about Susan Alexander who wanted to have the child she was carrying, but found out gross fetal deformities made her child's development ''incompatible'' with life, and threatened her life as well. Her doctors all recommended terminating her pregnancy for medical reasons. Unfortunately, she and her husband were shocked to find that her insurance policy no longer covered what turned out to be a very complicated and expensive procedure, performed to protect her life.

Mr. President, we know there are other women out there like Susan Alexander who have been directly affected by the decision made in this body last year. We know that to continue this policy will have a serious and tangible impact on women's health. Therefore, it is irresponsible to continue to deny women access to a full range of health care services because Congress has turned the health care choices of women into a political football.

Make no mistake about it, we are once again confronted with an attempt to deny women the rights they now hold. Women have the legal right of choice in this country, and the majority in this country support that right. This policy is micro-management of the worst kind, and it is wrong. The U.S. Congress should not be making reproductive health choices for Federal workers. Nor should it discriminate against Federal workers who choose to have an abortion.

By denying civil servants health coverage for abortion services, Congress does just that. It continues to force Federal employees and their families to purchase separate insurance to cover reproductive health services. It continues to add financial considerations to a very time-sensitive, personal decision. And, above all, it reinforces the message to civil servants that the same rules do not apply to them. Their health is subject to the political winds of Congress.

Mr. President, this is not reasonable to expect of people who are dedicated to serving the public good. I commend Senator BOXER for her vigilance and dedication on behalf of women everywhere, and thank her for her leadership in protecting the rights of civil servants. Once again, I urge my colleagues to reject this motion.

Mr. ROBB. Mr. President, I rise today to support the committee amendment which would strike House provisions prohibiting the Federal Employee Health Benefits Program from providing coverage for abortion services.

The vast majority of private health plans provide coverage for abortion services. The House bill is telling Federal employees that, because of who their employer is, they shouldn't have the ability to choose a health plan which covers this legal medical procedure.

An employee who opposes abortions can choose a health care plan which does not cover the service, which I understand was almost half of all FEHBP plans prior to last year's prohibition. I don't believe, however, that it is appropriate for us to preclude employees who want this coverage from choosing it.

For this reason, I urge my colleagues to support the committee amendment and vote against tabling this proposal.

Ms. SNOWE. Mr. President, I rise in strong opposition to this effort to reinstate the ban on abortions in Federal employee health benefits plans. It is yet another ripple in a steady stream of attacks on women's reproductive rights and health.

This debate is painfully familiar. One year ago, the Senator from Oklahoma, Senator NICKLES, offered an amendment, which—regrettably—passed this body and changed the status-quo of health care for Federal employees and their dependents in America. It represented a giant step backward for the rights and health of women who are covered by the Federal Employees Health Benefits Plan [FEHBP]. It prohibited the FEHBP from covering abortions—except when the woman's life is in danger or in cases of rape or incest.

As the result of these restrictions, Federal employees and their dependents enrolled in FEHBP's who need abortions must pay for them out of their own pocket, except in cases of rape, incest, or to save the life of the mother. This may result in significant hardship to a woman and her family, especially because many Federal employees have incomes at or below the poverty level, which is $12,980 for a family of three.

In fact, 25 percent of all Federal employees earn less than $25,000—with nearly 18,000 Federal employees having incomes below or just slightly above the Federal poverty level. And while the average cost of an early abortion performed in a clinic is $250, the cost rises to $1,760 if performed on an outpatient basis in a hospital.

This means that some Federal employees may be forced to decide between paying for an abortion and buying food for their children or paying rent. Others may be forced to carry their unintended pregnancies to term. It is shameful that our Federal employees have such terrible options.

Denying abortion coverage to Federal employees may also endanger a woman's health. Restrictions that delay an abortion make it more likely that a woman will continue a potentially health-threatening pregnancy to term, or undergo abortion procedures later in a pregnancy when they are far more risky to a woman's health.

Just because we have the power of the purse in Congress does not mean we should have the power to penalize women in public service by denying them their reproductive freedoms or threatening their health.

There are currently 1.2 million women of reproductive age who rely on their Federal health plan for their medical care—and that's 1.2 million American women who would be summarily stripped of their constitutionally guaranteed right to choose because they or a family member work for the Federal Government.

Federal employees should have no fewer rights than any other American worker who earns a health care benefit as part of their compensation package.

Some argue that the Federal Government has a right to dictate which medical services will be covered under the FEHBP. They argue that Federal tax dollars should not pay for abortions.

That's what some would like this debate to be about—taxpayer funding for abortion. But that's simply not the case. In fact, that argument is a red herring.

Taxpayers would not fund abortions covered by Federal health plans. Far from it. The Federal Government, like millions of private employers across the country, contributes a portion of its employee's insurance premiums, and the employee pays the rest. Thus, FEHBP coverage is not pocket money for Federal employees. It is not an allowance or a Federal handout. It is direct compensation earned by Federal employees. And I would like to note that CBO has determined that coverage of abortions—a legal medical procedure—does not add to the cost of the premium.

This anti-choice restriction on Federal employees health benefits arbitrarily and unjustifiably reduces their total compensation package. The fact is, any service not covered by their health insurance which they must pay for out-of-pocket amounts to a pay cut in their hard-earned wages. It is not for Congress to determine how those hard-earned wages should or should not be spent. Wages and benefits belong to the employees.

According to the Office of Personnel Management, which oversees the FEHBP, between 1993 and 1995, 178 of the 345 FEHB plans provided abortion coverage. Of the ''Big Five'' health plans offered to Federal employees, four of the five offered abortion coverage. This range of options allows employees who object to abortions to choose any one of the hundreds of Federal health plans that would not cover the procedure.

Today, 78 million women in America have abortion coverage in the private sector. Two-thirds of private fee-for-service plans provide the full range of reproductive health services, including abortions. And 70 percent of health maintenance organizations [HMO's] provide abortion coverage.

Finally, a majority of people in America believe that abortion should be safe, legal and rare. These Americans do not distinguish between women who work in the private sector and women who work for the Federal Government.

A person's ability to exercise a constitutional right should not be determined by an employer—even when the

employer is the Federal Government. What we can and must do today is ensure that we do not maintain the existing two-tiered system of rights for our citizens—one for women who work for or are insured by the Federal Government, and another for those women who work in the private sector. We must not allow such discrimination to continue. And we must stop sending a signal to our Federal employees and their female dependents that we do not value their health or their reproductive rights. I urge my colleagues to join me in voting to oppose this motion to table the committee amendment.

Mr. KERRY. Mr. President, today once again the radical right has come to this Senate floor to impose their will against the wishes of a vast majority of Americans. They have come forth again to add an amendment to the Treasury, Postal Service, and general Government appropriations bill that would limit reproductive health services for 1.2 million female Federal employees.

The Treasury-postal bill provides the funding for the Federal Employees Health Benefits Program [FEHBP], our network of insurance plans that cover approximately 9 million Federal employees and their dependents. Today, there are approximately 1.2 million women of reproductive age who rely on the FEHBP for their medical care.

Mr. President, in the United States we have a Constitution that guarantees an extensive list of freedoms upon which the Government cannot infringe. Perhaps the sponsors of this amendment do not understand the issue at hand. The Supreme Court ruled in Roe versus Wade that abortions are constitutional. It is completely legal for a woman who wants to have an abortion to obtain the services of a doctor who is willing to provide an abortion. Congress should not have the ability to decree to a woman that she cannot obtain an insurance policy that covers abortion, which is a fully legal procedure. This is not the role of Congress. We have no right to impose ourselves and our sense of morality in this way upon the women who work for the Federal Government.

Failing to make abortion illegal, antichoice Members of Congress are trying to make this right more difficult to exercise. Singling out abortion for exclusion from health care plans that cover other reproductive health care is harmful to women's health and discriminates against women in public service.

In 1993 and 1994, Congress voted to permit Federal employees, like workers in the private sector, to choose a health care plan that covered a full range of reproductive health services, including abortion. It is my belief that health insurance is part of an employees' earned compensation. As is common in private industry, costs for insurance coverage for Federal employees are shared by the employer and the employee. This is similar to the private sector where approximately two-thirds of private fee-for-service plans and 70 percent of health maintenance organizations provide abortion coverage.

Despite these facts, last year Congress stripped Federal employees of this right. This year, some Members are again attempting to restrict women's access to reproductive health services. Mr. President, this is not right. It is a troublesome manifestation of the Congress' well-known plantation mentality.

Mr. President, this amendment is unjustly restrictive and discriminatory. Passage of this amendment assigns an inferior status to women working in the Federal Government. It is time to stop these attempts to chip away at a woman's legal right to choose. I urge my colleagues to vote against this amendment.

Mr. DEWINE. Mr. President, would the Chair advise Members how much time remains?

The PRESIDING OFFICER. The Senator from Ohio has 8 minutes and 18 seconds under his control, and Senator BOXER has 4 minutes under her control.

Mr. DEWINE. Mr. President, let me yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator is recognized.

Mr. DEWINE. Mr. President, we are concluding this debate and we will shortly be voting on my motion to table the amendment.

Again, I think it is important that we keep our eye focused on the ball. We can come down here in the well of the Senate and discuss for hours the issue of abortion. That is not what this debate really is about. What this debate is about is a very narrow issue, a very narrow question, which is simply this: Should this body go against the will of the American people? The vast majority of the American people, even those who really have mixed feelings on the abortion issue, the vast majority of the American people say, no, I do not want my tax dollars being used for abortion. That is what this is because 74 percent of the premium of the Federal employee is paid for by taxpayers; roughly three-fourths of the premium is paid for by taxpayers.

This is a horribly contentious issue, an issue that divides families. It is an issue that friends do not want to talk about. It is an issue, quite frankly, that the Federal taxpayers have said time and time again that they do not want to be involved in, they do not want to fund.

We are not debating a woman's right to choose today. We are not debating that. We are not debating what a person can do. We are simply debating whether taxpayers are going to pay for this very, very, controversial procedure. That is what we really are talking about.

I yield to my colleague from Indiana.

Mr. COATS. Mr. President, just to summarize so Members know exactly what it is we are voting on. This is not, despite what has been said, this is not an issue over whether or not a woman has the right to choose to have an abortion. We do not change any constitutional rulings. We do not change anything in that regard.

This is simply an issue as to whether the taxpayer will be forced to pay for an abortion of a Federal employee's demand for an abortion. Mr. President, 70 percent or more of the citizens of the United States, whether they are pro-life, pro-choice, or neutral on the question, have consistently stated in polls and surveys that, regardless of their position, more than 70 percent have said no in an issue that is this controversial, which violates the conscience and religious beliefs of many people, or that is simply a taxpayer issue. We do not believe the taxpayer should be forced to pay for the abortion of someone else.

This goes one step further because it limits it to just Federal employees. The Senator from Ohio wants to retain the policy that has effectively been in practice, totally, almost consistently for more than 20 years, consistently supported by both Democrats and Republicans, whether Democrats have been in control of the Congress or whether Republicans have been in control of the Congress.

So I hope my colleagues will vote to maintain the current law—the current law being that we will not force taxpayers to pay for the abortions of Federal employees. And we do allow exceptions to that rule: If the life of the mother is in jeopardy or in cases of rape or incest.

I think that is a reasonable policy, and it has been consistently supported. I hope we retain that law.

Mr. DEWINE. Mr. President, I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mrs. BOXER. Mr. President, I have 4 minutes left, is that correct?

The PRESIDING OFFICER. Yes.

Mrs. BOXER. And the other side has how much?

The PRESIDING OFFICER. They have 4 minutes 23 seconds.

Mrs. BOXER. I will yield the remainder of the time to Senator KERREY, who has really worked hard in the committee to do the right thing, to give Federal employees equal treatment with the 75 million other women that have that choice in the private sector.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. KERREY. Mr. President, first of all, all Members have made up their minds on this issue. So it is not a question of trying to persuade anybody one way or the other. It is trying to say to the American people, those of us who intend to vote for allowing Federal employee health programs—as in this bill, their insurance money—to be used to pay for reproductive services, including legal abortions.

I have a great deal of respect for the Senator from Ohio, the Senator from

Indiana, the occupant of the chair, and others who hold a different view. But when they come and say this is about using taxpayer money to pay for abortions, really, the only way you can prevent taxpayer money from being used for abortions by Federal employees would be to actually come in and prohibit their salaries to be used in any way at all for abortion, because their salaries are paid for with taxpayer money.

If my salary is paid for with taxpayer money, if I am already provided a subsidy in my salary, what good does it do to say that they can't have health insurance programs do it? We have two-thirds of the health insurance programs in the United States and 70 percent of the HMO's in the United States already providing reproductive services, as well as legal abortions.

You are not really preventing taxpayer money from being used, not at all. If their salary is used to pay for abortion, that is taxpayer money. What you are doing is—you think that is what you are accomplishing, but you are not. What you are doing, in fact, is changing the rules and saying to women who are Federal employees that you are going to be treated differently than 70 percent of the other employees that are out in the work force.

There are 9 million Federal employees, approximately 1.2 million women of reproductive age, who rely on the Federal Employee Health Benefits program for medical coverage. Until November 19, 1995, Federal employees—like workers in the private sector—were permitted to choose a health care plan that covered a full range of reproductive health benefit services. So I say to citizens out there, who say, ''gee, I think we ought to restrict use of the Federal Employee Health Benefits Program for something that I don't want to pay for,'' that is not what you get done. All you are saying is they can't use health care benefits; you are not saying they can't use salary, which is taxpayer money as well.

In 1993 and 1994, Congress voted to permit Federal employees to choose the health care plan that covered abortion. And from 1983 until that time, Congress prohibited the Federal Employee Health Benefits Program from covering abortion services, except in cases where the woman's life was in danger.

Mr. President, one of the problems here—especially for lower income Federal employees, of whom we have a considerable number—is if you examine what the American Medical Association has said in this case. They have indicated, and they say it with evidence to back up the claim, that restrictions such as this—that deter and delay women from making a legal choice—make it more likely that women will continue a potential health-threatening pregnancy to term or undergo abortion procedures that would endanger their health. That is what the medical community has said that has examined this.

So I hope the citizens that are listening to this argument will understand that this is really not about using taxpayer money. You would have to restrict the use of salaries in order to accomplish that objective.

The PRESIDING OFFICER. The time of the Senator has expired. All time of Senator BOXER has expired.

Who yields time?

Mr. DEWINE. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 4 minutes 22 seconds.

Mr. DEWINE. I yield myself the balance of that time. In just a moment—4 minutes, roughly—I will make a motion to table this amendment. Let me, again, walk the Members through the procedure of exactly where we are.

The DeWine-Nickles motion to table will result in the following. This is what it means. First, that the status quo will remain. The law—as previously passed by this Congress, by this Senate, by the House, and signed into law by President Clinton—will remain the same. This vote, a vote to table, is consistent with what the Senate did a little over a year ago, by a vote of 50 to 44.

Again, Mr. President, we need to focus on the narrow issue before us. It is so easy for us—because we all have strong feelings about the issue—to get engaged in a debate about a woman's right to choose, pro-life issues, and even engaged in a debate about all kinds of different things connected with the abortion issue. That's not what we are here today to debate.

We are here to debate a very narrow question: Should current law prevail, which restricts from Federal coverage, health insurance coverage of Federal employees, one procedure—the abortion procedure—and allows it only in the case of rape, incest, or to save the life of the mother? That is the issue. The issue is fundamentally, with all due respect to my colleague from Nebraska, whether or not taxpayers are going to subsidize this at the rate of 74 percent. That is really what the issue is all about.

The vast majority of the American people, time and time and time again, have said ''no.'' The country is very divided on the abortion issue, but it is overwhelmingly against using Federal tax dollars for abortions.

Again, the motion to table will simply preserve the status quo, will reaffirm what the Senate did a year ago. Frankly, it is consistent with what the law was from 1984 to 1993. It was only changed when President Clinton took office, for 2 years, and that law then was changed. So really going back to 1984, until the current time, this motion to table is consistent with what the law has been during that period of time, with the exception of 2 years.

Mr. President, I yield back the balance of my time.

I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Delaware [Mr. ROTH] is necessarily absent.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent due to family illness.

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

The result was announced—yeas 53, nays 45, as follows:

[Rollcall Vote No. 284 Leg.]

YEAS—53

Abraham	Faircloth	Lott
Ashcroft	Ford	Lugar
Bennett	Frahm	Mack
Biden	Frist	McCain
Bond	Gorton	McConnell
Breaux	Gramm	Murkowski
Brown	Grams	Nickles
Burns	Grassley	Nunn
Coats	Gregg	Pressler
Cochran	Hatch	Reid
Conrad	Hatfield	Santorum
Coverdell	Heflin	Shelby
Craig	Helms	Smith
D'Amato	Hutchison	Thomas
DeWine	Inhofe	Thompson
Domenici	Johnston	Thurmond
Dorgan	Kempthorne	Warner
Exon	Kyl	

NAYS—45

Akaka	Glenn	Mikulski
Baucus	Graham	Moseley-Braun
Bingaman	Harkin	Moynihan
Boxer	Hollings	Murray
Bradley	Inouye	Pell
Bryan	Jeffords	Robb
Bumpers	Kassebaum	Rockefeller
Byrd	Kennedy	Sarbanes
Campbell	Kerrey	Simon
Chafee	Kerry	Simpson
Cohen	Kohl	Snowe
Daschle	Lautenberg	Specter
Dodd	Leahy	Stevens
Feingold	Levin	Wellstone
Feinstein	Lieberman	Wyden

NOT VOTING—2

Pryor	Roth

So the motion to lay on the table the committee amendment beginning on page 80, line 20 through page 81, line 4 was agreed to.

Mr. NICKLES. Mr. President, I move to reconsider the vote.

Mr. COATS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I make a point of order the Senate is not in order.

The PRESIDING OFFICER. The Senator is correct. The Senate will come to order.

The question recurs on the second committee amendment to which is pending amendment No. 5235, offered by Mrs. KASSEBAUM, the Senator from Kansas.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I ask unanimous consent the Senator from

Arizona be permitted to speak for 5 minutes as in morning business, and the Senator from Nebraska for 5 minutes immediately thereafter.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Arizona is recognized for 5 minutes.

Mr. GRAMM. Could we have order, Mr. President.

The PRESIDING OFFICER. The Senate will come to order so the Senator from Arizona can be heard.

The Senator from Arizona.

UNITED STATES MILITARY ACTION AGAINST IRAQ

Mr. MCCAIN. Mr. President, this morning we learned that Iraq fired a surface-to-air missile at American F–16's patrolling the no-fly zone over what has now become an imaginary Kurdish safe haven in northern Iraq. This latest challenge to the safety of American pilots and to the credibility of American security guarantees in the Persian Gulf region comes on the heels of Saddam Hussein's rejection of United States warnings not to repair his air defense systems damaged by our cruise missile strikes in southern Iraq.

The necessity of further United States military action against Iraq is now obvious. And by his actions, Saddam Hussein has made the strongest argument for a disproportionate U.S. response of considerably greater military significance than our military action last week.

Furthermore, Saddam's aggressive challenges to the United States, and his success in reasserting his control in northern Iraq as his troops and the troops of his new Kurdish allies, the KDP, completed their conquest of the region on Monday, reveal the critical importance of curbing the Clinton administration's tendencies to rhetorical inconsistency in defining its objectives, disingenuous explanations of its policy choices, and exaggerated claims of success.

Our strikes last week were in response to Iraq's conquest, in alliance with the KDP, of the Kurdish city of Irbil. But by striking targets in the south, the administration chose not a disproportionate response to Iraqi aggression, but a minimal response that was disconnected from the offense it was ostensibly intended to punish. As one administration official put it: ''* * * We know that we did the right thing in terms of stopping Saddam Hussein in whatever thoughts he might about moving south and in letting him know that when he abuses his people or threatens the region, that we will be there. * * * we really whacked him.''

Evident in that statement are the three harmful administration tendencies cited above. Our stated purpose to stop Saddam's abuse of his people was quickly overridden by, in the words of another administration official, the judgment that ''we should not be involved in the civil war in the north.'' And while administration officials at first suggested that our strikes in southern Iraq would affect Iraq's action in the north, they now emphasize that the strikes were intended only to serve our strategic interest in restricting Saddam's ability to threaten his neighbors from the south.

It is clear now that the erosion of coalition unity, evident in Turkey and Saudi Arabia's refusal to allow United States warplanes to undertake offensive operations from bases in those countries, had a far more important influence on our choice of targets and the level of force used than administration officials have admitted.

Most importantly, the President's claims that our strikes were successful in achieving their objectives are belied by the events of this week. By what measurement can we assert that Saddam has been persuaded to treat his people humanely; that he has been compelled to abide by U.N. resolutions and the terms of the cease-fire agreement; that the containment of Iraq has been further advanced; and that the United States and our allies are strategically better off since we fired 44 cruise missiles at Iraqi air defense systems in the south?

Since those strikes, Saddam's Kurdish allies have achieved a complete victory in the north, and Saddam has regained control of an area from which he has been excluded for several years. Kurdish refugees are again flooding across the border. Saddam, in utter contempt for U.S. warnings, has begun repairing the radar sites we struck last week. He, at least temporarily, split the Desert Storm coalition. And in violation of the cease-fire agreement and U.N. Security Council resolutions, he has fired missiles at U.S. planes patrolling an internationally established no-fly zone. As successes go, this one leaves much to be desired.

Clearly, Iraq's attempted downing of American planes requires a military response from us. I have little doubt that the President will order a response. Given that Iraq's action represents a challenge not just to the United States, but to the international coalition responsible for enforcing the no-fly zone, I would expect that we will have greater cooperation from our allies than we experienced last week. Thus our ability to take the disproportionate, truly punishing action which is clearly called for under the circumstances should not be limited by the consequences of our failure to maintain coalition unity.

Decisions about the dimensions of our response are, of course, the President's to make. I pray that he will choose wisely.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 minutes.

THE COMPREHENSIVE TEST BAN TREATY

Mr. EXON. Although there are many important things the U.S. Senate is in the process of doing right now, I want to pause for just a moment, if I might, to bring to my colleagues attention that yesterday, history was made at the U.N. General Assembly. After nearly 3 years of intense negotiations at the 61. Nation Conference on Disarmament, the world community reached an agreement on a treaty to ban nuclear weapons testing. This Comprehensive Test Ban Treaty, strongly supported by all five declared nuclear states, was overwhelmingly adopted by the U.N. General Assembly on a vote of 158 to 3 with 5 abstentions, clearing the way for world's nations—actual and potential nuclear states alike—to sign the agreement later this month.

After over 40 years of nuclear weapons testing and more than 2,000 detonations, this valuable tool in stemming nuclear weapons proliferation is finally within reach. In order for the treaty to enter into force, each of the world's 44 nations identified as possessing nuclear weapons or the research capability necessary to develop them must sign the comprehensive test ban agreement. As my colleagues are aware, India has led a high-profile campaign to prevent this from happening and frustrate the will of the world community to close the nuclear weapons Pandora's box. This temporary setback should not diminish, however, the significance of yesterday's truly historic vote. I am confident that India will see the wisdom of halting the spread of nuclear weapons and sign the Comprehensive Test Ban Treaty before too long. In the meantime, mankind can celebrate the fact that for the first time in history, the world's superpowers have agreed to end the testing of nuclear weapons forever.

Many of our allies played critical roles over the past 3 years in making passage of the Comprehensive Test Ban Treaty a reality. But I wish to take this opportunity to praise President Bill Clinton for his leadership on the issue of the Test Ban Treaty and nuclear weapons proliferation. The United States has been a world leader in halting the spread of nuclear weapons technology during the tenure of the Clinton administration. The earlier extension of the Nuclear Non-Proliferation Treaty and now the completion of the Comprehensive Test Ban Treaty are important milestones in the history of arms control, and the President deserves a great deal of credit in making it happen.

In addition to lauding President Clinton's dedication to this important aspect of our national security, I wish to praise the efforts of Secretary of State Warren Christopher, Arms Control and Disarmament Agency head John Holum, and U.S. negotiator to the conference on disarmament Stephen Ledogar.

I wish also to single out the tireless dedication of Senator MARK HATFIELD to the cause of a verifiable Comprehensive Test Ban Treaty. As my colleagues know, Senator HATFIELD will be leaving the U.S. Senate at the conclusion

of this session, ending 30 years of distinguished service to his country. I can think of no more fitting way to highlight the last few months of his career than yesterday's treaty approval. Four years ago, I joined him and former majority leader George Mitchell in authoring a law phasing out American nuclear weapons testing and jumpstarting international negotiations designed to achieve a permanent test ban. It is, therefore, with a great deal of pride that I herald the action of the General Assembly and look forward to the treaty signing ceremony later this month. I remind the Senate, with Senator Mitchell gone and Senator HATFIELD and myself leaving come January, the continued leadership in this area falls to Senator LEVIN and others to take up the challenge.

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

The PRESIDING OFFICER. The time of the Senator has expired. Who seeks recognition?

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

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

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

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1997

The Senate continued with the consideration of the bill

Mr. KERREY. Mr. President, I ask unanimous consent that the pending amendment be laid aside just for the consideration of an amendment offered by the distinguished Senator from Virginia, Senator WARNER.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 5240

Mr. WARNER. Mr. President, I thank the distinguished managers of the bill, and I thank my two colleagues who, for various reasons, at this point in time have an interest in the floor procedure and have permitted me, as a matter of Senatorial courtesy, to proceed with the following amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 5240. On page 53, beginning on line 23, strike ''and in compliance with the reprogramming guidelines of the appropriate Committee of the House and Senate.''

Mr. WARNER. Mr. President, first of all, I would like to commend the Appropriations Committee, subcommittee Chairman SHELBY and Senator KERREY for their efforts in including funding for security requirements in both the new construction and repair and alterations categories for the Federal buildings program of the General Services Administration in the fiscal year 1997 Treasury, postal appropriations bill.

The current security environment is uncertain and variable. Unforeseen circumstances, and events can radically change the requirements for security expenditures in real time and at a moment's notice as witnessed by recent tragic events in our Nation.

Current language in the Senate appropriations bill requires compliance with formal reprogramming processes in order to use funds for security purposes. While this requirement is an appropriate check on security expenditures, and I commend my colleagues for their swift action in this area in the past, I remain concerned that during a congressional recess, a delay in the implementation of reprogramming measures for security could impede actions necessary for the immediate protection of our Federal work force.

My amendment would allow GSA to use any funds previously appropriated for repairs and alterations and building operations and rental space to meet minimum standards for security upon notification of the Appropriations Committee of the House and Senate that such a determination had been made.

I would also request that should my amendment be agreed to, clarifying report language be added stating the following:

The Committee has included requested funding for security as a line item in both New Construction and Repairs and Alterations in addition to amounts requested in Basic Repairs. A provision authorizing the use of other repair funds has also been included to ensure that the GSA can respond quickly to safety and security requirements as they are identified. Safety and security concerns are to be addressed as a top priority in using capital funds provided in the bill.

As the chairman of the Subcommittee on Transportation and Infrastructure, with oversight responsibility over the General Services Administration, I have been pleased with GSA's actions to date in meeting an enhanced level of security at GSA controlled buildings and facilities. I would like to commend the Appropriations Committee for actions taken following the Oklahoma City bombing in the fiscal year 1995 legislation, continuing reprogramming efforts approved by both the authorizers and appropriators in fiscal year 1996, and now in the Treasury, postal appropriations bill that we have before us for fiscal year 1997.

I think that all of my colleagues would agree that in light of the new threatening environment we are under, resulting from incidents of domestic terrorism like the Oklahoma City bombing, providing a safe and secure environment for our Federal work forces and visitors to our Federal buildings should be the highest priority.

That is the intention of this amendment. I am pleased to learn from the distinguished manager, the Senator from Nebraska, it appears it is acceptable. And Senator SHELBY has, likewise, indicated that.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, both Senator SHELBY and I have looked at this amendment. We agree it is a good amendment. We appreciate the Senator from Virginia bringing it to our attention, and we are willing to accept it.

Mr. WARNER. Mr. President, I urge its adoption.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 5240) was agreed to.

Mr. WARNER. Thank you, Mr. President.

I move to reconsider the vote.

Mr. KERREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

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

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, I ask unanimous consent that the pending committee amendment, and the Kassebaum amendment thereto, be laid aside in status quo. In explanation of that unanimous consent request, Senator KASSEBAUM is, I believe, in a meeting having to do with the FDA reform. There has been a lot of discussion back and forth about how to handle these two amendments. The Senator from Oregon is here and is continuing to pursue his desire in this effort. He has been willing to have these set aside for now so we can take up other issues, and amendments can perhaps be agreed to, and perhaps other amendments can be debated and voted on, if necessary. We will continue to work to see how we can resolve that. I make that unanimous consent request.

Mr. WYDEN. Reserving the right to object, and I do not intend to object, I just want it understood that I have spent the last couple of hours trying to work, in a bipartisan way, to address this, to address the budgetary concerns. I want the majority leader, Senator LOTT, to understand that I have no interest in prolonging this. I do want to protect the rights of these vulnerable patients and get that done today. But I have no desire to prolong this.

Mr. President, we are going to continue, as the majority leader requested,

to work to try to fashion something that is acceptable. We thought we had something a minute ago, but, apparently, we have some more work to do.

With that, I withdraw my reservation. I appreciate the majority leader trying to help us by setting that aside.

Mr. LOTT. Mr. President, was that request agreed to?

The PRESIDING OFFICER. I thought the Senator from Alabama was rising to speak on the request.

Is there objection to the request?

Without objection, it is so ordered.

Mr. THOMAS. Mr. President, I ask unanimous consent that the pending amendment be laid aside.

The PRESIDING OFFICER. That has been done.

AMENDMENT NO. 5224

(Purpose: To limit the use of funds to provide for Federal agencies to furnish commercially available property or services to other Federal agencies)

Mr. THOMAS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. THOMAS] proposes an amendment numbered 5224.

Mr. THOMAS. 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 end of title VI add the following:

SEC. 646. (a) Except as provided in subsection (b), none of the funds appropriated by this or any other Act may be used by the Office of Management and Budget, or any other agency, to publish, promulgate, or enforce any policy, regulation, or circular, or any rule or authority in any other form, that would permit any Federal agency to provide a commercially available property or service to any other department or agency of government unless the policy, regulation, circular, or other rule or authority meets the requirements prescribed under subsection (b).

(b)(1) Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall prescribe regulations applicable to any policy regulation, circular, or other rule or authority referred to in subsection (a).

(2) The requirements prescribed under paragraph (1) shall include the following:

(A) A requirement for a comparison between the cost of providing the property or service concerned through the agency concerned and the cost of providing such property or service through the private sector.

(B) A requirement for cost and performance benchmarks relating to the property or service provided relative to comparable services provided by other government agencies and contractors in order to permit effective oversight of the cost and provision of such property or service by the agency concerned or the Office of Management and Budget.

AMENDMENT NO. 5224, AS MODIFIED

Mr. THOMAS. Mr. President, I send a modification of the amendment to the desk.

The PRESIDING OFFICER. The Senator has that right.

The amendment is so modified.

The amendment (No. 5224), as modified, is as follows:

At the end of title VI add the following:

SEC. 646. (a) Except as provided in subsection (b), none of the funds appropriated by this or any other Act may be used by the Office of Management and Budget, or any other agency, to publish, promulgate, or enforce any policy, regulation, or circular, or any rule or authority in any other form, that would permit any Federal agency to provide a commercially available property or service to any other department or agency of government unless the policy, regulation, circular, or other rule or authority meets the requirements prescribed under subsection (b).

(b)(1) Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall prescribe regulations applicable to any policy regulation, circular, or other rule or authority referred to in subsection (a).

(2) The requirements prescribed under paragraph (1) shall include the following:

(A) A requirement for a comparison between the cost of providing the property or service concerned through the agency concerned and the cost of providing such property or service through the private sector.

(B) A requirement for cost and performance benchmarks relating to the property or service provided relative to comparable services provided by other government agencies and contractors in order to permit effective oversight of the cost and provision of such property or service by the agency concerned or the Office of Management and Budget.

(C) The regulation would not apply to contingency operations associated with a national emergency.

Mr. THOMAS. Mr. President, I want to explain the amendment, if I may, and then ask that we have a vote on it. It has to do with the Federal Government's policy of more than 40 years that the Government should not compete with the private sector in areas in which the private sector can legitimately function. In fact, the Government should rely on the private sector to supply commercially available goods and services.

However, this policy is too often ignored. For example, the Defense Science Board calculates that out of 850,000 full-time positions needed to provide commercial services for the military, 640,000 are held by Federal employees rather than private sector personnel.

I want to go back and talk about commercial services, however, because the modification that I sent to the desk exempts emergencies and exempts factors that are not routinely commercial completely from the bill. There is a new administration policy that prompts this particular amendment.

OMB has come out with a policy that grandfathers existing Interservice Support Agreements from cost-comparison requirements. In other words, it says if you have had this kind of Interservice Support Agreement, it is not even necessary to inquire as to what the cost would be if, indeed, there would be savings in the private sector.

The Interservice Support Agreements permit one Federal agency to provide goods or services to another agency. This new policy gives agencies until October 1, 1997, to go out and recruit business from other agencies, without performing any cost analysis.

The administration implicitly argues that this entrepreneurial approach to Government will save the taxpayers money—and they don't even know what the cost comparisons are. Some examples of existing ISSAs are: Aerial photography, mapping services, laboratory services, printing services. Other specific examples are: A U.S. Geological Survey was hired by the Bureau of Reclamation to participate in the High Plains Groundwater Recharge Program. The project took twice as long and cost three times as much as the private sector standard.

In Jacksonville, FL, the Navy Public Works Division recently completed a state-of-the-art environmental lab to provide routine hazardous waste characterization. These services are already available from the private sector, and the Navy intends to offer these services now to other Government agencies.

Mr. President, this is not the concept that most of us have for Government. It is common sense, I think, that activities that are integral to Government, activities for emergencies, for defense, activities such as plane wrecks and all these things, those things, of course, are excluded under the bill. But when we are talking about routine services that can be provided commercially in the private sector, then they should be.

There are a few examples of direct Government competition with the private sector. So there is a new policy that encourages the Federal Government to compete with the private sector. I think that is philosophically wrong. Certainly, it hurts small business. There isn't even competition for projects —no public solicitation—the private sector never knows if there is a need that they could fulfill.

We did this, by the way, in the Wyoming legislature when I was there. We had a bill that said that in those areas where the function can be commercially carried out, there ought not to be competition by the Government, that there ought to be at least an analysis of the cost, and a fair analysis, so these things can be done, to the extent that it is possible, to save the taxpayers money and do it in the private sector. Numerous studies have shown that outsourcing can save the Government $9 billion to $10 billion annually.

Further, it seems to me that this process of having extra commercial activities carried on by Government agencies circumvents the appropriations process. If an agency is able to do the work for another agency, it is likely to have more resources and employees than it really needs to fulfill its primary mission. It may be wasting taxpayers' resources and may need to be cut back. If an agency appropriations is cut and it recruits business, it is circumventing the appropriations

process. The amendment that we have simply indicates that none of the dollars in this particular appropriations can be used unless, and the rule says:

A requirement for a comparison between the cost of providing the property or service concerned through the agency concerned and the cost of providing such property or service through the private sector.

It is very simple. It simply says that you have to take a look at letting the private sector do this and get the cost of that before one agency provides it to the Government sector for another agency.

I emphasize that we have been doing it for 40 years. This is a new OMB policy. It is a rule for the supplemental handbook. By the way, as to the handbook itself, I think we are going to hear—and we have heard from one agency, the Defense Department specifically—''Well, we will be curtailed on a number of these essential support emergency activities.''

Let me give you the modification first of all. It makes it clear that the amendment does not apply to national security. Furthermore, this OMB rule has an exemption. Nothing in this amendment would change advanced planning for contingencies; therefore, contingencies or emergencies, such as the Value Jet crash in the Everglades. There are two protections from that kind of thing. One is the rule itself, and the other as the amendment to this bill.

So it just seems to me that if you believe in the idea that the Government ought to be contained to those things that are uniquely Government activities and that beyond that we ought to go to the private sector, we have a broader bill that we have had for some time. We intended to have hearings on it. The hearings have been postponed twice—once at the request of the minority. So we have been prepared to have hearings on the broader bill. This one simply deals with the newest OMB supplemental handbook proposition. It says that you have to continue to do what you have been doing; and that is consider the cost of doing it in the private sector.

It is hard for me to imagine that anyone can object to the difficulty of doing things that can be done in the private sector, and doing them in the private sector if they are going to save us money. The idea that you can't do it in an emergency is not a valid one. It is not valid because of the handbook exemption. It is not valid because of the modification that we have put on the bill. This kind of thing, of course, simply expands Government.

I mentioned that we introduced S. 1724, the Freedom From Government Competition Act. It causes the Government to go outside. It causes OMB to study those things that are inherently governmental functions.

Senator STEVENS plans to hold a hearing on this bill in September. The Small Business Committee in the House has already held several hearings. But this is a smaller issue. While I am delighted that Senator STEVENS will be holding hearings on the broader bill, there is really no reason for small businesses to be caught under this Clinton administration ISSA policy, the Interservice Support Agreement policy. The amendment is very simple. It merely reaffirms existing law. It would prohibit the appropriation of funds of one agency to provide commercially available goods and services for another agency unless the cost comparison is done and more oversight is conducted on the agreement to provide more information about what we are doing. The amendment will create private-sector jobs, which is what we talk about all the time on both sides of the aisle. It will help small businesses. It will save taxpayer dollars and make Government smaller and more efficient.

Mr. President, the bottom line is we want Government to cost less. This is a way to do that.

So I urge my colleagues to support this amendment. It is a commonsense amendment, a good-government amendment, and a pro taxpayer reform amendment.

Mr. President, I yield the floor.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I would like to call up amendment No. 5237 and offer it as a second-degree amendment to the pending committee amendment, and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMS. Mr. President, this is a simple and straightforward amendment.

Mr. GLENN. I object.

The PRESIDING OFFICER. If the Senator will suspend. Is there objection?

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

The PRESIDING OFFICER. The Senator from Minnesota has the floor. Is there objection to the unanimous-consent request?

Mr. GLENN. Yes. There is objection.

The PRESIDING OFFICER. Objection is heard.

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

The PRESIDING OFFICER. The Senator from Minnesota has the floor. The objection is heard. The Senator from Minnesota has the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GLENN. 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. GLENN. Mr. President, I must oppose the amendment offered by my colleague from Wyoming, Senator THOMAS. The amendment would require cost comparisons and cost and performance benchmarks before any Federal agency can provide any other Federal agency with property or services.

I am a very strong supporter of increasing the efficiency of Government. Much of my effort over the last few years has been devoted to exactly that—passing the Chief Financial Officer Act, expanding inspectors general, and with the new procurement legislation we passed that was the work of not only the White House in the last administration but this administration and our Governmental Affairs Committee, as well as people in the Pentagon. So we have a track record of working in these areas of increasing the efficiency of Government and along with it of having a greater reliance on the private sector which we have provided in some of the new procurement legislation for providing goods and services to the Government.

In spite of that, I have difficulty supporting this amendment. Its impact, I do not think, has been completely reviewed and I think it is unnecessary and perhaps too broad. Let me go into some of that in a little more detail.

First, I must oppose the amendment because a floor amendment on an appropriations bill does not provide an adequate opportunity in which to consider this far-reaching proposal, and it is, indeed, a far-reaching proposal. The Governmental Affairs Committee, as I think the proponent has already mentioned, actually has a hearing scheduled for next week, September 19, on Senator THOMAS' related bill, S. 1724. I know we have had several hearings put off, and I understand that, and I understand the frustrations of people when they do not get appropriate hearings in committee to go ahead and opt for direct floor action. But consideration in committee will consider that legislation that also addresses Government and private sector issues. Consideration by the committee with substantive jurisdiction is needed before this proposal should be considered on the Senate floor. To bring the amendment to the floor when the sponsor has a hearing in only 1 week before the appropriate committee I do not feel is the best way to proceed, the best informed way to proceed on this issue.

Second, it is my feeling, having been into some of these things over the last several years, the amendment is unnecessary. The economy act at section 1535 of title XXXI of the United States Code already requires that an agency head determine that goods or services cannot be provided as conveniently or cheaply by a commercial enterprise before going to another agency for those goods or services. The cost and performance requirement of the present amendment would on their face have basically the same result as the economy act.

The relation of the amendment to the current law is exactly the sort of

issue that should be discussed at a committee hearing. I think we also need to examine the relation of the OMB regulations required by the amendment to OMB's circular A–76 that currently governs agency cost comparisons with private sector goods and services. To accept an amendment in the Chamber that on its face largely duplicates existing law and regulation is not the best way to proceed.

This overlap also concerns me with regard to the franchise fund pilots created by the Government Management Reform Act, GMRA, of 1994, which is Public Law 103–356. That act was a bipartisan effort of the Governmental Affairs Committee, and it passed unanimously in the Senate. The GMRA, the Government Management Reform Act, franchise fund pilots open up competition between agency service providers and the private sector for common administrative services. This program uses basic market force principles to search for better, quicker, and cheaper services. OMB is currently overseeing this program, and we should not enact new legislation that would affect it until we hear from OMB as to how this competition project is working.

My third objection to the amendment is that it is too broad. For example, in its original version it had no exemption for national security emergencies or danger to public health or safety.

Let me say right there that we had a letter from the Under Secretary of the Navy, John Hamre, who is working in these areas of better efficiency over in the Defense Department, and he felt it really gave a lot of trouble in this particular area.

I ask unanimous consent that his letter be printed in the RECORD.

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

UNDER SECRETARY OF DEFENSE,
Washington DC, September 11, 1996.

Hon. RICHARD C. SHELBY,

Chairman, Subcommittee on Treasury, Postal Service and General Government, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I have just learned of an amendment that Senator Thomas is proposing to offer on the Appropriations Bill for the Treasury, Postal Service and General Government. The amendment would require that before one federal agency can provide a service to another agency a cost comparison for providing the service would have to be made between the private sector and the government agency.

I recognize that the motivations behind this amendment are very worthwhile. We should use the private sector as much as possible for providing services; however, the unintended consequences of this amendment would be devastating to many of the cross agency operations that are now being conducted.

In its current form, this amendment could cost lives and delay essential support that has to occur immediately in time of emergency. Had this amendment been in place in the past, the Department of Defense (DOD) could not have transported equipment and material immediately for such catastrophes as Hurricane Andrew, the Oklahoma City bombing, the search for survivors and aircraft parts following the explosion of TWA 800, and numerous earthquake, fire and flood demands that are placed on the Department. These are extensive inter-agency arrangements for DOD support in times of emergency that are totally undermined by this amendment.

I strongly urge you to defer action on the amendment being offered by Senator Thomas until you have had an opportunity to hold a hearing on the implications of the amendment. This proposal while well intended, has far reaching consequences which must be studied and understood.

JOHN J. HAMRE.

Mr. GLENN. I understand though that this will be modified to accommodate that problem. I have not seen the modification yet specifically, but I understand that Senator THOMAS has modified his amendment to address concerns raised by the Department of Defense concerning national emergencies and that was one of the problems. I understand the amendment will provide an exemption for national security contingencies. Maybe that will solve the problem, maybe it will not, but that is a concern about the amendment, and I think the scope of it is still unclear.

If enacted into law in its original version, the amendment would appear to prohibit, for instance, some other things, and I do not know whether these are covered under contingencies or not. It would appear to prohibit the CIA from contracting with NSA or DIA, the National Security Agency or the Defense Intelligence Agency, for classified goods or services—for example, a spy satellite or equipment—without performing cost comparisons and benchmarks. While OMB might try to provide for such exemptions in the regulations required by the amendment, the amendment, as I understood it, provides no limitations on its comprehensive scope.

I am also concerned about the amendment's references to ''enforcing any policy or any authority in any other form.'' I put that in quotes, concerned about the amendment's reference to ''enforcing any policy or any authority in any other form.''

I am not certain what this might include. It could be interpreted to cover the budget. It would seem even to cover apportionment of funds. After all, when OMB apportions funds, it conveys an authority to outlay funds. How would this impact on interagency activities? I am not sure. Maybe it would be good. Maybe it would be bad. But these terms do concern me. I do not believe we should enact into law such an overarching requirement, a very major piece of legislation, without careful consideration of its scope and necessary exemptions.

The broad language of the amendment might also cover FFRDC's. Many times agencies contract with another agency such as DOE for goods or services to be provided by FFRDC, and this arrangement would seem to be covered by the amendment. I do not believe the Senate has sufficiently considered this proposal in order to subject the National Labs, the Center for Naval Analysis, and other FFRDC's with the blanket requirements of this amendment, and they would be affected by it. They could not help but be affected by it.

Finally, I am concerned that there could be other situations that this amendment would needlessly burden with reporting and study requirements. There could be instances in which an agency contracts for goods or services that another agency procures from other sources, even the private sector. There are also revolving funds and many interagency reimbursable activities that would appear to be covered by the amendment. And to subject all such activities to the terms of this amendment, without certainty about the impact, concerns me very much.

Again, the sponsors of the amendment may hope that OMB will provide the right exemptions for the right cases. But the text of the amendment is very, very comprehensive. Again, this is just another reason why I think we should not enact into law legislative language of such broad scope—not today, anyway.

Next week, OMB's Deputy Director for Management, John Koskinen, will testify before the Governmental Affairs Committee on various OMB and other agency initiatives to increase agency reliance on the private sector. That is one of the subjects of the hearing, and to create incentives for agencies to search for more economical ways to procure goods and services. That hearing will be very informative as to this debate. It should include this amendment, and that is where I think we should consider this amendment, not here on the appropriations legislation.

So I think I do not see any problem with recommending to my colleagues, with something of this broad a scope—and this is not an insignificant amendment, this is a major step in whatever direction it would be leading and is very, very far-reaching—I think, to wait 1 week until the head of OMB can give his testimony and give his opinion on this and indicate to us how this would operate at the executive branch level. It seems to me, that is not a delay that is intolerable.

For these reasons, I urge my colleagues to oppose the amendment. I think it is very far-reaching. It is not an innocuous little amendment; it is one that is very far-reaching, and after we know the scope of it better, it might be something I could well support. But I would like to have Mr. Koskinen's testimony on it and have it before the committee so we could explore, in a little bit more detail, the ramifications of this or the implications of it before we vote on it in an appropriations bill acting on the floor today.

Mr. President, for all those reasons, I oppose the legislation and hope my colleagues support that position. I yield the floor.

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

Mr. THOMAS. Mr. President, I appreciate the comments of my colleague from Ohio. Let me see if I cannot respond to some of them.

First of all, they talk about a hearing. We have delayed hearings twice now. We have asked for hearings, had them set up, they have been delayed—once at Senator GLENN's request. I think it is time we move forward with this proposition.

It is a narrow amendment. It is not a broad amendment. It is not a wide-reaching amendment. As a matter of fact, it deals only with circular No. A–76 and the language there where OMB has said, effective October 1997, ''The cost comparison requirements of this supplemental handbook will not apply to existing or renewed ISSA or consolidation of commercial services.''

This is not the broad bill that we have asked for a hearing on. It is not nearly as broad as I think it ought to be to effect this idea that we ought to be doing these things in the private sector. This notion that somehow we are going to get more efficiency out of doing it out of Government is one, I think, we have gotten long past. So we will be doing that, and we will be going further. This one only has to do with the changes that have been made by OMB.

The idea, of course, that it will affect the letter that the Senator read from the Department of Defense probably is not applicable in the first place. However, we have, in order to make sure that is not the case, amended and changed—modified the amendment with the language that ''the regulations would not apply to contingency operations associated with a national emergency.'' Clearly, I think that does that.

I want to interject here to ask unanimous consent that Senator STEVENS, the chairman of the Governmental Affairs Committee, and Senator FRAHM be added as cosponsors to this amendment.

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

Mr. THOMAS. The idea that is far-sweeping and far-ranging is that this has been in place for all these years until now. OMB simply changed it. It puts it back where it was, before OMB changed this. So the idea that it is an unknown is simply not true. It is simply not the case. It simply says to OMB, you cannot enforce these new rules that you put out that have changed what we have been doing now forever. So that is really what it amounts to.

I think it is very important that we move on these. We have had some other debates today about whether there have been hearings or whether there have not been hearings. It depends on which side you are on as to whether that is important. But the fact is, this is a relatively minor change and one that simply puts us back to where it is. If, in the hearings that subsequently occur, there is evidence that the OMB change is appropriate, then I urge the committee to authorize, in committee, them to do that. In the meantime, I think we ought not remove the requirements, the simple requirements that if you are going to offer a service to another agency—not services for yourself, offer them for another agency, which is a growing tendency within Government—that, first of all, you have to consider the outrageous notion of seeing if there is an alternative that is less expensive. That is really not very difficult. It is really not a new idea. Most people who do significant work contracting try to get more than one idea of what it costs. That is what we are talking about here.

As a matter of fact, I mentioned the idea that the statute on efficiency continues to exist. The problem is OMB is not abiding by it. That is the problem. It does continue to exist. It does say, yet, in the statute, that we ought to be doing this stuff in the private sector. The problem is, it is not being adhered to. The procurement act provides that an agency ''can provide another agency with goods and services if the goods and services cannot be provided by contract as conveniently or cheaply as a commercial enterprise.'' That is the law, but the rule negates that. That is what we are talking about. It is not a widespread change, not an unknown. It simply says we ought to go by what it says in the economy act, and not change it by OMB.

So, I suppose if we are going to deal with a broader bill, which I hope we do—I hope we make some conversions more to private sector use—then I agree we ought to take a look at it in the committee. This part of it, however, simply says, live under the law. It simply says, do not change the law. Go ahead and ask that, when you want to provide services to another agency, that the private sector ought to be examined first to see if, indeed, that is a more efficient and more effective way to provide those services.

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

The PRESIDING OFFICER. Is there a sufficient second?

At the moment, there is not a sufficient second.

Mr. THOMAS. We will ask when there are more people here.

Mr. LOTT. Mr. President, will the distinguished Senator from Wyoming yield?

Mr. THOMAS. Yes, I yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, after consultation with the Democratic leader and with the hope we can get a finite list and begin to work through these amendments, as we have done over the past couple of weeks, so we can get an agreement on amendments that we must, in fact, have votes on, I ask unanimous consent that the following be the only first-degree amendments remaining in order to the Treasury-Postal Service appropriations bill; that they be subject to second-degree amendments which are relevant to the first-degree amendment; that they may be offered in the first degree or in the second degree to a committee amendment; that the committee amendments be subject to second-degree amendments which are either on the list or relevant to an amendment on the list, if that amendment has been offered to the committee amendment; that no motions to recommit be in order and that upon the disposition of these amendments and the committee amendments the bill be read for a third time.

Mr. President, I submit for the RECORD the list. It is at the desk. The distinguished Democratic leader has a copy of this list.

The list is as follows:

REPUBLICAN AMENDMENTS TO H.R. 3756, THE TREASURY-POSTAL APPROPRIATIONS BILL

Abraham—Relevant.
Shelby—Managers amendments.
Shelby—Authority for GSA to work with Smithsonian to determine office space.
Stevens—Relevant.
Stevens—(1) Allow ACIR to use non-appropriated funds; (2) IRS commission.
Stevens—(1) Kodiak, Alaska Port of Entry Designation; (2) FOIA/privacy.
Grassley—Add $28 million to USCS; REDUCE TSM.
Inhofe—Strike Section 404(FPS position repeal).
Thomas—Inter-service Support Agreement.
Hatfield—Localflex pilot program.
Hatfield—Provide $1,450,000 for renovation of Pioneer Courthouse in Portland, Oregon.
Faircloth—(1) Prohibit IRS from using color printing except when describing tax law changes; (2) Social Security Administration.
Helms—Health care provider incentive plans.
Brown—Financial Management Bill.
Grams—Improve IRS telephone service.
Hutchison—Border Stations.
Kassebaum—(1) Job Training; (2) Relevant.
Lott—(1) Education; Relevant.
Lott—(1) Terrorism; Relevant.
Lott—(1) Drugs; Relevant.
Lott—(1) IRS; Relevant.
Nickles—re: Welfare.
Nickles—Workers rights.
Nickles—Presidential imunities.
Nickles—Relevant.
Hatch—Relevant.
Hatch—Relevant.
McCain—HIDTA Funding.
McCain—Federal overtime pay.
McCain—Udall Foundation.
McCain—Relevant.
Jeffords—Relevant.
Domenici—Relevant.
Ashcroft—Working flexibility.
Ashcroft—Relevant.
Thomas—Limit fund for Fed. Agencies to furnish commercially available services to other Fed. Agencies.
Coverdell—Relevant.
Coverdell—Relevant.
Gramm—Border stations.
Thompson—GSA telephone pilot project.
D'Amato—TWA crash.
D'Amato—Commemorative coin.
Warner—GSA building security.
Inhofe—Sec. 404.
Lott—Relevant.
Lott—Relevant.

TPO AMENDMENTS

Biden—(1) Drugs; (2) Drugs.

Bingaman—Energy savings.
Boxer—(1) Junk guns; (2) Pensions.
Bryan—(1) COLA for judges; (2) White House Travel (w/Levin/Reid); (3) Congressional pension.
Byrd—(1) Telecommuting center/W.VA; (2) Relevant.
Daschle—(1) Congressional employees health insurance; (2) Education; (3) Arson & Explosive repository; (4) Relevant; (5) Relevant; (6) Presidential immunities; (7) Welfare.
Dorgan—Indian Housing.
Feingold—Committee amdt p 129.
Feinstein—(1) Hate crimes (w/Wyden); (2) Relevant; (3) Tagents.
Graham—(1) Medicare receipts using emergency care; (2) Welfare formula fairness.
Hollings—Death benefits.
Kennedy—(1) Physicians gag (w/Wyden); (2) Education; (3) Workers protection; (4) Legal services.
Kerrey—(1) Managers package; (2) IRS review; (3) Relevant.
Kerry-Feinstein—(1) Relevant; (2) Tagents.
Kohl—Gun free school zones.
Lautenberg—Domestic abusers guns.
Levin—(1) White House travel (w/Reid); (2) SoS U.S./Japan auto.
Moseley-Braun—Age discrimination.
Reid—(1) White House Travel (w/Levin); (2) Judges' pay.
Simon—(1) Desalinization; (2) Pension auditing.
Wyden—Physician's gag (W/Kennedy).

Mr. LOTT. Mr. President, I would like to say right here that if there are any additions made to this list, it will be only after consultation and agreement between the two leaders.

That is the request.

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

Mr. LOTT. Mr. President, I thank the leader for his cooperation. It is a rather lengthy list, unfortunately, but now we have, at least, a list we can work on. Hopefully, we will both be able to work through getting these amendments removed if they are not really relevant to this bill.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, let me just say, the majority leader and I have had the opportunity in the last couple hours to talk to our Members and to urge their cooperation in coming forth with prospective amendments. I would emphasize that they are prospective. I hope that in many cases Senators would not feel compelled to offer them. Our hope is that we can resolve this bill some time in the not-too-distant future.

I hope that all of our colleagues can work with us to limit the list of amendments, to limit the debate on the amendments, once they are called up, and to see if we cannot complete our work. I have asked Members of our leadership to work with our caucus in order to put this list together now in a realistic fashion. And I hope that only in those cases where Senators truly felt that it was essential that the amendment be offered on this bill, that it be done so.

So I am urging cooperation, in concert with the majority leader, in the hope that we can come to some completion successfully on this bill some time in the not-too-distant future.

Mr. LOTT. Mr. President, did we get unanimous consent agreement on that?

The PRESIDING OFFICER. Yes.

UNANIMOUS CONSENT AGREEMENT—H.R. 3662

Mr. LOTT. Mr. President, I have another one. Showing full faith and effort to be accommodating to the Senators, and to get agreements that they really desire, I ask unanimous consent that during the Senate's consideration of the Interior appropriations bill, that it not be in order to consider any amendment relative to Ward Valley prior to Tuesday, September 17, 1996. This has been requested by the Senator from California, Senator BOXER. We would like to accommodate that request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. THOMAS. I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued to call the roll.

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

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1997

The Senate continued with the consideration of the bill.

AMENDMENT NO. 5224, AS MODIFIED

Mr. GLENN. Mr. President, it is my understanding we will each use about 5 minutes, and then I think the two leaders want to propose a unanimous-consent request after that. So if we can proceed on that basis, would that be satisfactory with my colleague?

Mr. THOMAS. That is fine.

Mr. GLENN. I ask unanimous consent that we have 5 minutes on a side to wrap this up, and then we will probably go to a vote after that.

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

Mr. GLENN. Mr. President, I want to respond briefly to the comments my colleague made a moment ago. This is a broad act. He said the Economy Act of 1982 is really not working and that is one reason we are putting this in. I don't like putting other legislation that might not work on top of legislation he says is already not working. Let's make work the legislation that is in law now. I am all for that.

Basically, it does what we are proposing here. In fact, I have a copy of that Economy Act of 1982 here, and one of the things provided under section 1335 under ''agency agreements,'' part 4 of paragraph (A) says: ''The head of the agency decides ordered goods or services cannot be provided as conveniently or cheaply by a commercial enterprise already required.''

I agree that should be lived up to. So then we come in with the legislation that my colleague and friend, Senator THOMAS, says is not as broad as I am interpreting it to be, and yet the words in it say that ''except as provided in subsection (B)''—which I will get to in a moment—''none of the funds appropriated under any other act may be used by OMB or any other agency to publish, promulgate or enforce any policy, regulation, circular or any rule or authority in any other form that would permit any Federal agency to provide a commercially available property or service to any other Department of Government unless the policy, regulation, circular or other rule meets the requirements in subsection (B).''

Subsection (B) says 120 days after this OMB will prescribe regulations as required, subject to the following, which shall include the following: A requirement for comparison between the costs of providing the property or service concerned through the agency concerned and the cost of providing such property or service through the private sector.

That is a mammoth requirement for any law or regulation to come out under. The (B) part of that, which is the last part, is a requirement for cost and performance benchmarks relating to the property or service provided relative to comparable services provided by other Government agencies and contractors permitting the oversight of this—and so on—agency concerned with the Office of Management and Budget.

That is a very, very broad-reaching, extremely broad-reaching, amendment.

I would say it is true, it is already covered under the Economy Act of 1982, as I quoted just a moment ago, and the best thing I would advise is we bring this to the attention of Mr. Koskinen, who is going to appear before the committee next week, that we ask his opinion about how broad-gauged this is and why he is not already enforcing the Economy Act of 1982. That is the way to proceed, as I see it, in good Government, not just to automatically pass something that does the same thing that is not being adhered to in earlier legislation.

Mr. President, I suggest we have that as our method of procedure. I am all for efficiency in Government, but I am not just for passing one law and covering up deficiencies in carrying out a law that is already on the books and should be adhered to.

I reserve the remainder of my time. How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 1½ minutes remaining.

Mr. DASCHLE. Mr. President, I think for the interest of Senators, as I understand it, we are about to have a vote. Does the Senator from Wyoming know approximately what length of additional time he will need to complete his remarks?

Mr. THOMAS. I believe I probably have about 2 minutes, and Senator GLENN has 1½ minutes. So I would guess less than 5 minutes.

Mr. DASCHLE. Mr. President, I ask unanimous consent, assuming that is agreeable to the majority leader, to have the vote on the amendment offered by the Senator from Wyoming no later than 6:20.

Mr. THOMAS. It is fine with me.

Mr. GLENN. That will be fine.

Mr. LOTT. Mr. President, if that request was not made, I enter that request now. I ask unanimous consent that we have that vote not later than 6:20, and before if all time is yielded back.

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

The PRESIDING OFFICER. The Senator from Wyoming has 2 minutes 5 seconds remaining.

Mr. THOMAS. Mr. President, I would agree with the Senator if what he is saying were the case, and I think it is not. We have indicated that the statute requires under the Efficiency Act what we are asking here: that there be this effort to communicate in the private sector and measure that cost.

The problem is this one right here. This is March 1996, called the ''Revised Supplemental Handbook, Performance of Commercial Activities, Executive Office of the President, Office of Management and Budget.'' It says:

> The cost comparison requirements of this supplemental handbook will not apply to existing or renewed ISSA's or the consolidation of commercial services.

So it is not just a function of the law not being lived up to but, in fact, is a change that has been put in place by OMB. So that is what we are seeking to do. We are not seeking to change the law. We are not seeking to change the basic operation of this statute, but we are saying that there are changes made by Executive order which remove that requirement that those activities that are being carried on by one agency for another, not the activities for themselves, one agency for another, that the requirement continue to exist as it has in the past, that we see if there are commercial activities available at a lesser, more efficient cost.

This is simply an effort to put back in place the requirement that has been in place for a very long time, that for the activities that are acquired from another agency within Government, that there be an effort to determine if it can be done more cheaply, more efficiently in the private sector.

This is not a new idea. This is an idea that now exists in law but has been taken out of the law by OMB. This would put it back. It is not broad. I hope very much that the Senator from Ohio, and his committee, will take a look at this whole broad thing. But in the meantime, I think we need to return where we were so that private industry can be part of this idea.

We have used it for a very long time. It has to do with being more efficient. It has to do with good Government. It has to do with strengthening the private sector. I certainly urge my colleagues to vote aye.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I yield back the balance of my time, and assume my colleague does.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERRY. Mr. President, I ask unanimous consent to add Senator MCCONNELL as a cosponsor to amendment No. 5232.

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

The question occurs on agreeing to amendment No. 5224, as modified, offered by the Senator from Wyoming. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Delaware [Mr. ROTH] is necessarily absent.

Mr. FORD. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of family illness.

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

The result was announced—yeas 59, nays 39, as follows:

[Rollcall Vote No. 285 Leg.]

YEAS—59

Abraham	Faircloth	Lott
Ashcroft	Feinstein	Lugar
Baucus	Frahm	Mack
Bennett	Frist	McCain
Biden	Gorton	McConnell
Bond	Graham	Murkowski
Bradley	Gramm	Nickles
Breaux	Grams	Pressler
Brown	Grassley	Santorum
Burns	Gregg	Shelby
Campbell	Hatch	Simpson
Chafee	Hatfield	Smith
Coats	Helms	Snowe
Cochran	Hutchison	Specter
Cohen	Inhofe	Stevens
Coverdell	Jeffords	Thomas
Craig	Kassebaum	Thompson
D'Amato	Kempthorne	Thurmond
DeWine	Kohl	Warner
Domenici	Kyl	

NAYS—39

Akaka	Bumpers	Dodd
Bingaman	Byrd	Dorgan
Boxer	Conrad	Exon
Bryan	Daschle	Feingold
Ford	Kerry	Nunn
Glenn	Lautenberg	Pell
Harkin	Leahy	Reid
Heflin	Levin	Robb
Hollings	Lieberman	Rockefeller
Inouye	Mikulski	Sarbanes
Johnston	Moseley-Braun	Simon
Kennedy	Moynihan	Wellstone
Kerrey	Murray	Wyden

NOT VOTING—2

Pryor	Roth

The amendment (No. 5224), as modified, was agreed to.

Mr. SHELBY. Mr. President, I move to reconsider the vote.

Mr. KERREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SHELBY. 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. SHELBY. I ask unanimous consent that the pending committee amendments be temporarily laid aside.

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

AMENDMENTS NOS. 5249 THROUGH AMENDMENT NO. 5255, EN BLOC

Mr. SHELBY. Mr. President, I send a group of amendments, en bloc, to the desk and ask for their immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from Alabama [Mr. SHELBY] proposes amendments, en bloc, numbered 5249 through amendment No. 5255.

Mr. SHELBY. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 5249

(Purpose: To provide for the Advisory Commission on Intergovernmental Affairs to continue operations)

Page 93 after line 19 insert the following new section:

SEC. . Notwithstanding the provision under the heading ''ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS'' under title IV of the Treasury, Postal Service, and General Government Appropriations Act, 1996 (Public Law 104–52; 109 Stat. 480), the Advisory Commission on Intergovernmental Relations may continue in existence during fiscal year 1997 and each fiscal year thereafter.

AMENDMENT NO. 5250

(Purpose: To strike section 404)

On page 60, line 19 strike all through line 21.

AMENDMENT NO. 5251

(Purpose: To provide for an audit by Inspector Generals of administratively uncontrollable overtime practices, to revise guidelines for such practices, and for other purposes)

At the appropriate place in the bill, insert the following new section:

SEC. . (a) No later than 45 days after the date of the enactment of this Act, the Inspector General of each Federal department or agency that uses administratively uncontrollable overtime in the pay of any employee shall—

(1) conduct an audit on the use of administratively uncontrollable overtime by employees of such department or agency, which shall include—

(A) an examination of the policies, extent, costs, and other relevant aspects of the use of administratively uncontrollable overtime at the department or agency; and

(B) a determination of whether the eligibility criteria of the department or agency and payment of administratively uncontrollable overtime comply with Federal statutory and regulatory requirements; and

(2) submit a report of the findings and conclusions of such audit to—

(A) the Office of Personnel Management;

(B) the Governmental Affairs Committee of the Senate; and

(C) the Government Reform and Oversight Committee of the House of Representatives.

(b) No later than 30 days after the submission of the report under subsection (a), the Office of Personnel Management shall issue revised guidelines to all Federal departments and agencies that—

(1) limit the use of administratively uncontrollable overtime to employees meeting the statutory intent of section 5545(c)(2) of title 5, United States Code; and

(2) expressly prohibit the use of administratively uncontrollable overtime for—

(A) customary or routine work duties; and

(B) work duties that are primarily administrative in nature, or occur in noncompelling circumstances.

Mr. MCCAIN. Mr. President, this amendment will address the abuses of Administratively Uncontrolled Overtime—AUO—throughout the Federal Government.

The costs to taxpayers of AUO misuse, estimated at $323 million at a single Federal agency since 1990, are significant. With improper oversight, AUO is likely to be costing the Treasury tens of millions of dollars a year. This amendment will empower the Office of Personnel Management [OPM] to stop these abuses.

First, it directs the Inspector General [IG] of each agency that utilizes AUO to audit its use and cost. The findings of these audits must be reported to the Congress and the Office of Personnel Management within 45 days.

Second, OPM shall review these IG audits, and issue revised guidelines to the respective agencies to limit the use of AUO to its statutory intent. These strengthened guidelines shall prohibit the use of AUO for routine or inappropriate work duties.

The amendment directs OPM to issue these new guidelines, to prevent the ongoing misuse of AUO, within 30 days of receiving the Inspector General audits.

For my colleagues who, like myself, have not been acutely aware of the details and minutiae of Federal overtime policies, let me briefly describe AUO and how it can readily be fixed on behalf of taxpayers in this appropriations bill.

''Administratively Uncontrolled Overtime'' was authorized by Congress to pay overtime to law enforcement officers for vital investigative duties that require them to work irregular and unscheduled hours—pursuing suspects, undercover work, special investigative operations, et cetera. That makes sense. Agency regulations stipulate that AUO should be reserved for work duties that are ''compelling'' and where it would be negligent for officers to stop their enforcement actions.

What has been going on, however, for too many of the 6,300 employees receiving AUO, is that it has turned into a unjustified salary and retirement supplement for the most routine work duties imaginable. And that makes no sense whatsoever for taxpayers.

I'd like to describe the abuses of AUO that occurred in a single Federal agency in my State, as revealed by a selfless Federal employee who stood much to lose by uncovering this waste.

One Immigration and Naturalization Service [INS] officer in Arizona reported that every single officer and supervisor at his facility was receiving the maximum AUO possible, despite the fact that ''In two years . . . not one legitimately qualifying AUO hour has been worked in my department.''

Mr. President, somehow those duties don't sound like ''hot pursuit'' to me. They certainly are necessary, but they do not meet the statutory criteria for AUO. This is not an isolated problem of mere local concern. Both the Inspector General and the INS's top policymakers have recognized this ongoing abuse of AUO.

The INS investigated the use of AUO at a detention facility in Arizona and found that: ''None of the work performed [in Florence] met the criteria for AUO, because the overtime hours could be administratively controlled.''

The Inspector General at the Department of Justice then further investigated this INS facility, and the IG's findings provide the perfect rationale for this amendment. The IG stated that ''[W]e encountered no information [at the INS detention center] to demonstrate efforts to follow up on or implement'' the INS's own recommendations.

The IG recommended that ''The issue of AUO needs to be systematically addressed.'' That is exactly what this amendment would accomplish.

I would like to add that ''Citizens Against Government Waste'' have endorsed this amendment, and I urge my colleagues to support it.

I ask unanimous consent that some accompanying material be printed in the RECORD.

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

[From the Washington Post, Sept. 11, 1996]

INS ACCUSED OF TOLERATING CITIZENSHIP TESTING FRAUD

(By William Branigin)

The Immigration and Naturalization Service came under fire yesterday from congressional Republicans over allegations of fraud in the testing of new citizenship applicants and the payment of millions of dollars in overtime to federal law enforcement officers.

In a hearing of the House Government Reform and Oversight subcommittee on national security Republican members assailed what they described as a ''controversial Clinton administration program,'' called Citizenship USA, that has streamlined naturalization procedures and helped produce record numbers of new citizens this year.

Rep. Mark Edward Souder (R–Ind.) charged that a program in which the INS licenses private organizations to test applicants on U.S. civics and English proficiency has led to ''serious instances of testing fraud in the citizenship process.'' He said the INS ''has done a very poor job of * * * cracking down on testing fraud'' and suggested that the Clinton administration is pushing naturalization as part of a plan to enlist large numbers of new Democratic voters in time for the November elections.

T. Alexander Aleinikoff, executive associate commissioner of the INS for programs, rejected those charges. He said the agency has tightened monitoring of the privatized testing, which began under the previous Republican administration, and defended the Citizenship USA program as a needed response to an upsurge of applicants that threatened to overwhelm the naturalization system.

While Republicans see politics behind the processing of this year's record 1 million-plus citizenship applicants, administration officials regard the subcommittee's investigation itself as politically motivated.

Among the witnesses at yesterday's hearing was Jewell Elghazali, who formerly worked in Dallas for Naturalization Assistance Services, Inc., one of six entities authorized by INS to test immigrants on civics and English as part of the naturalization process.

''There is a lot of fraud going on'' in the programs, she testified. When she alerted a superior in the company to indications of cheating on tests administered by affiliates, she was fired, she said.

Elghazali said that in grading tests during her five months at the firm, she found numerous cases in which the written answers of different applicants were in the same handwriting and responses to multi-choice questions—including wrong answers—were identical. She said that in many cases, applicants who had passed the test could not speak English when they called to inquire about the results. Some Spanish speakers became irate when there was no one in the office who could respond to them in their native language, she said.

Paul W. Roberts, the chief executive officer of Naturalization Assistance Services, told the subcommittee that the firm has ''acted swiftly to revoke all licensees discovered engaging in improprieties.'' He said the for-profit company has shut down 43 of its test sites as a result of its own monitoring and argued that, in any case, passing the standardized test does not automatically guarantee citizenship for an applicant, who must still pass an interview with an INS examiner.

INS Commissioner Doris M. Meissner acknowledged that ''there have been problems'' with the company, which has been warned that it faces suspension unless cleared by an INS review. ''If we need to suspend them, we will,'' she said. But she insisted that ''there is no validity to the notion that people are becoming citizens today who would not have 10 years ago'' because of a lowering of standards. She said citizenship requirements have remained unchanged.

In a separate news conference yesterday, Sen. John McCain (R–Ariz.) called for a congressional investigation into alleged abuses

by the INS and other government agencies of a type of overtime pay. He cited a report by a watchdog group, Citizens Against Government Waste, that the INS has spent $323 million on ''administratively uncontrollable overtime'' since 1990, much of it in violation of regulations.

The overtime pay, amounting to as much as 25 percent of many employees' salaries, has become an ''entitlement program'' that wastes tens of millions of dollars a year, the watchdog group charged.

While the overtime is supposed to compensate law enforcement officers for working long hours on investigations or surveillance, it has been used routinely to pay for mundane duties such as delivering mail, guarding prisoners during meal times and substituting for absent employees, the citizens group charged. Besides the INS, ''administratively uncontrollable overtime'' has been used in the departments of justice, defense, interior and agriculture, the group said.

Meissner said that in principle, the overtime category ''is a very good deal for the taxpayers.'' But she conceded that there has been a tendency to misuse it as ''an ongoing bonus'' and vowed renewed efforts to ensure it is properly managed.

[From the Tribune, Sept. 2, 1996]

INS TO REVIEW OVERTIME POLICIES AFTER CHARGES OF ABUSE

(By the Associated Press)

FLORENCE.—The Immigration and Naturalization Service will review its policies for filing overtime after government and civic groups showed it improperly spent millions of dollars on overtime.

The agency's decision followed criticism by U.S. Sen. John McCain and a citizens watchdog group, which released a report last week estimating that the INS office here spent $60 million on overtime last year alone.

The extra payments allow officers to pad their pensions and up their salaries by as much as 25 percent, according to the Citizens Against Government Waste.

At issue is special pay called Administratively Uncontrollable Overtime (AUO). The fund was created to compensate federal officers for duties that require irregular hours, such as surveillance or undercover work.

Federal rules say such overtime can be used only for ''uncontrollable'' overtime—work that can't be regulated or routinely scheduled by supervisors.

According to government reports, the INS managers in Florence are using the fund for day-to-day duties, such as delivering mail, guarding prisoners during meals, going to court and filling in for absent employees.

Documents obtained by The Arizona Republic show a 1995 INS probe and another in April 1996 by the Justice Department's Office of the Inspector General concluded the practice being abused.

''None of the work performed in Florence met the criteria for AUO because the overtime hours could be administratively controlled,'' the 1995 INS report said.

Virginia Kice, spokeswoman for the INS Western Region, said the agency is aware of the concerns and is conducting a review of the policy.

''We want to be sure that whatever we do is not only appropriate, that it's prudent, it's responsible and it won't have a negative impact on our enforcement operation,'' she said.

According to John Raidt, McCain's legislative director, such abuse is likely rampant in government agencies. The special overtime is available for employees of at least four agencies: the Justice Department, which includes INS; the Defense Department; the Department of Interior; and the Department of Agriculture.

McCain plans to amend a Senate appropriations bill to place tighter restrictions on such overtime and will ask for hearings this fall before the Senate Governmental Affairs Committee, Raidt said.

Critics say INS supervisors have an incentive to keep paying the special overtime. If managers supervise employees who qualify for the extra pay, then the managers also qualify for the money, according to federal guidelines.

Amendment No. 5252

At the appropriate place, insert the following:

SEC. . Notwithstanding section 8116 of title 5, United States Code, and in addition to any payment made under 5 U.S.C. 8101 et seq., beginning in fiscal year 1997 and thereafter, the head of any department or agency is authorized to pay from appropriations made available to the department or agency a death gratuity to the personal representative (as that term is defined by applicable law) of a civilian employee of that department or agency whose death resulted from an injury sustained in the line of duty on or after August 2, 1990: *Provided*, That payments made pursuant to this section, in combination with the payments made pursuant to sections 8133(f) and 8134(a) of such title 5 and section 312 of Public Law 103–332 (108 Stat. 2537), may not exceed a total of $10,000 per employee.

Mr. HOLLINGS. Mr. President, my amendment is quite simple. It increases the reimbursement for funeral and burial costs and specific related expenses to $10,000 for Federal civilian employees who die as result of injuries sustained in the performance of duty. This amendment would apply to the dedicated civil servants who were tragically killed in the line of duty while accompanying Commerce Secretary Ron Brown on his trade mission to Bosnia and Croatia. And it would apply to the survivors of those Federal civilian employees who died during the bombing of the Murrah Building in Oklahoma City.

Under current law, Federal civilian employees who die in the performance of duty receive only a $1,000 reimbursement for funeral and burial costs, and related expenses. This amount was set in 1960, and it has not been adjusted since that time.

This is not the case for military personnel. In 1990, at the beginning of the gulf war, Congress increased death-related benefits for the survivors of the military personnel killed in the line of duty. Military survivors are currently provided slightly more than $10,000 for funeral and burial costs.

My amendment recognizes that civilian employees are no less dedicated and they are all too often called upon to make the ultimate sacrifice in the service of the United States. Further, I should note that this amendment does not require additional appropriations. It provides the discretion to agency heads to pay these increased benefits from existing appropriations.

Mr. President, in short, this amendment provides for equity and updates current law. This is a good amendment that I believe all my colleagues should support.

I urge its adoption.

AMENDMENT NO. 5253

(Purpose: To provide for training of explosive detection canines)

At the appropriate place in the bill insert the following new section:

SEC. . EXPLOSIVES DETECTION CANINE PROGRAM.

(a) AUTHORIZATION.—

(1) The Secretary of the Treasury is authorized to establish scientific certification standards for explosives detection canines, and shall provide, on a reimbursable basis, for the certification of explosives detection canines employed by federal agencies, or other agencies providing explosives detection services at airports in the United States.

(2) The Secretary of the Treasury shall establish an explosives detection canine training program for the training of canines for explosives detection at airports in the United States.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

AMENDMENT NO. 5254

At the appropriate place in the bill, insert the following:

SEC. . DESIGNATION OF MARK O. HATFIELD UNITED STATES COURTHOUSE.

The United States Courthouse under construction at 1030 Southwest 3d Avenue in Portland, Oregon, shall be known and designated as the ''Mark O. Hatfield United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the courthouse referred to in section 1 shall be deemed to be a reference to the ''Mark O. Hatfield United States Courthouse''.

SEC. 3. EFFECTIVE DATE.

This section shall take effect on January 2, 1997.

AMENDMENT NO. 5255

(Purpose: To provide for the establishment of uniform accounting systems, standards, and reporting systems in the Federal Government, and for other purposes)

At the end of the bill, add the following new title:

TITLE ___—FEDERAL FINANCIAL MANAGEMENT IMPROVEMENT

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Federal Financial Management Improvement Act of 1996''.

SEC. ___02. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) Much effort has been devoted to strengthening Federal internal accounting controls in the past. Although progress has been made in recent years, Federal accounting standards have not been uniformly implemented in financial management systems for agencies.

(2) Federal financial management continues to be seriously deficient, and Federal financial management and fiscal practices have failed to—

(A) identify costs fully;

(B) reflect the total liabilities of congressional actions; and

(C) accurately report the financial condition of the Federal Government.

(3) Current Federal accounting practices do not accurately report financial results of the Federal Government or the full costs of programs and activities. The continued use of

these practices undermines the Government's ability to provide credible and reliable financial data and encourages already widespread Government waste, and will not assist in achieving a balanced budget.

(4) Waste and inefficiency in the Federal Government undermine the confidence of the American people in the Government and reduce the Federal Government's ability to address vital public needs adequately.

(5) To rebuild the accountability and credibility of the Federal Government, and restore public confidence in the Federal Government, agencies must incorporate accounting standards and reporting objectives established for the Federal Government into their financial management systems so that all the assets and liabilities, revenues, and expenditures or expenses, and the full costs of programs and activities of the Federal Government can be consistently and accurately recorded, monitored, and uniformly reported throughout the Federal Government.

(6) Since its establishment in October 1990, the Federal Accounting Standards Advisory Board (hereinafter referred to as the ''FASAB'') has made substantial progress toward developing and recommending a comprehensive set of accounting concepts and standards for the Federal Government. When the accounting concepts and standards developed by FASAB are incorporated into Federal financial management systems, agencies will be able to provide cost and financial information that will assist the Congress and financial managers to evaluate the cost and performance of Federal programs and activities, and will therefore provide important information that has been lacking, but is needed for improved decisionmaking by financial managers and the Congress.

(7) The development of financial management systems with the capacity to support these standards and concepts will, over the long term, improve Federal financial management.

(b) PURPOSES.—The purposes of this title are to—

(1) provide for consistency of accounting by an agency from one fiscal year to the next, and uniform accounting standards throughout the Federal Government;

(2) require Federal financial management systems to support full disclosure of Federal financial data, including the full costs of Federal programs and activities, to the citizens, the Congress, the President, and agency management, so that programs and activities can be considered based on their full costs and merits;

(3) increase the accountability and credibility of Federal financial management;

(4) improve performance, productivity and efficiency of Federal Government financial management;

(5) establish financial management systems to support controlling the cost of Federal Government;

(6) build upon and complement the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838), the Government Performance and Results Act of 1993 (Public Law 103–62; 107 Stat. 285), and the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410); and

(7) increase the capability of agencies to monitor execution of the budget by more readily permitting reports that compare spending of resources to results of activities.

SEC. ___03. IMPLEMENTATION OF FEDERAL FINANCIAL MANAGEMENT IMPROVEMENTS.

(a) IN GENERAL.—Each agency shall implement and maintain financial management systems that comply with Federal financial management systems requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger at the transaction level.

(b) PRIORITY.—Each agency shall give priority in funding and provide sufficient resources to implement this title.

(c) AUDIT COMPLIANCE FINDING.—

(1) IN GENERAL.—Each audit required by section 3521(e) of title 31, United States Code, shall report whether the agency financial management systems comply with the requirements of subsection (a).

(2) CONTENT OF REPORTS.—When the person performing the audit required by section 3521(e) of title 31, United States Code, reports that the agency financial management systems do not comply with the requirements of subsection (a), the person performing the audit shall include in the report on the audit—

(A) the name and position of any officer or employee responsible for the financial management systems that have been found not to comply with the requirements of subsection (a);

(B) all facts pertaining to the failure to comply with the requirements of subsection (a), including—

(i) the nature and extent of the noncompliance;

(ii) the primary reason or cause of the noncompliance;

(iii) any official responsible for the noncompliance; and

(iv) any relevant comments from any responsible officer or employee; and

(C) a statement with respect to the recommended remedial actions and the timeframes to implement such actions.

(d) COMPLIANCE DETERMINATION.—

(1) IN GENERAL.—No later than the date described under paragraph (2), the Director, acting through the Controller of the Office of Federal Financial Management, shall determine whether the financial management systems of an agency comply with the requirements of subsection (a). Such determination shall be based on—

(A) a review of the report on the applicable agency-wide audited financial statement;

(B) the agency comments on such report; and

(C) any other information the Director considers relevant and appropriate.

(2) DATE OF DETERMINATION.—The determination under paragraph (1) shall be made no later than 90 days after the earlier of—

(A) the date of the receipt of an agency-wide audited financial statement; or

(B) the last day of the fiscal year following the year covered by such statement.

(e) COMPLIANCE IMPLEMENTATION.—

(1) IN GENERAL.—If the Director determines that the financial management systems of an agency do not comply with the requirements of subsection (a), the head of the agency, in consultation with the Director, shall establish a remediation plan that shall include the resources, remedies, and intermediate target dates necessary to bring the agency's financial management systems into compliance.

(2) TIME PERIOD FOR COMPLIANCE.—A remediation plan shall bring the agency's financial management systems into compliance no later than 2 years after the date on which the Director makes a determination under paragraph (1), unless the agency, with concurrence of the Director—

(A) determines that the agency's financial management systems are so deficient as to preclude compliance with the requirements of subsection (a) within 2 years;

(B) specifies the most feasible date for bringing the agency's financial management systems into compliance with the requirements of subsection (a); and

(C) designates an official of the agency who shall be responsible for bringing the agency's financial management systems into compliance with the requirements of subsection (a) by the date specified under subparagraph (B).

(3) TRANSFER OF FUNDS FOR CERTAIN IMPROVEMENTS.—For an agency that has established a remediation plan under paragraph (2), the head of the agency, to the extent provided in an appropriation and with the concurrence of the Director, may transfer not to exceed 2 percent of available agency appropriations to be merged with and to be available for the same period of time as the appropriation or fund to which transferred, for priority financial management system improvements. Such authority shall be used only for priority financial management system improvements as identified by the head of the agency, with the concurrence of the Director, and in no case for an item for which Congress has denied funds. The head of the agency shall notify Congress 30 days before such a transfer is made pursuant to such authority.

(4) REPORT IF NONCOMPLIANCE WITHIN TIME PERIOD.—If an agency fails to bring its financial management systems into compliance within the time period specified under paragraph (2), the Director shall submit a report of such failure to the Committees on Governmental Affairs and Appropriations of the Senate and the Committees on Government Reform and Oversight and Appropriations of the House of Representatives. The report shall include—

(A) the name and position of any officer or employee responsible for the financial management systems that have been found not to comply with the requirements of subsection (a);

(B) the facts pertaining to the failure to comply with the requirements of subsection (a), including the nature and extent of the noncompliance, the primary reason or cause for the failure to comply, and any extenuating circumstances;

(C) a statement of the remedial actions needed; and

(D) a statement of any administrative action to be taken with respect to any responsible officer or employee.

(f) PERSONAL RESPONSIBILITY.—Any financial officer or program manager who knowingly and willfully commits, permits, or authorizes material deviation from the requirements of subsection (a) may be subject to administrative disciplinary action, suspension from duty, or removal from office.

SEC. ___04. APPLICATION TO CONGRESS AND THE JUDICIAL BRANCH.

(a) IN GENERAL.—The Federal financial management requirements of this title may be adopted by—

(1) the Senate by resolution as an exercise of the rulemaking power of the Senate;

(2) the House of Representatives by resolution as an exercise of the rulemaking power of the House of Representatives; or

(3) the Judicial Conference of the United States by regulation for the judicial branch.

(b) STUDY AND REPORT.—No later than October 1, 1997—

(1) the Secretary of the Senate and the Clerk of the House of Representatives shall jointly conduct a study and submit a report to Congress on how the offices and committees of the Senate and the House of Representatives, and all offices and agencies of the legislative branch may achieve compliance with financial management and accounting standards in a manner comparable to the requirements of this title; and

(2) the Chief Justice of the United States shall conduct a study and submit a report to Congress on how the judiciary may achieve compliance with financial management and accounting standards in a manner comparable to the requirements of this title.

SEC. ___05. REPORTING REQUIREMENTS.

(a) REPORTS BY DIRECTOR.—No later than March 31 of each year, the Director shall submit a report to the Congress regarding implementation of this title. The Director may include the report in the financial management status report and the 5-year financial management plan submitted under section 3512(a)(1) of title 31, United States Code.

(b) REPORTS BY THE COMPTROLLER GENERAL.—No later than October 1, 1997, and October 1, of each year thereafter, the Comptroller General of the United States shall report to the appropriate committees of the Congress concerning—

(1) compliance with the requirements of section ___03(a) of this title, including whether the financial statements of the Federal Government have been prepared in accordance with applicable accounting standards; and

(2) the adequacy of uniform accounting standards for the Federal Government.

SEC. ___06. CONFORMING AMENDMENTS.

(a) AUDITS BY AGENCIES.—Section 3521(f)(1) of title 31, United States Code, is amended in the first sentence by inserting ''and the Controller of the Office of Federal Financial Management'' before the period.

(b) FINANCIAL MANAGEMENT STATUS REPORT.—Section 3512(a)(2) of title 31, United States Code, is amended by—

(1) in subparagraph (D) by striking ''and'' after the semicolon;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

''(E) a listing of agencies whose financial management systems do not comply substantially with the requirements of the Federal Financial Management Improvement Act of 1996, the period of time that such agencies have not been in compliance, and a summary statement of the efforts underway to remedy the noncompliance; and''.

SEC. ___07. DEFINITIONS.

For purposes of this title:

(1) AGENCY.—The term ''agency'' means a department or agency of the United States Government as defined in section 901(b) of title 31, United States Code.

(2) DIRECTOR.—The term ''Director'' means the Director of the Office of Management and Budget.

(3) FEDERAL ACCOUNTING STANDARDS.—The term ''Federal accounting standards'' means applicable accounting principles, standards, and requirements consistent with section 902(a)(3)(A) of title 31, United States Code, and includes concept statements with respect to the objectives of Federal financial reporting.

(4) FINANCIAL MANAGEMENT SYSTEMS.—The term ''financial management systems'' includes the financial systems and the financial portions of mixed systems necessary to support financial management, including automated and manual processes, procedures, controls, data, hardware, software, and support personnel dedicated to the operation and maintenance of system functions.

(5) FINANCIAL SYSTEM.—The term ''financial system'' includes an information system, comprised of one or more applications, that is used for—

(A) collecting, processing, maintaining, transmitting, or reporting data about financial events;

(B) supporting financial planning or budgeting activities;

(C) accumulating and reporting costs information; or

(D) supporting the preparation of financial statements.

(6) MIXED SYSTEM.—The term ''mixed system'' means an information system that supports both financial and nonfinancial functions of the Federal Government or components thereof.

SEC. ___08. EFFECTIVE DATE.

This title shall take effect on October 1, 1996.

Mr. BROWN. Mr. President, today I offer an amendment that has already passed the Senate as a free-standing bill called the Federal Financial Management Improvement Act of 1996 (S. 1130). This measure brings urgent reforms to Federal financial management and restores accountability to the Government. The Senate should include this measure in the Treasury, Postal Service, and General Government appropriations bill because it is our best hope for enacting these important reforms into law this year. There is very little time left in this session and it is of the utmost importance that Congress send this measure to the President before we leave town. However, I strongly encourage efforts currently underway in the House Government Reform and Oversight Committee to pass S. 1130. Chairman CLINGER as well as Government Management Subcommittee Chairman HORN are working hard on the bill and I hope they are able to get it through the House of Representatives during these busy weeks.

Mr. President, I'll make just a brief statement on financial management reform. Several years ago, in an effort to identify excess spending in the Federal budget, I inquired as to overhead costs in Federal programs. I was advised that the Federal accounting system makes it impossible to identify overhead expenses for most Federal operations. The Federal Government, it turned out, has over 200 separate primary accounting systems, making it impossible to compare something as basic as overhead costs.

Worse, many of these systems are shamefully inadequate even on their own terms. The Internal Revenue Service offers another disturbing example of poor financial management and its consequences. The General Accounting Office testified before the Governmental Affairs Committee on June 6, 1996, that despite years of criticism, ''fundamental, persistent problems remain uncorrected'' at the IRS. For example, the IRS cannot substantiate the amounts reported for specific types of taxes collected, such as Social Security taxes, income taxes, and excise taxes. The IRS cannot even verify a significant portion of its own nonpayroll operating expenses, which total $3 billion. One can hardly resist observing that this is the agency that demands precision from every taxpayer in America.

The IRS is just a small part of a Government so massive and complex that it controls and directs cash resources of almost $2 trillion per year, issuing 900 million checks and maintaining a payroll and benefits system for over 5 million Government employees. Clearly it is imperative that the Government use a uniform and widely accepted set of accounting standards across the hundreds of agencies and departments that make up this Government.

Enactment of this measure into law would be a great step toward putting Federal financial management in order. It requires that all Federal agencies implement and maintain uniform accounting standards. The result will be more accurate and reliable information for program managers and leaders in Congress, meaning better decisions will be made: tax dollars will be put to better use, and a measure of confidence in the Government will be restored. While this is not the kind of legislation that makes headlines, it is of great significance. Its passage would be a major accomplishment for the 104th Congress.

Mr. SHELBY. Mr. President, the amendments I have offered are as follows: One is for Senator STEVENS, to provide that the ACIR utilize nonappropriated funds for continued operations; for Senator INHOFE, to strike section 404 of the bill; for Senator MCCAIN, regarding a study of the administratively uncontrollable overtime; for Senator HOLLINGS, to provide certain death benefits to civilian Government employees; for myself and Senator KERREY, regarding explosive detection training for canines; for myself, naming the new courthouse in Portland, OR; for Senator BROWN, regarding Federal financial management improvement.

Mr. KERREY. Mr. President, we have reviewed the amendments on this side, and we support all of them.

Mr. SHELBY. Mr. President, I ask unanimous consent that these amendments be considered and agreed to, en bloc, and that any accompanying statements be placed at the appropriate place in the RECORD.

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

The amendments (No. 5249 through 5255), en bloc, were agreed to.

Mr. SHELBY. Mr. President, I move to reconsider the vote by which the amendments were agreed to.

Mr. KERREY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SHELBY. I suggest the absence of a quorum.

Mr. REID. Mr. President, will the chairman withhold?

Mr. SHELBY. I am glad to withhold.

Mr. REID. I ask unanimous consent that the pending amendment be set aside so that I may be allowed to offer an amendment.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. Reserving the right to object, I would like to check with Senator KASSEBAUM on her amendment, and also Senator WYDEN, who has been conferring with her, before we do that.

Mr. WYDEN. Did the Senator from Alabama ask unanimous consent to lay aside——

Mr. SHELBY. The Senator from Nevada asked unanimous consent. What

we would like to know is, where are the Senator and Senator KASSEBAUM on the amendment?

Mr. WYDEN. Senator KASSEBAUM and I are continuing to discuss these matters. I think it is fair to say, in fact, that Senator KASSEBAUM indicated that she thought it was appropriate to go on with further business, and we will continue to discuss the matters with respect to the gag rule a bit more.

Mr. SHELBY. I have no objection to temporarily setting aside the Kassebaum amendment.

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

Mr. REID. Mr. President, I will shortly send the amendment to the desk on my behalf and that of Senator LEVIN and that of Senator BIDEN.

Mr. President, we have heard a lot in this Chamber about the issue of reimbursing the former employee of the White House Travel Office, Billy Dale, for attorney fees. There have been hours of talk in this Chamber about that issue. Unfortunately, Mr. President, much of what we have heard has been based on emotion and not on facts. In fact, there is very little, if any, factual support for this very costly expenditure of a $0.5 million—$500,000—to reimburse attorneys on the Billy Dale case.

The American people, in effect, are being asked to pay for the attorney fees of a person who was lawfully indicted and legitimately prosecuted. Let me repeat: The American people are being asked to pay the attorney fees for a person who was indicted lawfully—no question about that—and who was legitimately prosecuted.

Proponents of this taxpayer expenditure contend that Mr. Dale was wrongfully prosecuted. Yet, neither Dale nor these high-powered lawyers who represented him—and still represent him—ever raised any of this in any proceeding or in any case that was before the courts. They didn't move to dismiss his indictment on the ground of prosecutorial misconduct.

In fact, when they filed a motion for acquittal, the court, having heard the evidence, denied the motion for acquittal. Why? Because it was the judge's reasonable assessment that sufficient evidence existed for a reasonable person to find Billy Dale guilty of the charges.

Mr. Dale and his attorneys also failed to allege wrongdoing against those who investigated him, and there is no evidence to support that there was any wrongdoing by the people who did the investigation. The watchdog of Congress, the General Accounting Office, reviewed the case and determined that the FBI and the IRS action taken during the period surrounding the removal of the Travel Office employees were reasonable and consistent with the Agencies' normal procedures.

Mr. President, a review by the Office of Professional Responsibility in the Justice Department concluded that there was no wrongdoing on the part of any FBI employees regarding the Travel Office matter.

Mr. President, I want to say that I believe that the chairman of this subcommittee and the ranking member, the junior Senators from Alabama and Nebraska, have brought a good bill before this body. There are scores of amendments that have been filed. I would bet that a number of them are not germane. Certainly this one is, and I felt there is language in this bill that relates to this issue where this bill would pay, in effect, Mr. Dale's attorneys $500,000, and that this should be something that should be discussed. This should be an issue that is debated, and I do that under the recognition that I think the two managers of this legislation have done a good job.

But let me repeat regarding these attorney fees that there is no evidence to support that Mr. Dale—as Mr. Dale and his attorneys did raise—there is nothing to support that there was any wrongdoing in this investigation. I repeat: The General Accounting Office reviewed this matter and determined that the FBI and the IRS did nothing wrong regarding the procedures in the Travel Office. They were reasonable and consistent with the Agencies' normal procedures and practices.

A review by the Office of Professional Responsibility in the Justice Department concluded that there was no wrongdoing on part of any FBI employee regarding the Travel Office matter, and it is clear that all the people who investigated this case were there long before this administration took office. Notwithstanding this, the American taxpayers have been asked to pay almost $0.5 million to Dale's attorneys. This is clearly a private relief bill.

If this had been in the form of an amendment, our rules would have allowed us to raise a point of order, and this procedure could have been knocked out. But in that the committee and the subcommittee had, in effect, amended the House bill, we have nothing to raise a point of order on. As a result of that, this is the only alternative we have.

We are being asked as a body to grant this relief absent any hearing or committee report on this subject. The matter should be subject to the ordinary procedures for private relief bills provided under Senate rule XIV.

That is why I am offering this amendment, along with Senators LEVIN and BIDEN, that comports with the procedures set out in rule XIV. The amendment that will shortly be offered refers the reimbursement of Mr. Dale's attorney fees to the Federal Court of Claims.

Mr. President, the Federal Court of Claims is a body in which the judges are appointed for a period of 15 years. This is a body that has been in existence for over 100 years. It has decided exactly the type of issue presented in the Billy Dale matter on hundreds and hundreds of cases. This court has special jurisdiction for cases involving claims against the Federal Government.

As I have indicated, it is made up of approximately 15 judges. These are referred to as article 1 judges because they serve for a time certain, and these people are appointed by the President of the United States for these 15-year terms. They handle primarily contractual claims, fifth amendment claims, and certain Indian claims.

Over the past century, Congress has referred thousands of cases to the court. The court reviews these cases under specific statutory authority and procedures set out in claims cases under the United States. Initially, the case is referred to a chief judge who designates another judge. In fact, they usually have three people that hear these cases, and these three judges become the reviewing body.

The bottom line is this panel has the most expertise that we have in America to handle this kind of case.

I think this is something we would want to do to avoid the bitter political acrimony that has taken place on this floor in the past regarding this matter. It would seem that we should refer it to the body separate and apart from the policy involved. If in fact this amendment carries, it is up to the Court of Claims to determine the extent to which Mr. Dale has a legal and equitable remedy in this matter and whether or not the taxpayers should pay him money.

Now, I think justice and equity weighs against Mr. Dale, but let the Court of Claims determine that. This amendment is the least we can do for the American taxpayer. Half a million dollars may be pocket change for some and maybe even Mr. Dale's attorneys, but it is not to the American public. It is a lot of money to the American public.

Facts do not support such a controversial expenditure on behalf of someone who has been indicted for embezzlement and offered to plead guilty.

Here is what we are being asked to do. We are being asked to pay $500,000 in attorney's fees for someone who admitted his guilt, basically, according to his attorney. Here is what his attorneys wrote to the U.S. attorney:

> Mr. Dale will enter a plea of guilty to a single count of 18 U.S.C. section 654. He will acknowledge that he intentionally placed Travel Office funds in his personal checking account without authorization.

Here is what he, Mr. President, has agreed to plead guilty to.

This is the statute.

> Whoever, being an officer or employee of the United States or of any department or agency thereof, embezzles or wrongly converts to his own use the money or property of another which comes into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or employee, shall be fined under this title . . . the value of the money and property thus embezzled . . . or imprisoned not more than 10 years, or both.

It seems somewhat unique to me that someone who, in writing, agreed to

plead guilty, could be sentenced to up to 10 years in prison, fined the amount of money he stole, is now coming before the Congress of the United States and saying pay my attorney's fees. Why? Because he was acquitted.

Mr. President, I am a trial lawyer. Before I came here, I tried a lot of cases. I did criminal work. I believe in our system of justice. The vast majority of times trial by jury works out right. The right decision is not always reached, but most of the time it is. The vast majority of the time the right decision is reached. A lot of times the jury does not arrive at the right result, but they arrive at a result. Sometimes they do not, as we know it appears to a lot of us in the O.J. Simpson case or the Menendez brothers. The juries do not always do the right thing, but most of the time they do. This is an instance clearly when they did not do the right thing.

Now, the facts do not support such a controversial expenditure on behalf of someone who is indicted for embezzlement and offered to plead guilty to a felony.

This issue is not about the firing of the Travel Office employees in 1993. Most agree that these terminations were not handled appropriately. But everyone also agrees that their dismissals were legal, that the administration, the White House, had a right to do that within the prerogatives of the law and the office held by the President.

I repeat, the people who were relieved of duty there were relieved of duty legally. Whether it was done in an appropriate manner without hurting a lot of feelings and kind of roughshod, that is something we can all talk about. We would all agree it could have been handled better. But nothing was done illegally. This amendment that will be offered is about putting an end to the partisan election year games that are now occurring in Congress. Half a million dollars is too high a price to ask of taxpayers, the people of the State of Nevada, Ohio, Washington, Kansas, Pennsylvania, Utah, and the rest of the country. This is about putting an end to partisan, election-year games now occurring in Congress. I repeat, half a million dollars is too high a price to ask the taxpayers to bear for such an obvious election-year program.

Those who seek to embarrass this administration should not ask the taxpayers to finance their fun and games. If we decide as a body to reimburse Mr. Dale as called for in this legislation now before the Senate, we will be setting a dangerous precedent. This will be the first time in the history of this Congress that we will have paid the attorney's fees of a lawfully indicted and prosecuted individual. There is precedent to pay the legal fees for the Travel Office employees who were not indicted, and we should do that. No problem with that. There is nothing in precedent that would prevent the Government from rectifying a wrong. Travel Office employees who had to pay legal fees should be reimbursed. The independent law governs this area. That is the best we have. We can talk about it.

Payment of attorney's fees is permitted if the following two conditions are satisfied. No. 1, the subject in the investigation would not have been investigated but for the independent counsel, and No. 2, the person was not indicted. Not indicted. Clearly, Mr. Dale would follow under that basis. He was indicted and he was lawfully indicted. Under independent counsel, the way the statute reads, there could even be prosecutorial misconduct when the indictment takes place and he still would not be reimbursed for his attorney's fees. In this situation, there is no question that he was indicted properly, legally. Mr. Dale's attorneys never raised prosecutorial misconduct, never.

As we all know, Mr. Dale was indicted. The independent counsel law is explicit about the requirement that attorney's fees can be recovered only if the individual was not subject to indictment. There are no exceptions to this rule. If we are going to establish new precedent, there at least should be a foundation for doing so, and the indictment of a person legally is certainly strange grounds to set a precedent for this Congress to start reimbursing people after the jury returns an acquittal verdict.

There have been no Congressional hearings. There is no foundation in the instant case. There is no committee report laying out the reasons for breaking long-established precedent.

Without a lot of politics involved, we have offered the appropriate response to Mr. Dale's problem. If in fact he has been wronged, which I do not think he has, but if he has, why is this not referred to the appropriate tribunal, which would be the Court of Claims? We have done it hundreds and thousands of times, as I have indicated earlier. Legislation to pay attorney's fees for specific individuals is a form of private relief. Senate rule 14.9 governs the Senate consideration of private relief legislation.

What we have in this instance is that private relief legislation has been folded over into this Treasury-Postal Service bill. If this amendment were not raised, the American public would be paying half a million dollars. They may pay half a million dollars anyway if this bill passes and this amendment does not carry, but they will know that a man who agreed to plead guilty to a felony, a man who was properly indicted—there was never a question of prosecutorial misconduct ever raised during the trial proceedings—is going to be paid $500,000 in attorney's fees. I think that sets a very, very dangerous precedent. In short, it requires, this amendment I will offer, the adoption of a resolution referring such matter, as I have indicated, to the Court of Claims. That is why we have the Court of Claims.

What would the American public think if anytime someone is indicted and acquitted that we pay their attorney's fees? Or do we pick and choose what attorney's fees we pay if there is an acquittal? We do that legislatively? If there is a problem it should be referred to the Court of Claims. There is statutory procedure in place for dealing with this. Under 28 U.S.C. 2509, the Federal claims court determines whether the private relief sought from U.S. taxpayers is appropriate.

We have heard the plaintive cries of how they were terminated improperly. Remember, the President had the ability and the legal right to fire the people for no reason. I have acknowledged that they could have been terminated in a different manner. Procedurally, the claims court assumes jurisdiction of these cases upon referral of either House of Congress. Upon review, the court must determine whether there is a legal or equitable claim to taxpayer money or whether such payment would be simply a gratuity. Our amendment follows precedent and is in compliance with the statute.

To many, Billy Dale is the epitome of the modern-day victim. The media—remember where he worked. He worked in the White House Travel Office. Millions of dollars went through his hands every year. And his job was to make happy the people who travel from the White House, but especially the press, especially the press. He had to make them happy. That was his main function. He served them well. He made them happy, and they have done a great job of portraying him as victim. In Nevada, Seattle, Cleveland, or anyplace else, it would not be that way. It would not be that way. In any city in Nevada, if this were explained to them, he would not be a victim. He would be somebody who should be prosecuted, as was determined by the Justice Department.

In addition to his high-priced attorney, Mr. Dale has received public support from many notable heavyweights in the media. He took good care of them. He runs in powerful circles and has no shortage of influential supporters. Today he has become the poster boy for every—I should not say for every—for many fundraisers. At many Republican fundraisers around the country, Billy Dale is the poster boy. As it was reported in August in the media, candidate Dole had offered him a job in his Presidential campaign. He is still the subject of a plethora of sympathetic pieces in the news by his old friends in the media.

This has all culminated in today's effort to attempt to embarrass the President by appropriating $500,000 very quietly. It is in the bill. There would be no vote on it. It was just slipped through here quietly and the American taxpayers then would be confronted with people saying, ''Yeah, we told you so. The President has agreed to pay this money because he was so wrong.'' He is not so wrong. The Congress of the

United States should not be involved in this. It should be referred to the Court of Claims.

The real facts according to his indictment have yet to be aired, but we are going to talk about those. If such an appropriation took place in this bill, under the Federal election laws it should be deemed as an in-kind contribution to campaigns around the country, Republican in nature.

When it comes to Billy Dale, many speak of conspiracies. But it is the conspiracy of silence that I would like to speak about a little bit today. The silence over the activities that led to Mr. Dale's indictment is deafening. All we seem to hear about is poor Billy Dale. However there is reason why the man was indicted, and let us not forget that Mr. Dale agreed—I repeat—to plead guilty to embezzlement. Mr. Dale is, in my opinion, an admitted crook. He is today asking the American taxpayer to pick up his legal bill.

He has every right to do this, but let us do it in the Court of Claims. He has waived, in my opinion, every right of confidentiality, with his campaign by his attorneys and him to be reimbursed for attorney's fees, regarding the facts supporting his prosecution. If the American public is going to pay $500,000 to a high-priced Washington law firm, they should know the whole story. So let us talk a little bit about the whole story. Let us talk about some of the things that he testified to at his trial.

He testified to a number of things. He admitted putting 55 checks for Travel Office funds totaling some $54,000 in his personal bank account. Mr. President, if we want to get into more detailed facts, and we can do that, we will find that he was very careful in the checks that he put in his personal bank account. He basically put in checks that would be very, very difficult to trace. What checks did he put in his personal bank account? Checks that came from foreign news outlets, from Mexico, from places in Europe, from Asia. He was very careful. He did not put into his personal bank account checks from CBS, ABC, and other American media outlets. He took into his personal checking account checks that could not be traced.

He also had a number of explanations why he did this. It was more convenient—that is a real laugher—more convenient. The bank that held the checks legally for the Travel Office was about a block from the White House where he worked. His personal bank was miles away, out in Maryland someplace.

He admitted during the trial, admitted cashing refund checks to the Travel Office received from telephone companies for trips where the press had been overcharged.

He admitted that by not putting the refund checks in the Travel Office bank account he was breaching an obligation he had to apply any surplus in that account toward the very next trip. He even got into—he was storing this money up so he could cover foreign trips during October and November. It is a little difficult in an election year. They just do not happen.

He admitted that there were times in 1992 that he cashed Travel Office checks but did not write them down in his petty cash log, and that anyone looking for them in the log would not know that he had cashed the checks.

He admitted during the trial to putting checks that were supposed to go into the Travel Office surplus fund account at the Riggs Bank into his own personal account. This is what I have talked about. One was a block away, the other was at his home.

He admitted during the trial that he did not even tell the individual who worked with him in the Travel Office for 30 years, his chief assistant, Gary Wright, of this practice of putting these checks into his own account and not the office account. No one knew except him. It was a secret. Why? Because he was stealing the money. He admitted to cashing one check for $5,000, writing down only $2,000 for that check in the petty cash log. When he was first contacted by the investigators about that he was silent. They talked to him again: Silent. Suddenly, after having run to his credit union and borrowing enough money to cover this, he brought the money back and said, ''I had it in my desk drawer.'' Of course he did not have it in his desk drawer.

Dale admitted that he overcharged for some of the flights and undercharged for others, instead of just charging exactly what the trip cost. Then he offered some incomprehensible explanation to the investigators, why that was beneficial.

There are many other things that he admitted during the trial, but the fact of the matter is we are being asked here to reimburse attorney's fees of $500,000 for Billy Dale, his attorneys, so he can carry on this campaign of harassment that he has been engaged in in the past 6 months or year.

We can look at a prosecution memo. Before cases are brought in Federal court—you have heard the expression, ''What are they trying to do, make a Federal case out of it?'' That, Mr. President, comes with very good reason, because in the federal system, and the Presiding Officer knows, having been an Attorney General, as most people, that Federal cases are developed under very detailed circumstances. Almost every time a case is filed that results in indictment, a prosecution memo is prepared. A prosecution memo was prepared in this case.

I will read just a little bit from the prosecution memo:

> The FBI has investigated this matter and strongly supports these charges.

That is in the first paragraph. I repeat:

> The FBI has investigated this matter and strongly supports these charges.

What are these charges?

> We propose to charge Billy Ray Dale, the former director of the White House Telegraph and Travel Office, with converting to his own use approximately $54,000 in checks and $14,000 in cash received by him in connection with his official duties.

The only reason the $14,000 figure isn't higher is because records were destroyed. This is the petty cash fund for only 1 year. It certainly would have been much higher if those records had been available.

There are a number of other things in this prosecution memo that I think call out for comment when Congress is being asked to respond to half a million dollars:

No legitimate explanation for these deposits. It talks about the missing cash in addition to the missing checks. There were numerous checks cashed, unreconciled estimated bills and large fluctuations in the bank balances. This is from the prosecution memo.

> A decision was made to inform the Travel Office employees that the examination was being conducted as part of the National Performance Review. RECORDs were in a shambles.

Thirteen checks made out to cash for which there was little or no documentation established how the cash was spent. There was a questionable transaction involving a $5,000 check to cash. Further, he had no explanation of the discrepancy—this is the $5,000 check—but that he later found the money in his desk. The report found a lack of financial controls and accounting systems. We know that.

Most importantly, the report found discrepancies with the petty cash fund, which he controlled.

Also, they indicate that this certainly was no kind of a witch hunt. They also, Mr. President, came to the conclusion:

> We found no evidence of illegal conduct by any other member of the Travel Office. The media checks selected by Dale for deposit into his account were not from mainstream press organizations, but rather English, Japanese, German and Hispanic media. Dale's selection of these checks is significant. The refund checks invariably were generated by the vendors on their own. They arrived unexpectedly, and their absence would not be missed. Similarly, the checks from these esoteric news services were less likely to be scrutinized by these services when returned by their bank, and those organizations would be less likely to understand the meaning of Dale's name on the deposits and not the Travel Office.

Because he wrote on them ''For deposit only to Billy R. Dale.''

> We could find no legitimate reason for these checks to be deposited in Dale's personal bank account. It certainly was not easier—

Still quoting from this memo:

> It certainly was not easier for Dale to have taken checks to home, to Maryland, rather than walk across the street. Indeed, on four occasions, Travel Office checks were deposited by Dale in his account on the same day deposits were made to the Travel Office account at Riggs.

There is certainly no evidence at all that Dale ever used any of these moneys from his personal account to pay Travel Office expenses. Then why

would he put it in there? He would put it in there so he could use the money.

Then, of course, they do a minimal accounting to find out what would happen if he spent this money and where he spent it. They did that and arrived at the conclusion he had to take the money and use it on his own: homes purchased, children getting money. These are not my words. This is from the Justice Department:

The evidence indicates that Dale stole the missing $14,000 in cash. He cannot claim credibly that he used relatively large amounts of unused checks to pay trip expenses during the period. He offered no explanation for the misrecording.

Dale was asked three times about the $5,000 check, and he finally said on the third occasion:

He now had an explanation for the missing money. Dale went to his desk and produced an envelope containing $2,800 in cash, enough to make up the difference, which he told the investigator this corresponded to a portion of the missing money. Dale told the investigator that he had set the $3,000 aside for an upcoming trip to Indonesia because he sometimes had to pay kickbacks when he traveled to that part of the world.

Dale's explanation, of course, is not credible. There is no reason why this cash would not have been used for another trip. So his explanation is without any foundation whatsoever.

His explanation about needing this money in Indonesia is inconsistent with the travel records for that period. The $5,000 check was cashed in October of 1992. He made no international trips from January 10, 1992, until he left the office in May of 1993. The question is asked, why wasn't he convicted? We all ask that question.

I am not going to impugn the ability of the prosecutors, but it must have been a busy week. I don't think they were very well prepared for this case. Acquittals come, as we all know. Sometimes they shouldn't come. So, in finality, the prosecution memo says:

We propose to charge Dale with two counts of conversion under United States Code 654.

So, Mr. President, there is more here to this than we have heard in the past. For example, we have referred to his plea agreement. November 30, 1994, I am reading directly from his letter:

Mr. Dale will enter a plea of guilty to a single count of 18 U.S. Code 654. He will acknowledge he intentionally placed Travel Office funds in his personal checking account without authorization.

It goes on to explain what he would like in the way of a sentence.

I believe the facts simply do not support a half-million-dollar payment to Dale's attorneys. It is clear that the Justice Department had probable cause to indict and prosecute Billy Dale. It is important to keep in mind who it was who made this determination—career service attorneys at the Department of Justice. The White House had nothing to do with this. Likely—not likely; no question about it—that people doing this were holdovers from the Bush and Reagan administrations, professional prosecutors.

This is a private relief claim at best and should be referred to the Court of Claims. It has been turned into a political matter and should be removed from the political arena. Claims court is the proper forum for deciding whether Mr. Dale's attorneys are entitled to receive taxpayer compensation; otherwise, we are breaking well-established precedent for purely political purposes. In doing so, we would create a tremendously dangerous precedent in this body.

We cannot make a mistake about it. This reimbursement is for Presidential politics. Mr. Dale runs in high circles now and has become the poster boy for every Republican—I should not say ''every''—for many political fundraisers held by the Republicans. He was offered a job by Presidential candidate Dole, as reported in the press. And there are a few $1,000 fundraisers at which he appears.

Any appropriations should be considered an in-kind contribution to the Republican Presidential campaign. The record we have laid out today evidences the need to remove this matter from this body and to take it to the Court of Claims where appropriate consideration can be given. At a minimum, don't the taxpayers at least deserve this? What kind of a precedent would we set by including, in an appropriations bill, a payment for somebody's attorney's fees who was rightfully indicted and was acquitted by a jury, which happens in our system?

Mr. Dale's attorneys down on K Street, or wherever they are, I do not think will go hungry awaiting this decision. It is the right thing to do. The amendment that is going to be offered says that he should be reimbursed if the Court of Claims determines Dale has a legal or equitable claim.

AMENDMENT NO. 5256

(Purpose: To refer the White House travel office matter to the Court of Federal Claims)

Mr. REID. Mr. President, I send an amendment to the desk on my behalf and that of Senator LEVIN and Senator BIDEN.

The PRESIDING OFFICER (Mr. GORTON). The clerk will report.

The bill clerk read as follows:

The Senator from Nevada [Mr. REID], for himself, Mr. LEVIN and Mr. BIDEN, proposes an amendment numbered 5256.

Mr. REID. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 91, line 3, strike ''The'' and insert ''Except as provided in subsection (f), the''.

On page 92, between lines 21 and 22, add the following:

(f)(1) Any former employee of the White House Travel Office whose employment in that office was terminated on May 19, 1993, and who was subject to criminal indictment for conduct in connection with such employment, shall be reimbursed for attorney fees and costs under this section but only if the claim for such attorney fees and costs, which shall be referred to the chief judge of the United States Court of Federal Claims, is determined by the chief judge to be a legal or equitable claim, as provided in paragraph (2).

(2) The chief judge shall—

(A) proceed according to the provisions of sections 1492 and 2509 of title 28, United States Code; and

(B) report back to the Senate, at the earliest practicable date, providing—

(i) such findings of fact and conclusions that are sufficient to inform the Congress of the nature, extent, and character of the claim for compensation referred to in this section as a legal or equitable claim against the United States or a gratuity; and

(ii) the amount, if any, legally or equitably due from the United States to any individual referred to in this section.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Does the amendment relate to the amendment of the Senator from Nevada?

Mr. HATCH. It does.

The PRESIDING OFFICER. The clerk will report.

Mr. REID. Mr. President, could I make a parliamentary inquiry?

The PRESIDING OFFICER. State your parliamentary inquiry.

Mr. REID. Is there a second-degree amendment pending to the amendment offered by the Senators from Michigan and Nevada?

The PRESIDING OFFICER. The Chair is attempting to make that determination.

Mr. REID. Mr. President, I was only curious. Something was sent to the desk.

The PRESIDING OFFICER. The Senator from Nevada has in fact sent, not one, but two amendments to the desk at the same time. It would take unanimous consent to consider the two amendments as a single amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 5256, AS MODIFIED

Mr. REID. Mr. President, I ask unanimous consent that the amendment offered by the Senators from Nevada, Michigan and Delaware be modified to strike lines 1 and 2 of the amendment.

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

The amendment (No. 5256), as modified, is as follows:

On page 92, between lines 21 and 22, add the following:

(f)(1) Any former employee of the White House Travel Office whose employment in that office was terminated on May 19, 1993, and who was subject to criminal indictment for conduct in connection with such employment, shall be reimbursed for attorney fees and costs under this section but only if the

claim for such attorney fees and costs, which shall be referred to the chief judge of the United States Court of Federal Claims, is determined by the chief judge to be a legal or equitable claim, as provided in paragraph (2).

(2) The chief judge shall—

(A) proceed according to the provisions of sections 1492 and 2509 of title 28, United States Code; and

(B) report back to the Senate, at the earliest practicable date, providing—

(i) such findings of fact and conclusions that are sufficient to inform the Congress of the nature, extent, and character of the claim for compensation referred to in this section as a legal or equitable claim against the United States or a gratuity; and

(ii) the amount, if any, legally or equitably due from the United States to any individual referred to in this section.

AMENDMENT NO. 5257 TO AMENDMENT NO. 5256

(Purpose: To reimburse the victims of the Travel Office firing and investigation)

The PRESIDING OFFICER. The clerk will report the second-degree amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 5257.

Mr. HATCH. 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 first word and insert the following:

(2) VERIFICATION REQUIRED.—The Secretary shall pay an individual in full under paragraph (1) upon submission by the individual of documentation verifying the attorney fees and costs.

(3) NO INFERENCE OF LIABILITY.—Liability of the United States shall not be inferred from enactment of or payment under this subsection.

(b) LIMITATION ON FILING OF CLAIMS.—The Secretary of the Treasury shall not pay any claim filed under this section that is filed later than 120 days after the date of the enactment of this Act.

(c) LIMITATION.—Payments under subsection (a) shall not include attorney fees or costs incurred with respect to any Congressional hearing or investigation into the termination of employment of the former employees of the White House Travel Office.

(d) REDUCTION.—The amount paid pursuant to this section to an individual for attorney fees and costs described in subsection (a) shall be reduced by any amount received before the date of the enactment of this Act, without obligation for repayment by the individual, for payment of such attorney fees and costs (including any amount received from the funds appropriated for the individual in the matter relating to the ''Office of the General Counsel'' under the heading ''Office of the Secretary'' in title I of the Department of Transportation and Related Agencies Appropriations Act, 1994).

(e) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—Payment under this section, when accepted by an individual described in subsection (a), shall be in full satisfaction of all claims of, or on behalf of, the individual against the United States that arose out of the termination of the White House Travel Office employment of that individual on May 19, 1993.

SEC. 529. None of the funds made available in this Act may be used by the Executive Office of the President to request from the Federal Bureau of Investigation any official background investigation report on any individual, except when it is made known to the Federal official having authority to obligate or expend such funds that—

(1) such individual has given his or her express written consent for such request not more than 6 months prior to the date of such request and during the same presidential administration; or

(2) such request is required due to extraordinary circumstances involving national security.

SEC. 528. (a) REIMBURSEMENT OF CERTAIN ATTORNEY FEES AND COSTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall pay from amounts appropriated in title I of this Act under the heading, ''Departmental Offices, Salaries and Expenses'', up to $499,999 to reimburse former employees of the White House Travel Office whose employment in that Office was terminated on May 19, 1993, for any attorney fees and costs they incurred with respect to that termination.

Mr. SHELBY. Mr. President, it is moving on in the day and Senator KERREY and I have talked to a number of Members about any votes requested tonight. We will try to stack them tomorrow. He has no disagreement with that.

I yield to him for any comments.

Mr. KERREY. We have not had a discussion with the leadership about this. We have lots of people who would like to bring amendments down.

Mr. SHELBY. Subject to the approval of both leaders?

Mr. KERREY. We will try to get in touch with the leadership and see if we can work that out.

Mr. SHELBY. I yield the floor.

THE PRESIDING OFFICER. The Presiding Officer, in his capacity as the Senator from Washington, suggests the absence of a quorum.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 5208, AS MODIFIED

Mr. SHELBY. I ask unanimous consent that amendment 5208, which was previously agreed to, be modified with the changes I now send to the desk, and, further, that the modifications be considered agreed to.

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

The amendment (No. 5208), as modified, is as follows:

At the end of the committee amendment, insert the following:

''No adjustment for:

''(1) members of Congress under section 601(a) of the Legislative Reorganization Act of 1946, and

''(2) members of the President's Cabinet (as defined in 5 U.S.C. section 5312) under section 5318 of Title 5, U.S. Code,

shall be considered to have taken effect in fiscal year 1997.''.

Mr. SHELBY. I yield the floor.

AMENDMENT NO. 5256, AS MODIFIED

Mr. LEVIN. Mr. President, the appropriations bill before the Senate includes a provision to pay attorney's fees for the employees of the White House Travel Office who were dismissed from their jobs in 1993. This provision is similar to Senate bill 1561 sponsored by Senator HATCH earlier this year and to House bill 2937.

The provision would direct the Secretary of the Treasury to pay up to $500,000 of taxpayers' money to six former Travel Office employees; $50,000 of that amount would go to five of the employees who were already partially reimbursed by last year's appropriations bill. The rest, or about $450,000, would go to reimburse former Travel Office Director Billy Dale's attorney fees.

Unlike the other Travel Office employees, Billy Dale was subject to a Federal indictment and prosecution for embezzlement and conversion. It is that indictment and prosecution for embezzlement and conversion which is the source of the attorney fees. I want to repeat that because that is the critical issue that is before the Senate: It is the attorney fees that related to the FBI indictment and prosecution for embezzlement and conversion that is the source of the attorney fees that is in this bill. The provision, though, in this bill, lumps together both the unindicted and the indicted Travel Office employees. That is the mistake which should be remedied.

We know that the White House staff acted inappropriately when they summarily fired all the Travel Office employees in May 1993. The White House acknowledged that in their July 1993 management review when it said—this is the White House speaking—that the White House erred in not treating the Travel Office employees with more sensitivity. We also know that the White House staff erred in that conduct with respect to the FBI. They took actions which they should not have, which had the appearance of trying to influence the FBI. The White House acknowledged that in their 1993 management review when that review said, ''The White House erred in not being sufficiently vigilant in guarding against even the appearance of pressure on the FBI.''

The White House, by its own acknowledgment, was wrong when it allowed people with personal financial interest in the Travel Office to be involved in the work of the office and in evaluating the office. The White House management report acknowledged this, as well, when it said, ''The White House erred in permitting people with personal interests in the outcome to be involved in evaluating the Travel Office.''

Now, it is because of those errors, those facts, on the part of the White House relative to the firing of those employees that the Congress agreed to pay the attorney fees of former Travel Office employees who were fired, who should not have been fired, who were improperly filed. We appropriated $150,000 in last year's appropriation for

the Department of Transportation, and we will complete that course of action with the remaining $50,000 with this appropriations bill.

I do not have any argument with that. Quite the opposite. I think it was the right thing to do. We ought to pay those attorney fees relative to the firing of those employees.

However, $450,000 of the money in this bill would go for something far different than paying attorney fees for employees who everybody has already acknowledged should not have been fire—$450,000 of the taxpayers' money in this bill will go to pay the attorney fees that Billy Dale incurred in his defense against a criminal indictment. That $450,000 was not incurred because Dale was wrongly fired. It was incurred because a proper FBI investigation and a proper Department of Justice review found substantial evidence of embezzlement and conversion on the part of Billy Dale.

It was not the wrongful firing which relates to these $450,000 in bills for attorneys. It is because Billy Dale was indicted. He was indicted following a proper FBI investigation. He was indicted following a proper Department of Justice review which found substantial evidence of embezzlement and conversion on his part.

Now, as best as I can determine, if we pass this legislation as currently drafted, it will be the first time in our history that we have passed legislation to pay attorney fees incurred by someone who has been, from all appearances, lawfully indicted.

Now, maybe there is another case; maybe there is another instance where someone who was—I emphasize this—lawfully indicted following a proper investigation by the FBI, and following a proper review by the Department of Justice. Maybe there is another instance, but we can't find it.

So what is in this bill is precedent-setting. There is not an adequate foundation to set this precedent. The only law that allows for the payment of attorney fees incurred because of a criminal investigation is the independent counsel law. That law explicitly prohibits individuals from recovering their attorney fees if they have been indicted.

Now, while the attorney fees at issue here don't involve the independent counsel law, it is the only standard that we have on the books where the situation is comparable, so that it is reasonable that it would serve as our guide. Ten years ago, when we reauthorized the independent counsel law for the first time, we concluded that the independent counsel statute may create inequitable situations, where persons who would otherwise not be involved in a criminal investigation could incur sizable attorney fees solely because of the independent counsel law.

We decided, therefore, to allow for the reimbursement of attorney fees for persons subject to investigation under the independent counsel law if they met a two-part test. First, they had to show that they would not have incurred the attorney fees but for the independent counsel statute, and, second, they were not eligible if they were indicted.

No one at the time, or since, has ever mentioned, much less considered, the possibility of paying attorney fees for an indicted individual. Now, when Congress took the first step last year of paying the attorney fees of the fired White House Travel Office employees by including $150,000 in the Department of Transportation appropriations bill, that legislation explicitly limited payment of that money to reimburse attorney fees only of White House Travel Office employees who ''were not the subject of the FBI investigation.'' That is why it was passed so easily by a voice vote. It coincided with the independent counsel standard. But the legislation before us would violate that standard. If we are going to do that, we better have some criteria for the precedent that we are setting.

The reason that we have made an indictment the threshold beyond which there is to be no reimbursement for attorney fees is because an indictment requires a determination that there be probable cause that the person subject to the indictment committed a crime. The grand jury is comprised of average citizens who make a determination as to whether or not there is probable cause to go forward with an indictment and a trial. It is a system that we use thousands of times a year, if not a day, across this country. In order to be indicted, a prosecutor must present evidence to a grand jury to show probable cause that a crime was committed and that a specific person is the one who committed the crime.

Whether or not the indicted person is eventually acquitted does not take away from the fact that there was probable cause to believe that the person had committed a crime. Acquittal doesn't mean that the indictment never should have been brought. It means that the judge or jury did not believe there was proof beyond a reasonable doubt that the indicted individual was guilty. We have almost a thousand acquittals a year in this country in the Federal system alone, and I suspect a reasonable number of those involve relatively short jury deliberations, like the Billy Dale case. There is nothing unusual or suspect about such acquittals. That is the way the criminal process works.

But what if an indictment had been improperly obtained? If that is the case, that the indictment was tainted or obtained improperly, the defendant can seek to have it thrown out before or during trial. Rule 12 of the Federal Rules of Criminal Procedure provides for a defendant to make a number of pretrial motions, ''including any defense or objection to the prosecution, based on defects in the institution of the prosecution''—there I am quoting rule 12—''or based on defects in the indictment,'' and again I am quoting rule 12. Those motions are made in hundreds—probably thousands—of cases.

Outside of rule 12, courts may also recognize challenges to a prosecution or an indictment based on lack of due process. The court may dismiss an indictment as an exercise of its inherent supervisory authority to protect a defendant's due process.

These are long-recognized defenses to improper criminal prosecutions. Those defenses, though, are supposed to be raised in the judicial process and, in most cases, prior to trial. Rule 12 explicitly requires that any claim of defect in the institution of the prosecution, or the indictment, must be made prior to trial. Extensive case law supports the requirement with the result that any claim not raised prior to trial is deemed waived. So there is a clear and appropriate way for a defendant in a criminal case to challenge the fairness or the propriety of a prosecution.

As far as I can tell, Billy Dale did not raise any of these challenges during the course of his prosecution. The court docket for Billy Dale's case does not show any motion to dismiss because of alleged defects in the indictment, or because of alleged Government misconduct, or because of a claim of lack of due process; nor does the docket show that Billy Dale made any of those claims during the course of his trial. If he had these claims, he should have raised them at the trial. Had he been convicted and appealed the conviction, he would have been precluded from raising them on appeal, because if the claims haven't been made before trial, then the defendant will be treated as having waived those defenses.

Now, in support of this legislation, Senator HATCH has claimed that Dale's indictment and prosecution were a ''grave miscarriage of justice,'' and that Dale was ''wrongfully prosecuted.'' Well, if Billy Dale had those claims at the time of his trial, he had the opportunity and the legal obligation to raise them at trial. If he did not raise those claims there, then unless there are compelling reasons, we should be particularly careful in considering them here under this very rare and unusual process of private relief legislation.

If the answer is that Billy Dale has one of these claims, but did not raise it at the appropriate time, then we need an explanation as to why he did not raise it in the appropriate form at the appropriate time. There may be a legitimate reason, and we should hear that. But, so far, there is nothing on the record to that effect.

Without a compelling reason to justify Dale's failure to make his case about a wrongful prosecution while at trial, we would be overthrowing long-standing and critically important precedent in criminal procedure and in our handling of private relief bills were we to act at this time. We would be saying to hundreds, perhaps thousands,

of defendants, that although they failed to make a timely motion challenging the legitimacy of the private prosecution brought against them, they can still come to Congress and we will consider paying their legal fees, even though they would be forbidden from challenging the legitimacy of the prosecution were the case on appeal from a conviction.

But let's assume there was a legitimate reason for Dale to have failed to raise this claim of wrongful prosecution at the trial. If that were true, then we could be in a position to consider the substance of the claim. But, surely, before we pay his attorney fees out of taxpayer money, we ought to determine that the prosecution was improper.

As the record now stands, I don't see evidence to support such a claim. We don't have a Senate hearing record, or even a Senate committee report on this legislation, because there aren't any. The only record we have upon which we are supposed to judge this matter is the House committee report that accompanies the bill.

Mr. President, I have read the House committee report. I do not find anything in that report to justify a finding that either the FBI investigation or Department of Justice prosecution of Billy Dale was improper. What I have found is this: White House staff did a poor job in responding to evidence of financial mismanagement in the White House Travel Office, did a poor job of handling long-time White House Travel Office employees, and the White House summarily fired all the Travel Office employees before all the facts were known. The White House itself acknowledged these errors back in 1993. There is nothing new about those findings. In July 1993, the error was acknowledged by the White House in the firing of Travel Office employees.

What else have we found? It was found before, but the White House conveyed a heightened sense of urgency about the allegations involving the Travel Office to the FBI and coordinated a press release with the FBI which created the appearance of pressuring the FBI. The White House acknowledged that error back in July 1993.

Those White House errors do not mean that the investigation by the FBI or the prosecution by the Department of Justice were improper. That is the heart of the matter. Errors in the firing, yes. They have been acknowledged for years. But the prosecution of Billy Dale, the investigation by the FBI, the prosecution by the Department of Justice—were they defective? There is not even an allegation of that. That is what these legal fees relate to. They do not relate to the firing. We are paying those legal fees. They relate to the defense of a criminal indictment which was properly brought following a proper FBI investigation, following a proper Department of Justice prosecution that no one has said was improper. There is nothing in the House report, which is the only report we have, that says that the FBI investigation was tainted, or wrong, or defective, or improper. There is nothing in that House report which says that the Department of Justice prosecution was tainted, or defective, or improper.

That is what these legal fees relate to. We are paying the legal fees for the firing. And we ought to. They were done inappropriately. That has been acknowledged for years. We paid $150,000 last year in the appropriations bill. And this appropriations bill appropriates an additional $50,000, and we ought to pay it. It is the $450,000 for the defense against an indictment which was properly brought which is the issue here and which would set a precedent. We have never paid the legal fees of someone who was properly and legally indicted. If we open up that door, we would have thousands of folks out there who are acquitted, and many of whom are acquitted in just as short a time, who will have an equal claim.

That is the issue. Whether or not we ought to have the Court of Claims say that there was something inappropriate here before this money is paid, that is what this amendment does. It does not say strike the money. It says refer this to the Court of Claims to see if there is an equitable claim. And if there is, pay it.

Mr. President, it was not the White House which carried out the criminal investigation which led to the indictment of Billy Dale. It was the FBI. Has anyone said that investigation by the FBI was inappropriate, or tainted? Not that I have heard; not in the House committee report, which is the only report we have on it. The White House did not review the evidence obtained by the FBI and determine that it should be presented to a grand jury for possible indictment. That was the Department of Justice. It was not the White House that reviewed the FBI investigation and said, ''Hey, we are going to indict this person.'' The Department of Justice made that decision. I have not heard anyone say that the Department of Justice concluded that it should seek an indictment of Billy Dale which was tainted, or defective, or inappropriate, or improper. That is not in the House report, the only report we have.

The White House did not hear the evidence and determine that there was probable cause to believe that Billy Dale had embezzled $54,000 from the White House Travel Office. That was the grand jury, and the White House did not try this case and determine that there was sufficient evidence to sustain a conviction. That was the judge. The judge did that. The judge heard this evidence and decided that there was sufficient evidence to sustain a conviction of Billy Dale and let this case go to the jury and denied a motion for directed verdict.

There is no evidence, there is no allegation, that the Federal Bureau of Investigation pursued its investigation in an improper manner. There is no evidence that the decision to prosecute a decision made by career attorneys at the Justice Department was improper. That allegation has not been made. It is not in the House report. I do not think it would be sustainable if someone made it. There is no evidence that the indictment by the grand jury was improper. There is no evidence that the criminal trial conducted by a well-respected judge, whom Dale himself lauded as being fair, was in any way improper. In fact, Dale was asked at a hearing on the House side before the Committee on Government Reform and Oversight in January of this year by Congressman KANJORSKI whether Dale was ''suggesting in any way that either those attorneys in the Justice Department, the people in the grand jury, the judge that tried the case, or the people that made up the jury were in some way compromised?'' That was the exact question. Billy Dale responded, ''Absolutely not.''

On May 28, 1993, the FBI released a report of its internal review of its contacts with the White House on the Travel Office. The FBI Director concluded that ''The FBI acted correctly''. He said that ''FBI personnel declined to offer guidance, restricted their interest to the parameters of a possible criminal investigation and did not commit to conducting a criminal investigation until after consultation with appropriate personnel within the FBI and Department of Justice.''

The GAO looked into the handling of the White House Travel Office. In its report in May of 1994 it stated, ''FBI interactions with Associate Counsel Kennedy and White House press officials occurred in a mode of urgency but GAO found no evidence that the FBI took inappropriate action as a result of those conditions.''

The GAO went on to say that it found that the FBI actions ''during the period surrounding the removal of the Travel Office employees were reasonable and consistent with the agency's normal procedures.''

The Office of Professional Responsibility in the Department of Justice also reviewed the conduct of the FBI in this matter, and in its report, dated March 18, 1994, said the following: ''Based on our inquiry, we have concluded that the FBI acted properly throughout its dealings with the White House regarding the Travel Office matter.''

Providing more detail, the report went on to say, ''As noted, we found no wrongdoing on the part of any FBI employees regarding the Travel Office matter, but the various FBI agents who had direct contact with White House Associate William Kennedy have different recollections of their conversations with him. All agreed that they did not interpret Kennedy's statements as threats or attempts by him to pressure them to respond to the factual situation in an inappropriate manner, or in any way inconsistent with normal procedures.''

I am continuing to quote. ''And the record makes clear that the agents who had direct contact at the White House, as well as their superiors at FBI headquarters, followed normal procedures in responding to the Travel Office matter.''

The Office of Professional Responsibility goes on to say that ''ill-advised and erroneous'' action by White House staff during this time—''ill-advised and erroneous'' action by White House staff during this time; everyone concedes that. But the Office of Professional Responsibility said, ''—created the appearance that the FBI was being used by the White House for political purposes'' but concluded that the problem was one of appearance and not substance with regard to the FBI.

The House committee report lays out a summary of the facts in this case, a summary with which I do not have much dispute, but in reaching its conclusion it, like the legislation, makes no distinction between former Travel Office employees who were not indicted and Billy Dale who was indicted. That is the distinction which this appropriations bill does not make either. It is the critical distinction because there has been concession, there has been acknowledgement, there has been awareness for years that errors were made by the White House in the firing of those people and the attorney's fees have been paid, and they have been paid except for $50,000, in this bill, properly.

But there is another case, there is another situation in here. That is the proper legal indictment of Billy Dale following a proper investigation by the FBI, following a proper review of that investigation by the Department of Justice, following a proper indictment by the Department of Justice from the grand jury, following a proper jury trial.

The issue with respect to this legislation then is not the payment—and I am going to repeat this because we are going to hear a lot about the improper firing, which is conceded, has been acknowledged for years, and I have no doubt that we will hear later tonight, perhaps tomorrow, in great detail about the improper firing of these employees of the Travel Office, and that is not the issue. That has been acknowledged at least for 2 years. Those attorney fees, again, should be and have been paid for the most part and will be paid, the balance, in this legislation. I think it is supported universally that they were inappropriate firings and that the legal fees should be paid. I do not know anyone who disagrees with that one.

The issue here is the payment of attorney fees to somebody who was properly and legally indicted for the first time that I can find in our history. No standards in the committee report, no committee report from the Senate, just a private bill to pay attorney fees of people legally indicted, following a proper investigation by the FBI, not tainted, not alleged to be tainted, following proper prosecution, not tainted, not alleged to be tainted, either at trial or in the House report or as far as I know here. What was improper was the firing. But the indictment was proper, too, and I am going to spend a few minutes as to what that evidence was that led the FBI and the Department of Justice to seek an indictment and to prosecute Billy Dale.

This indictment was based on a finding of probable cause that a named individual committed a crime. Billy Dale was in charge of the White House Travel Office. He served as its head for 11 years, had been in the office for 32 years. There were six other employees in the Travel Office who worked under Billy Dale. None of these employees, including Billy Dale, was a member of the civil service. All the employees, including Billy Dale, served at the pleasure of the President and could be fired at will.

The job of the White House Travel Office is to accommodate the White House press corps by arranging for their transportation and housing while on travel to cover the President. Although the Federal employees in the Travel Office are paid for at taxpayer expense, the payment for the travel, the airplane, taxi, train, hotel costs are paid for by the respective news organizations. The moneys for travel are funneled through the White House Travel Office, so while the White House Travel Office employees will make the arrangements for the airplane charter and handle the reservations for hotel accommodations and meals, the money to pay for those items will be collected by the Federal employees at the Travel Office from the news organizations and then paid to the respective companies that have incurred the costs.

To cover the costs in advance and keep the operation running, the Federal employees at the Travel Office oversee and maintain an account at the Riggs Bank through which payments and reimbursements are made.

So let's say that the White House press corps needs 20 rooms at a hotel in Paris. The White House Travel Office books the 20 rooms, pays for them when required either upfront or after the trip, and then it bills each respective news organization for its share of the expenses.

That is how it is done. Why Federal employees should be the ones responsible for getting the press corps around the world and accommodated may not be 100 percent clear, but that is the way it works. There is no problem with that. That is the way it works.

White House Travel Office employees would often go on these trips to manage the travel and to cover incidental costs such as baggage handlers and local transportation. The employees who would go on a trip would take a fair amount of cash with them to pay for the necessary expenses. They get this money, this cash they took along with them from a petty cash account that they maintained at the Travel Office. They were supposed to work as follows: The petty cash account would be replenished by cashing checks at the Riggs Bank where the main account for the office was maintained, recording the number of the check and the amount cashed in a petty cash log. The Travel Office employees were supposed to use either the Riggs Bank account, which was several blocks away, that is all, from the White House, or the petty cash account, which was in the Travel Office, to cover the expenses while traveling with the White House press corps.

In May 1993, the White House counsel's office requested Peat Marwick, a private accounting firm, to conduct a review of the financial records of the Travel Office. That review found, according to the summary, ''significant accounting system weaknesses, including missing or inadequate documentation for disbursements, a lack of financial control consciousness, no formal financial reporting process, no reconciliations of financial information, no documented system of checks and balances on transactions and accounting decisions within the office, no general ledger of cash receipts, disbursement journals, no copies of bills on file.''

Now, in particular, Peat Marwick noted about ''eight discrepancies between the amounts written to cash on the Riggs National Bank account and the recording of these amounts into the petty cash fund.''

''Each of the eight checks was made out to cash and signed by the director of the press travel office and endorsed by the same individual. Those discrepancies totaled,'' according to Peat Marwick, ''$23,000.''

As a result of that audit, the FBI began an investigation, and during the investigation the FBI learned the following. Sometime around 1988, Billy Dale started depositing checks that belonged to the Travel Office into his own personal account in Maryland that he had with his wife. Dale deposited, the FBI found, 55 checks over 3 years totaling $54,000. He did not reveal that he was depositing those checks into his account in Maryland instead of in the office account across the street to anybody. He did not acknowledge or notify Peat Marwick he was doing it. He did not tell the FBI he was doing it. He did not tell his coworkers at the White House he was doing it—nobody. The FBI uncovered the deposits in his account because it had subpoenaed the records from that account.

The FBI also learned that on numerous occasions Dale cashed Travel Office checks for petty cash at the Riggs Bank but failed to record that fact on the petty cash ledger, which he was supposed to do. There was an unaccounted-for discrepancy of $13,000. During the Peat Marwick audit, Dale never mentioned these facts and irregularities to auditors. He never told anyone else about that money. We are here talking about petty cash. He did not

tell his fellow employees in the White House Travel Office, anybody at the FBI once the FBI investigation started. And this is from the trial transcript now of Billy Dale.

Question: And you never told your deputy that you had taken checks out of the Travel Office and put them into your personal account, did you?

Answer: That is correct.

Question: And you never told any of the people in the Travel Office that you had taken checks out and put them in your personal account?

Answer: That is true.

Over the course of 3 years, 1988 to 1991, Billy Dale took checks intended for the White House Travel Office, which were checks mostly from telephone companies to reimburse the Travel Office for prior payments in excess of needs. He took those checks, which were supposed to go to the Travel Office, deposited them in his personal bank account in Clinton, MD. He never told anyone, again, people he had worked with for decades, about taking those checks.

When he was asked about which checks he took, this is what he admitted at trial. How did he select the checks which he was not going to deposit in the Riggs account across the street? It was the office account. The ones he took to Clinton, MD, and deposited and merged with his own private funds with his wife in his own personal bank accounts, how did he pick them? Which ones? There were thousands of checks which come in:

Question: And you took a little more care in selecting these checks, didn't you?

Answer: I don't know what you mean.

Question: Well, you took the telephone refund checks, because there was no record in the office that these telephone refund checks were issued and coming back to the office; right?

Answer: That is right.

Question: And so no one would know that the money was missing, right?

Answer: That is right.

Question: And, so that no one would learn of what were you doing, right?

Answer: That is right.

Now, again, the FBI was not told by Billy Dale that he deposited $54,000 in checks in his personal account. He did not tell Peat Marwick during their review. Despite the negative report by Peat Marwick about financial mismanagement, he did not disclose it then. He never told anyone about that—3 years, deposits checks in his personal account. It was only after they were subpoenaed by the FBI that they discovered the deposits of these Travel Office checks by Mr. Dale.

So, now the FBI learns, because of its subpoenaed bank records, of these deposits of $54,000 in Travel Office money in his personal account. That is not a small amount of money and it is not a minor act by a Federal employee. It is a willful, intentional deposit of Travel Office funds in an employee's private bank account. He did not keep the funds separate. He merged them in his own private account, all mixed together.

There is not one of us in this Chamber who would tolerate that conduct by any of our employees. No one in private industry would allow that. He did it surreptitiously, he did it secretly, and even when he knew that the FBI was investigating the financial management of the Travel Office, he kept it a secret.

That is about as good probable cause as a lot of prosecutors are going to get in a lot of cases. At trial, Billy Dale testified and presented an explanation for his conduct. He said that he was under pressure by news organizations to keep the size of the office account at Riggs, the so-called surplus in that account, at a reasonable amount. But he said he needed more money than that in order to pay the bills, and he testified he needed ''convenience and flexibility'' in getting cash for trips.

Apparently walking two blocks to the Riggs Bank and cashing a telephone refund check to take on a trip was not sufficient convenience. So here is what he testified he did. He testified he kept a personal hoard of cash at his home, not his home bank in Clinton, but his house. He kept $20,000, he said, at his house. This came, he said, from the proceeds of a small business that he sold, from rent that he received from his children, and from the proceeds of his brother's estate. He testified that he would take a telephone refund check for the Travel Office, which might be in an amount of, say, $800 or $1,000, he would go home, take that amount from his cash reserve. He would then bring that amount from his cash reserve into the Travel Office. He would then take the refund check which was intended for the Travel Office and deposit it in his personal account at the Clinton, MD, bank. That is his explanation as to how he deposited $54,000 of Travel Office money in his personal checking account, for flexibility and convenience.

He could have cashed these checks two blocks away at the Riggs Bank, a bank that Travel Office employees used all the time, but he did not do that. He deposited them in his personal bank account, merged with his personal money for ''flexibility and convenience.'' He never made a copy of the checks, never told anyone in the Travel Office about them. No other Travel Office employee who had the same financial needs and responsibilities on these trips—no other Travel Office employee deposited Travel Office checks in their personal checking accounts. All the other Travel Office employees used either cash from the Riggs account or cash from the petty cash account in the office. All the others—not Billy Dale.

Now, those facts surely were reasonable grounds upon which to proceed. No one has argued—again, I emphasize, no one has argued that the decision to prosecute was not reasonable here or that the FBI investigation was not reasonable here. The judge found that that was adequate to sustain a conviction.

Supporters of Billy Dale say because he was acquitted in just a few hours, somehow or other that taints the prosecution. Are we going to get into the business of awarding attorney's fees to an indicted, properly indicted but acquitted, individual based on the amount of time that it took to acquit? O.J. Simpson's trial lasted over a year and the jury deliberated less than a day. Should the State of California pay O.J. Simpson's attorney's fees because of the brevity of the deliberation? I do not think we want to walk down that road. I do not think we want to base our judgment on the validity of a criminal prosecution on the length of a jury's deliberation.

Moreover, Billy Dale offered to plead guilty to a felony. This is a situation where we are asked to decide whether a person who offered to plead guilty to a felony should receive $450,000 in taxpayers' money to pay for his defense when his offer to plead guilty was rejected by the Government as not being adequate and he went to trial. The offer is to a felony called ''wrongful conversion'' to one's own use and property under his control. He offered to plead guilty to a felony called ''wrongful conversion.'' He did it on November 30, 1994. This information has been made public in many newspapers. Several points in this written plea offer are important to note.

First, it is clearly and unequivocally an offer to plead guilty to one count. It is one count of violation of the U.S. Code, section 654, which states as follows:

Whoever, being an officer or employee of the United States, or of any department or agency thereof, embezzles or wrongfully converts to his own use the money or property of another which comes into his possession or under his control in the execution of such office or employment, or under color or claim of authority as such officer or employee, shall be fined under this title not more than the value of the money or property thus embezzled or converted . . . .

And so forth.

Billy Dale says he did not agree to plead guilty to embezzlement, and that is correct. He did agree to plead guilty to wrongful conversion, which is part of the same statute as the embezzlement language, the same section, section 655 of 18 U.S. Code, which makes it a felony to either embezzle or wrongfully convert. Both crimes carry the same maximum penalties of up to 10 years in prison.

Billy Dale not only offered to pay a fine of not to exceed $69,000, he also offered to accept up to 4 months imprisonment, one-half of which was to be served in jail.

Why was Billy Dale offering to plead guilty? As he has said in various testimonies since he offered to plead guilty: Because he wanted to spare his family the grief and expense of a trial. But he also offered to plead guilty because he did not want to face the risk, a risk that he must have thought he had a reasonable likelihood of incurring, the risk of a longer jail term. His attorney wrote in the plea offer and the consequences of the acceptance of the

plea—this is the attorney for Billy Dale that said in the plea offer:

The Government will be able to publicize the conviction in a case that has received considerable notoriety. The defendant will in all likelihood receive some jail time and will suffer a substantial financial detriment, all of which is important to the Government. Moreover, Mr. Dale will be forced to live with the stigma of having acted criminally in his handling of the Travel Office money.

On the other hand—

His attorney writes in the plea offer:

Mr. Dale will avoid the expensive trial and the risk of a substantially longer jail term.

So he offered to plead guilty, pay both a sizable fine and actually serve some time in jail.

One other fact relative to the trial. At the end of the Government's case, Billy Dale made a motion for acquittal, and that was denied. This motion allows the judge to assess the presentation of the Government's evidence and decide if, on its face, it is insufficient to present to a jury.

Rule XXIX of the Federal rules of criminal procedure provide that:

The court, on motion of a defendant or on its own motion, shall order the entry of judgment of acquittal of one or more offenses charged in the indictment after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.

So here was another check on the legitimacy of the prosecution. Even though the grand jury was appropriately convened and the indictment was without defect and the prosecution did not violate due process and was not inappropriately selective, the defendant can ask the judge to consider whether the evidence of guilt, as presented by the Government, is sufficient to sustain a conviction by the jury. If the Government did not present sufficient evidence to convict, then the case does not go to the jury. The judge must acquit based on the motion of the defendant over its own motion.

Billy Dale made this motion, and it was denied by the judge. So, in the opinion of the judge, after the Government had presented all of its evidence, there was sufficient evidence to sustain a conviction.

I think a reasonable person looking at this record would find it reasonable to conclude that the criminal prosecution of Billy Dale was legitimate. Three separate reports on the firing of the White House Travel Office employees concluded there was no wrongdoing by the FBI, which was the lead investigative agency into alleged criminal conduct in the Travel Office. The GAO concluded in May 1994 that ''the FBI and the IRS actions during the period surrounding the removal of the Travel Office employees were reasonable and consistent with the agency's normal procedures.''

The FBI's internal review in May 1993 determined ''the FBI acted correctly:''

FBI personnel declined to offer guidance, restricted their interest to the parameters of a possible criminal investigation and did not commit to conducting a criminal investigation until after consultation with appropriate personnel within the FBI and the Department of Justice.

Third, the review by the Office of Professional Responsibility and the Department of Justice concluded:

We found no wrongdoing on the part of any FBI employees regarding the Travel Office matter.

The Senate has not had 1 hour of hearings on this bill. We don't have a committee report upon which we can assess the facts, not only of the criminal prosecution but of the estimate for the attorney's fees.

The House committee report upon which we are supposed to rely does not even mention, does not discuss the nature of the indictment or the facts surrounding the indictment or the basis for it. Those facts are ignored. What it focuses on and what I am sure will be focused on here tonight is the inappropriateness of the firings, which the White House and others concede.

The attorney's fees relating to the firing are, concededly, appropriately paid. We should pay them. We paid three-quarters of them. We should pay the balance in this bill. Those are not at issue. It is not the firings that is at issue here. It is whether or not the criminal indictment and the prosecution was defective and inappropriate. That is the issue, because that is what these $450,000 of attorney's fees relate to.

The basis upon which we should consider paying Mr. Dale's attorney's fees would be if there had been information uncovered that the Federal Government acted unfairly in indicting Mr. Dale. If there was sufficient evidence of that, then we should be given that information. That is the only basis upon which we ought to be considering spending almost a half million dollars of the taxpayers' money to reimburse Billy Dale and setting a precedent, which, as far as we can determine, is, indeed, a precedent, paying the attorney's fees of someone who is properly and legally indicted.

We do not have a record of the facts upon which we can make such a judgment.

Finally, Mr. President, there is a process in law to get that record. This legislation is effectively a private relief bill. In fact, the Parliamentarian has already ruled that the freestanding bill is a private relief bill for Billy Dale.

There is a statutory procedure, 28 U.S. Code, section 2509. That procedure provides that the Court of Claims can determine whether or not private relief sought from Congress and the taxpayers by an individual or group of individuals is appropriate.

Under that statute, the Court of Federal Claims, on referral from either the Senate or the House, is required to determine if there is a legal or equitable claim to taxpayers' money or whether such payment would be simply a gratuity. The statute provides the following in part, and here I am reading section 2509 of 28 U.S. Code:

Whenever a bill is referred by either House of Congress to the chief judge of the United States Court of Federal Claims, the chief judge shall designate a judge as hearing officer for the case and a panel of three judges of the court to serve as a reviewing body.

Each hearing officer and each review panel shall have authority to do and perform any acts which may be necessary or proper for the official performance of their duties, including the power of subpoena and the power to administer oaths and affirmation.

The hearing officer shall determine the facts and shall append to his findings of fact conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or gratuity and the amount legally or equitably due from the United States to the claimant.

Referral under this statute to the Court of Claims would require the court to develop a factual record outside the rhetoric of politics upon which we could either then base a judgment or, in the case of the amendment that has actually been filed, all that would be necessary is for the Court of Claims to determine that, in fact, it is an equitable claim. And then the legal fees would be automatically paid. We would be given a report under the amendment which the Senator from Nevada filed, but it would not have to come back here for further action. We would authorize these attorney's fees subject to a determination and finding by the Court of Claims pursuant to a law which is on the books that that is an equitable claim against the United States.

Surely, we owe that much to the American taxpayers who would be paying this bill, and we owe that much to ourselves before making a decision on overturning decades of precedent. That is what the amendment would do.

Again, it allows for the five Travel Office employees who were not indicted to receive the final reimbursement of $50,000 for their legal fees, which I think we all support. But it would refer the matter relative to Billy Dale's attorney's fees to the Court of Federal Claims for determination on the merits, and if the court determines that Billy Dale has either a legal or equitable claim, then this amendment would provide Billy Dale would be paid directly at that time when the findings of the Court of Claims become final.

No additional action would be required other than a report to us of what that final decision is. If, however, the court were to conclude that the payments to Billy Dale were not based on a legal or equitable claim but would be a gratuity, then the fees would not be paid.

This is a routine procedure. We use this procedure dozens of times. We refer cases to the Court of Claims all the time. We do it with private relief bills all the time. Sometimes the court finds that there is a legal or equitable claim; sometimes it finds that it is a mere gratuity. But before we set a precedent that we may come to regret, there should be, from some objective source, a determination that this claim is a legal or equitable basis.

Adoption of the Reid amendment, which has been cosponsored by myself and Senator BIDEN, is the surest way to remove this issue from politics, which is regrettably infused. Mr. President, I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr HATCH. I yield to the distinguished majority leader. I would like to retain my right to the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I thank the distinguished Senator from Utah for yielding, but I do think we need to notify our Members of where we are. It will not take me but just a moment.

For the information of all Senators, earlier this evening the Senate reached an agreement which limits the amendments in order to the Treasury-Postal Service appropriations bill. The managers have been working, along with the leadership representatives, with a number of Senators, to reduce that list, instead of just a large list of amendments here.

However, the grand total of amendments on the list is somewhere between 95 and 97, I guess, amendments, which certainly is unsatisfactory at this point. It makes it very difficult for us to be able to complete the bill. But in order for the managers to continue to work and try to reduce these amendments or to clear some of the amendments, I would like to announce now, there will be no further votes this evening, and any votes ordered tonight on this or other amendments will be stacked at 9:30 a.m. on Thursday.

Senators should be aware that the managers are here and are willing to debate, perhaps accept amendments or to conclude some of the amendments that are now being debated. Members should expect rollcall votes, of course, throughout the day on Thursday. It would be my intent, in the morning, after consultation with the managers and the minority leader, that we would continue on amendments in the morning.

After the stacked votes, if any, at 9:30—we had hoped to go to the Chemical Weapons Convention at 10 o'clock in the morning. It looks like we will have to just delay that and see where we are, which means that we could have to go very, very late into the night on Thursday night, could actually have to go over until Friday to have a vote on Friday morning.

In any event, there will not be any votes after 12 noon on Friday, since it is a Jewish holiday. I had hoped we could come to some reasonable conclusion on this bill, get it completed, and then spend the necessary time tomorrow on the Chemical Weapons Convention.

It is my intent to go to the Chemical Weapons Convention tomorrow. I just do not know when it might be now in an effort to try to get some conclusion on these amendments and complete this bill. But there will be no further rollcall votes tonight. The next vote will be at 9:30 in the morning, if any are ordered.

Does the minority leader have any comment?

Mr. DASCHLE. Mr. President, let me just say, I want to thank the Members of our leadership for working with Members on our side. As I understand it, the list is quite extensive on both sides. There are 51 Republican amendments and almost that many, not quite that many, Democratic amendments. But we are going to do our best to work with the majority leader to see if we can bring that list down substantially by tomorrow.

Obviously, Senators would be very helpful to both of us if we could limit the amount of time on many of those amendments and offer additional amendments tonight. There is no reason even if there are no more votes why we cannot have a number of amendments yet tonight. So, hopefully we can do that and be in a much better position to come to some final assessment as to what the list looks like by midmorning tomorrow.

Mr. LOTT. Mr. President, just in conclusion, certainly we will be working with the Senator from South Dakota. We will get this list pared down to what I guess is a real list, probably two or three or four or five max. I do not know why we have to go through these exercises, but we do, and we will do the best we can.

Again, under the rules we have, every Senator has his right or her right to make their case, and we will work with them on that. But I do want to remind Senators, a lot of times they think, ''Well, this will kind of just go away, and I won't have to stay late tomorrow night, and I can fly home tomorrow night or I'll be able to leave Friday morning.''

There are some things around here that have to occur. And we have a unanimous-consent agreement on the Chemical Weapons Convention. I have an obligation to call that up. And I am going to. It requires 10 hours under the rule. We can either cut that time down or we can take the whole 10 hours. We can go late tomorrow night. But if we do not begin until 1 or 2 or whatever time, it would be very late tomorrow night, and we could not do anything about it basically. That one would go until we got to the end.

So when Senators come, pleading, saying, ''I want to go home,'' there would not be anything we could do if we wanted to. Or I guess one other option is, we can go over and have a vote on that on Friday morning. I know that there are some Members of the Jewish faith who would like very much on their holiday to be able to leave on Friday morning so they can be with their families before the Jewish holiday begins. I would like to honor that, but we are in a bind here.

If we finish this bill at a reasonable time, we can go to chemical weapons at a reasonable time. We either get a time agreement, or vote late tomorrow night, or vote on Friday. This is one time where the leadership is not going to have a lot of options.

So I plead, once again, with our Members, let us be reasonable. This is not the last train. We still have plenty of times to play games, if we insist, on both sides of the aisle. I am not putting the other side down. We have ours on there, you have yours. So let us agree to hold hands and do this bill, and we can save all of our choice, lovely, luscious amendments for the next bill or the next bill. We still have 3 weeks. We do not have to do it on this one. Then we can do two very important bills—Treasury-Postal Service, Chemical Weapons Convention. And I believe we can work on that in the morning. I have seen miracles happen around here before. Maybe we could come up with one in the morning.

Mr. REID. Would the majority leader yield?

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DASCHLE. Might I just make one other point.

I appreciate the indulgence of the Senator from Nevada.

As I look at the list on both sides, the one thing I think the majority leader will agree with me on, about two-thirds, if not three-fourths of those amendments are legislative amendments. I believe we made a very big mistake a year ago in overriding the Chair on the question of legislating on appropriations bills.

I think we are paying a heavy price, and will continue to pay a heavy price, so long as we continue to insist that even on appropriations bills we can add anything to everything. And that issue will come back. It stung us and it has caused us more problems in the last 2 years than virtually anything else. I think it was a big mistake. Our Republican colleagues insisted at the time to overrule the Chair and allow the practice of legislating on appropriations bills, so these amendments are fair game. But we are now paying the price, and continue to pay the price so long as that issue becomes almost a joke with regard to these appropriations bills.

So I think when we get back for the 105th Congress, and when we have the opportunity again, in the majority, to deal with this issue, I hope we can restore the rule.

Mr. LOTT. The majority will certainly look at that very closely because we will be working in the majority with the minority. I think this is one case where maybe we can agree and in fact change the rule or take action to bring some reasonableness back to this area. I think I agree with what the Senator is saying. Let us work together no matter, you know, which party is in control to get that resolved.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. REID. While both leaders are on the floor, speaking for me, this Senator, and for—sorry.

Mr. LOTT. I believe that is correct. I believe the Senator from Utah had yielded to me.

Mr. REID. I am sorry.

Mr. HATCH. I will be happy to yield for a question, and then retain my right to the floor.

Mr. REID. I want to make a brief statement. I apologize.

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

Mr. REID. While both leaders are here, I want them to understand that, speaking for this Senator, Senator LEVIN and Senator BIDEN, we do not intend to hold this bill up because of the amendment we have offered. However, if we do not get a vote on our amendment, then we have no alternative. We need an up-or-down vote on our amendment. And the procedure, the way things are now before us, we will not be able to do that. So we will agree to a time agreement, and be totally reasonable, but we want an up-or-down vote on whether or not this matter should be referred to the Court of Claims.

Mr. DASCHLE. Mr. President, would it be in order to ask unanimous consent to get a time agreement, say, for additional debate of no more than an hour and 20 minutes? I am prepared to offer one of the amendments I was planning to offer in order to accommodate the schedule if we could, perhaps, divide the next 90 minutes equally.

Mr. HATCH. I might add, it is going to take me a little bit of time to rebut what they have said. I will certainly be amenable to trying.

Mr. DASCHLE. How much time does the Senator from Utah need?

Mr. HATCH. I have no idea. I imagine 45 minutes to an hour.

Mr. REID. I need about 15 minutes if I get an up-or-down vote on my amendment sometime through this process.

Mr. DASCHLE. I would like about 10 minutes, so perhaps we could take an hour on the Republican side and a half hour on the Democratic side.

Mr. LOTT. I believe the chairman of the committee has some comments.

Mr. DASCHLE. Could we ask unanimous consent that the time for the amendment be divided two-thirds/one-third, providing the Republicans with an hour, the Democrats with half an hour, beginning at 8:45, with a vote to be held tomorrow morning.

Mr. LOTT. Is this on the Hatch amendment?

Mr. HATCH. And the Reid amendments, back to back, following the end of the debate.

Let me say this: The proponents have taken 2 hours; I believe I can finish in about an hour, and I will try to do it in less time than that, but I do have to rebut what they have had to say because I think it has been outrageous.

Mr. REID. If the Senator would yield again, I have no problem with the reasonable suggestion made by the Democratic leader as long as we have a vote on both amendments.

Mr. SHELBY. I wonder if the Democrat leader would yield?

Mr. DASCHLE. I yield.

The PRESIDING OFFICER. The Senator from Utah has the time.

Mr. HATCH. The parliamentary situation is that the Reid-Levin amendment has been filed. We filed a second-degree amendment. Their amendment would go to the Court of Claims. Frankly, I do not see any reason why, if we went on my amendment, why you have to have a vote on your amendment.

Mr. REID. That is the whole problem. We want a vote. We want the Senate to vote as to whether that matter should be referred to the Court of Claims. If the Senate says no, we will walk away from this.

If we only get a vote to keep this in the bill, then I think I can speak for the Senator from Michigan and the Senator from Delaware, we are going to talk here a while.

Mr. HATCH. You are going to filibuster the bill over that issue?

This is legitimate. You filed an amendment; we filed a second-degree amendment.

Mr. DASCHLE. Would it accommodate both to have two freestanding amendments back to back, voted up or down at 9:30? That would accommodate everyone and resolve the matter, and we could move on to other issues.

Mr. HATCH. Fine with me.

Mr. LOTT. Mr. President, I believe we can get an agreement to that. I want to clarify the time that we are talking about.

Mr. HATCH. Will the Senator yield? I will move to table the Reid amendment, but it would be a vote up or down.

Mr. REID. We understand. We would have an opportunity to offer our amendment, and you could move to table it.

Mr. LOTT. I believe that would do it.

Mr. President, I thank the Democratic leader for the suggestion in trying to put that in motion here.

I ask unanimous consent that the time on the pending issue be limited to 60 minutes under the control of Senator HATCH, with 50 minutes to Senator HATCH and 10 minutes with Senator SHELBY, and then 30 minutes of time under the control of Senator DASCHLE or his designee, and votes occur first on the amendment No. 5257, and then on or in relation to the amendment of the Senator from Nevada, and that vote occur at 9:30.

Mr. DASCHLE. It would accommodate a Senator if that vote could occur at 9:45.

Mr. LOTT. We would have that vote at 9:45. Every time we do that, it pushes the Chemical Weapons Convention further back down, but the vote is to occur at 9:45.

I also ask each amendment be in the first degree and no second-degree amendments be in order.

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

Mr. HATCH. Mr. President, this has to be one of the most hypocritical White Houses in this century. And that is really saying something. Frankly, I think it is abominable, absolutely abominable. And my colleagues on the other side of the aisle are attempting to retry Mr. Dale right here in the Senate. Senator LEVIN, the distinguished Senator from Michigan, is even suggesting that Billy Dale should have been found guilty.

Fortunately—fortunately—our system calls for a more equitable fair process. Mr. Dale has been tried by a jury of his peers, and he was acquitted in less than 2 hours. I think there is a principle called double jeopardy. I am really amazed that after this man was smeared by the White House—for greedy purposes, to help their buddies, the Thomasons, and their relative, Ms. Cornelius—was put through an abysmal trial that cost him $500,000. And this outfit is acting like something should not be done.

I found the White House critical in this issue, and that is an understatement. The fact is, these people were smeared. They were treated improperly. They were abused. The FBI was abused, and it was all done for the purposes of greed, so they could take care of their buddies.

The fact of the matter is, if you look at what has happened here, it is just pathetic. A memorandum we got from the White House admits to the wrongdoing:

> You all may dimly remember the Travel Office affair in which a number of White House staff, many immature and self-promoting, took impulsive and foolhardy actions to root out problems at the beginning of the Clinton administration and gallantly recommended they take over its operation.

Those comments were from the White House itself.

Now, let me read from the Watkins memorandum. This is an interim White House memorandum. I ask unanimous consent to have this printed in the RECORD.

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

[Privileged and Confidential—Memorandum]

From: David Watkins.

Subject: Response to Internal White House Travel Office Management Review.

In an effort to respond to the Internal Travel Office Review, I have prepared this memorandum, which details my response to the various conclusions of that Report. This is a soul cleansing, carefully detailing the surrounding circumstances and the pressures that demanded that action be taken immediately. It is my first attempt to be sure the record is straight, something I have not done in previous conversations with investigators—where I have been protective and vague as possible. I know you will carefully consider the issues and concerns expressed herein.

As a preliminary matter, the procedure followed in finalizing the report was needlessly unfair. Even in the context of General Accounting Office audits and reviews, the reviewed agency is afforded the opportunity to respond to the report and criticisms prior to

release and publication. This is an important step which allows inaccuracies or erroneous conclusions to be addressed and corrected prior to publication, and more importantly, allows the criticized party to respond to the contents of the report. Unfortunately, in this case, neither I nor others directly involved were afforded any opportunity to rebut the contents and conclusions of the internal Review.

In this case, I was notified of the forthcoming reprimand around 10 a.m. on July 2. But I received a copy of the report shortly after noon the same day, and at the exact time from that briefing the report was publicly released. I was never afforded the opportunity to respond, and until this memorandum, I have never responded to the report or its contents.

With the recent release of GAO audits and the resultant press coverage and criticism of my office, setting the record straight on the Travel Office occurrences is important.

BACKGROUND

As you recall, an issue developed between the Secret Service and the First Family in February and March requiring resolution and action on your's and my part. The First Family was anxious to have that situation immediately resolved, and the First Lady in particular was extremely upset with the delayed action in that case.

Likewise, in this case, the First Lady took interest in having the Travel Office situation resolved quickly, following Harry Thomason's bringing it to her attention. Thomason briefed the First Lady on his suspicion that the Travel Office was improperly funnelling business to a single charter company, and told her that the functions of that office could be easily replaced and reallocated.

Once this made it onto the First Lady's agenda, Vince Foster became involved, and he and Harry Thomason regularly informed me of her attention to the Travel Office situation—as well as her insistence that the situation be resolved immediately by replacing the Travel Office staff.

Foster regularly informed me that the First Lady was concerned and desired action—the action desired was the firing of the Travel Office staff. On Friday, while I was in Memphis, Foster told me that it was important that I speak directly with the First Lady that day. I called her that evening and she conveyed to me in clear terms that her desire for swift and clear action to resolve the situation. She mentioned that Thomason had explained how the Travel Office could be run after removing the current staff—that plan included bringing in World Wide Travel and Penny Sample to handle the basic travel functions, the actual actions taken post dismissal and in light of that she thought immediate action was in order.

On Monday morning, you came to my office and met with me and Patsy Thomasson. At that meeting you explained that this was on the First Lady's ''radar screen.'' The message you conveyed to me was clear: immediate action must be taken. I explained to you that I had decided to terminate the Travel Office employees, and you expressed relief that we were finally going to take action (to resolve the situation in conformity with the First Lady's wishes). We both knew that there would be hell to pay if, after our failure in the Secret Service situation earlier, we failed to take swift and decisive action in conformity with the First Lady's wishes. You then approved the decision to terminate the Travel Office staff, and I indicated I would send you a memorandum outlining the decision and plan, which I did.

I have never stated all this so clearly before, but to form a complete and accurate picture it must be kept in mind while reading the specific criticisms of the Podesta Management Review. I will now address those criticisms directly.

RESPONSE TO SECTION II ''DISCUSSION OF PRINCIPAL ISSUES'' OF TRAVEL OFFICE REVIEW

''Travel Office Management'' (Page 14):

''The review conducted by KPMG Peat Marwick uncovered serious financial mismanagement.'' At .

At the strong recommendation of myself and others in my office, KPMG Peat Marwick was brought in—instead of having the FBI take over immediately—to review the financial practices of the Travel Office. I concurred in Peat Marwick's analysis and conclusions: Management of the Travel Office was abysmal.

''Treatment of the Travel Office Employees'' (Page 15):

''While all White House Office employees serve at the pleasure of the President, the abrupt manner of dismissal of the Travel Office employees was unnecessary and insensitive.'' At ___.

In the conversation with the Travel Office staff notifying them of their termination, I explained that a review of the Travel Office operations had always been planned to conform to the general review process implemented across the White House administrative offices and the Office of Administration. I further explained my decision to terminate them; I explained that from a management perspective, in this case it was best to relieve them all immediately from their jobs and provide them a additional two weeks in pay. I informed them of this and asked them to leave immediately. The tone was firm, with emphasis on the mismanagement recounted in the Peat Marwick report. I explained that in light of that mismanagement, it was best to dismiss the entire office.

The allegation in the report that this was insensitive is wrong. These employees work at the pleasure of the President and all in the White House Office should understand that there is extremely low tolerance for the severely negligent and unaccountable procedures followed in that office. In light of the First Lady's insistence for immediate action and your concurrence, the abrupt manner of dismissal, from my perspective, was the only option.

''Moreover, the Peat Marwick report did not furnished efficient cause for terminating the employees without financial authority. As a legal matter, the White House has this right to terminate an employee without cause. In this case, however, the White House asserted that this termination of all seven was for cause. Based on the information available, this assertion was inappropriate with respect to the employees who did not exercise financial authority. . . . Abuses cause, in some humans approach was in order. For example, even if it were decided that the Travel Office would operate more efficiently with a reorganized, smaller staff, an effort could have been made to locate other federal employment for those who would be displace.'' At 15.

As early as February, the intent of Management and Administration was to review and reorganize the Travel Office before October 1 into a leaner operation—just as with every other office within the domain of Management and Administration, from the Photo Office to the Telephone Office to the Travel Office. That remained the plan until the intense pressures surrounding this incident arose in May. If given time to develop, the original plan to reorganize the Travel Office for a smooth transition in September would have allowed the Travel Office employees to seek other federal placement, along with other Executive Office of the President staff, in anticipation of the end of the fiscal year staff cuts; however, when pressure began to build for immediate action in the Travel Office, the long-term plans were short-circuited.

''The other major White House mistake in the treatment of the former Travel Office employees was in tarnishing their reputations. This resulted, in discussed above, from the inappropriate disclosure of an FBI investigation into potential wrongdoing in the Travel Office. (p. 15) * * * It was a mistake for the White House to publicly discuss FBI involvement, which led to the disclosure of the FBI investigations. * * * The talking points prepared by Watkins' office for the press office stated that the White House had asked the FBI to investigate. Eller had also sanctioned the FBI in an earlier draft of talking points. In making that reference, Watkins and Eller were insensitive to the effect such reference can have on the reputation of an innocent person. This mistake was compounded when Fouter's and Kennedy's instruction to eliminate the FBI reference was not carried out. Watkins did attempt to reach Myers, and Eller himself omitted the FBI references in his own background press briefings the morning of May 19. However, neither ensured that Myers avoided the reference.'' At 18.

Revealing the ongoing FBI investigation was insensitive, but that fact comprised one sentence in a draft version of talking points drafted by one of my staff and distributed for comment on the morning of May 19—the day of the termination. The talking points were distributed to Foster, Kennedy, Myers, and Eller with the expectation that we would have until the 2 o'clock press briefing to get the kinks worked out of the talking points. As soon as the suggestion came to delete the reference to the FBI, it was done. I immediately went to see Myers to inform her of the change and sensitivity to the ongoing investigation, but she had gone to the Hill with the President. I struck that sentence from Eller's copy and asked him to inform Myers. As soon as Myers returned from the Hill, prior to noon—more than an hour before the press briefing—I proceeded to her office and told her not to mention the FBI investigation She informed me that it was too late. She had already responded by phone to a reporter's inquiry by phone.

Thus, this was a mistake made on my part because I was not intuitive enough to take the talking points drafted by one of my staff and realize that the FBI investigation should not be mentioned—despite the strong support this provided for White House actions.

''Catherine Cornelius also played a role in the dismissal of the Travel Office employees, and she to had a personnel stake in the outcome. As the three memos she wrote on the Travel Office attest, who was eager to work in and, if possible, manage the Office. Her proposal to reorganize the travel office was appropriate and would be considered usual to any transition process. But her role in the decision-making process after she came, in effect, an 'accuser' of the Travel Office employees, by collecting documents and alleging possible wrongdoing, was inappropriate. * * * [E]very effort should be made to insulate the federal government's management decisions from even the appearance that personal interests have played a role in the outcome of those decisions.'' At 20.

Catherine Cornelius had no part in the dismissals. I put no stock in most of what Cornelius told me except to the degree it was factual. Her arguments for dismissal and reorganization had absolutely no bearing on the final decision to terminate the employees. If her input had been respected, the need for Peat Marwick would have been negligible, but in light of her self-interest and

her tendency to exaggerate, I decided to rely exclusively on a professional accounting firm. Catherine Cornelius, despite the Review's suggestion to the contrary, had absolutely no role in the decision-making process, and was in no danger of being placed in charge of the Travel Office. My intent all along was to put a trained financial manager over all the White House administrative operations, including the Travel Office.

When I assigned Catherine to the Travel Office, I did ask her to provide a report to me on May 15 based on her previous experience and actual experience in the Travel Office. She was placed in the Travel Office because of her prior experience in that area and a need to move her out of my immediate office—where she had become a liability to daily operations. Having had extensive experience with Catherine, I knew that her report would contain unworkable recommendations, but as I have in the past, I expected to distill those with which I disagreed from those I thought helpful. Unfortunately, due to her desire to revamp the Travel Office in her own likeness, Catherine may have ignored my intent to carefully review and scrutinize any recommendations made.

After Catherine became an ''accuser'' of the Travel Office staff, her input was merely on a factual level. I interviewed her to derive the factual basis of her allegations and for facts about the tasks performed by the Travel Office staff, but never asked for other, non-factual input other than the May 15 report I was expecting. All views she expressed were evaluated in light of her known bias. To put it simply, she had no impact on the decision-making process other than by providing factual information.

''The White House took several actions that demonstrated an insensitivity to the appearance of favoritism. Hiring World Wide Travel on a no-bid basis—even as an interim, stop-gap measure—created the appearance of favoritism toward a local friend from the campaign. World Wide's president, Betta Carney, is a long-time acquaintance of Watkins. Watkins' Little Rock advertising agency was a client of World Wide in the 1970s and World Wide was a client of Watkins' agency during that time period.'' At 20.

Part of the plan for immediate replacement of the Travel Office staff was use of World Wide Travel Service to book commercial flights for the Office. This aspect of the plan was discussed with all interested parties, and all concurred with knowledge that World Wide had been the campaign's travel agent. This made the most sense due to the fact that we could not have publicly solicited bids in light of confidentiality concerns and when we had ongoing business needs that had to be taken care of immediately following the terminations.

As for my longtime acquaintance with Betta Carney and World Wide Travel, I must point to my experience in the business world. There, reliance on a firm from whom one has received exceptional service is the rule.

As well, since the time I was a client of World Wide's and since World Wide was a client of my advertising agency in the 1970s, I have personally and professionally used at least half a dozen other travel services. So, any suggestion that calling them in this case derived from that history is absurd, and the media suggestions of improper favoritism were likewise absurd.

We had recent experience with World Wide, and based on that experience I knew we could rely on them for confidentiality in handling and preparing to handle the Travel Office business, until the business could be subject to full and open competition.

''None of this implies any improper conduct by World Wide, which is a well-established, successful travel agency, twenty-third largest in the country. World Wide executives understood that they could secure White House business only through an open, competitive bidding process. But the impression of favoring a local supporter was impossible to dispel.''

At this point in the sequence of events, with the current plan approved by the First Lady and yourself including resort to World Wide Travel, it would have unnecessarily heightened confusion to recruit an unknown travel service. Again, a primary source of the problem was the abruptness caused by the calls for immediate action in the Travel Office and the at least daily inquiries. If my plan to slowly shift as the fiscal year came to a close had remained intact, a travel agent would have been procured in a more transparent fashion. However, since at the time of hiring World Wide it was known that they had a GSA contract, hiring World Wide was not as questionable or ''non-competitive'' as the Report or the press would have one believe.

''Bringing in Penny Sample, President of Air Advantage, to handle press charters on a no-bid, volunteer basis furthered the appearance that the White House was trying to help its friends. Sample was the Clinton-Gore campaign's charter broker and a close associate of Darnell Martens. This implies no improper conduct on Sample's part, but, again, created an appearance of favoritism.'' At 20.

Like World Wide Travel, Penny Sample was part of the short-term plan for running the Travel Office after the terminations. Since she was willing to volunteer her services without her or her company receiving any compensation—because we realized, like they did, that they would be conflicted out of virtually all White House business—we believed the conflicts and appearance of favoritism issue had been sufficiently addressed. Again, we did not believe it to be favoritism to have a former service provider for the campaign volunteer to assist the White House.

''White House Management'' (Page 21):

''The White House made a number of management mistakes in handling the Travel Office.''

''Lax Procedures''

''The responsibility for Thomason's influence on the Travel Office incident must be attributed to White House management. Thomason should have avoided continued involvement in a matter in which his business partner and his friends in the charter business stood to benefit and in which there was an appearance of financial conflict of interest. But lax procedures allowed his continued participation in the process. . . . There should be better management control with respect to the mission that any non-White House staff person is brought in to carry out. Permitting Thomason—or any non-staff person who comes in on special assignment—to work on problems outside the scope of his or her assignment is not a good practice.'' At 21.

Management and Administration had no part in bringing Thomason into the White House. In fact, the responsible office failed or intentionally neglected to inform Management and Administration of the nature of his work. Contact with this Office on the subject consisted only of the First Lady's Office calling to insist on immediate access for Thomason.

''Placing Cornelius in Travel Office.''

''Given Cornelius' personal interest in running the Travel Office, Watkins should not have placed her in the Office to make recommendations on how the Office should be structured.''

As stated above, Catherine was placed in the Travel Office because of her experience in travel and to allow her to make a meaningful and significant contribution to this Administration. The original assignment was made to see if she would work there permanently—if she liked that work and if it likewise suited her. The report I asked her to draft and provide on May 15 was in no way the driving force for her assignment to the office, it was simply a way to help determine her long-term suitability. She was placed in that office because of her extensive experience since October 1991 in coordinating travel for then-candidate Bill Clinton. She was not placed in the Travel Office primarily to make recommendations on its future structure.

''Watkins compounded the problem where in responses to Thomason's complaints, he asked Cornelius to be alert to possible wrongdoing or corruption. Cornelius lacked the experience or preparation for this role. Nor was she given my guidance.'' At 21.

Catherine was not asked to investigate or document wrongdoing by the Travel Office staff. I understood that she lacked experience to perform such a task. Catherine was merely asked to observe what transpired in the Travel Office—nothing further was requested or expected. Special training is not needed to keep one's eyes and ears open, to observe. I never asked her to collect documents or other information; she undertook this of her own volition.

''If, in April, Watkins thought the allegations reported by Thomason should be looked at more seriously, he should have done so in a more professional manner.'' At 21.

The suggestion that this could be more professionally handled is absurd. I noted the allegations, but thought they could wait for review—and knew they would be examined—during the course of the planned internal review of the Travel Office. For that reason, no action was taken other than to ask to Catherine to ''keep her eyes and ears open.''

''Poor Planning.''

''There was no adequate plan in place to manage the Travel Office in the aftermath of the dismissals.'' At 21.

Harry Thomason indicated that he could put a more efficient structure in place in an hour's time to handle all the tasks of the Travel Office. While I believed that my original plan to carefully review the Travel Office would best serve the White House, when I spoke with the First Lady on Friday night, May 14, she cited Thomason's plan as support for the need for immediate action. That action involved utilizing World Wide Travel and Penny Sample in the short term. As well, in my memo to you on May 17 explaining my intent to terminate the Travel Office employees the next day, the intention to use World Wide Travel was outlined. You approved this action based on this memo prior to the actual terminations.

''For example, no one in the decision-making chain spoke to the White House press and press advance staff members who worked closely with the Travel Office employees, knew the employees there, understood the services they provided and the degree to which they were relied upon by members of the travelling press and other considerations. None was contacted by Watkins.'' At 22.

In light of the need for absolute confidentiality, it would have been foolhardy to consult the press or press advance staffs. From the staff review and Catherine Cornelius' experience (this is the primary area where her factual expertise was relied upon), we in fact did know the services that the Travel Office staff performed. Catherine Cornelius and Harry Thomason regularly and repeatedly reassured me that the press charter function

could easily be assumed with the assistance of Penny Sample. ''Thus, plans to replace these aspects of the Travel Office functions were in place prior to the dismissals. Then, when the need for immediate replacement became evident, I committed to provide whatever manpower was needed to perform the services the Travel Office staff had performed.

Immediately following the dismissals, meetings were held with the press and press advance staff to make all necessary arrangements for upcoming trips. These discussions came after the fact, but were accompanied with a commitment from my office for all necessary resources to perform the job.

''The absence of a plan prompted the last-minute use of World Wide Travel and Penny Sample of Air Advantage, which fueled the charges of favoritism already discussed.'' At 22.

As explained above, the plan was to use World Wide Travel and Penny Sample; there was no absence of a plan. Because of the need for confidentiality and the need for quick action, reliance on those with whom we had experience seemed the only rational decision. Having performed superbly in the campaign and in light of our need for immediate travel agent support—due to the pressure for immediate action from several quarters—we decided the plan would include short-term reliance on World Wide Travel.

I would have much preferred to have my staff carefully review the Travel Office and make a detailed business plan for the new fiscal year. This proved impossible, though, when the pressure for action from the First Lady and you became irresistible. This demand for immediate action forced me to accept hastily formulated plans for hasty, inadvisable action.

''Overview.''

''The management problems in the handling of the Travel Office extended beyond the White House Office of Management and Administration. The Chief of Staff and the White House Counsel's Office had the opportunity to contain the momentum of the incident, but did not take adequate advantage of this opportunity.'' At 22.

''The process should have been handled in a more careful, deliberate fashion. Before any decision was made, the Travel Office employees should have been interviewed and other White House staff who understood the operations of the Travel Office should have been consulted. If dismissals were deemed appropriate, a new structure should have been designed and readied for implementation before any action was taken. Throughout, the process should have treated the Travel Office employees with sensitivity and decency.'' At 22.

As stated above, I too would have much preferred to have my staff carefully review the Travel Office and formulate a detailed business plan for the new fiscal year. This proved impossible, though, when pressure for action became irresistible. It forced me to accept hastily formulated plans for hasty, inadvisable action.

CONCLUSION

I think all this makes clear that the Travel Office incident was driven by pressures for action originating outside my Office. If I thought I could have resisted those pressures, undertaken more considered action, and remained in the White House, I certainly would have done so. But after the Secret Service incident, it was made clear that I must more forcefully and immediately follow the direction of the First Family. I was convinced that failure to take immediate action in this case would have been directly contrary to the wishes of the First Lady, something that would not have been tolerated in light of the Secret Service incident earlier in the year.

For this reason, I was forced to undertake the Travel Office reorganization without a business plan firmly in hand—something I had never before done in years as a management consultant, where such plans were my business.

All failings outlined in the Podesta Management Review were either mistaken and groundless criticism, or were based on actions dictated by the need for instant action. This reorganization required more careful review, but in this case that possibility was foreclosed. Delaying action was beyond my control.

Mr. HATCH. I am absolutely astounded that people would come here and try to try Billy Dale again.

I am now going to quote Mr. Watkins:

On Monday morning, you came to my office and met with me and Patsy Thomasson. At that meeting, you explained this was on the First Lady's radar screen. The message you conveyed to me was clear: immediate action must be taken. I explained to you that I had decided to terminate the Travel Office employees, and you expressed relief that we were finally going to take action (to resolve the situation in conformity with the First Lady's wishes.) We both knew that there would be hell to pay if after our failure in the Secret Service situation earlier, we failed to take swift and decisive action in conformity with the First Lady's wishes. You then approved the decision to terminate the Travel Office staff, and I indicated I would send you a memorandum outlining the decision and plan, which I did.

This is a memorandum, which is marked privileged and confidential, is from David Watkins in response to the internal White House Travel Office Management Review. The White House even admits they were doing the wrong things.

The distinguished Senator from Michigan claims this case should be referred to the Claims Court because the Senate has not done a report on the issue. I disagree: the facts in this case are not in dispute. The reason you have a Claims Court proceedings is because you have disputed facts. In this case, the facts are not in dispute.

And these facts have been well-documented: no less than four reports have been done on this issue, as well as 2 years' worth of investigations and hearings, and a debate on the floor of this chamber that was filibustered when the bill was filibustered as a free-standing bill. Two years' worth of investigations and hearings on the House side has established the facts. The only reason to refer this case to the claims court would be if the facts were in question. The facts, in this instance, are not even in dispute.

I might also add that the other side has referred to a document that, for all intents and purposes, is a privileged document that should never have been made public. It is the prosecutor's memorandum.

Somebody has violated the most sacred canons of ethics in giving a prosecutor's memorandum, which tells the Government's side of the case. My colleagues have read from it like it is fact, when, in fact, it isn't fact. They refer to two documents—one is the ''prosecution memorandum,'' and the other is a ''plea agreement.''

Now, where did they get those documents? Those documents are not permitted to be given to anybody. Somebody at Justice or the prosecutor's office has violated the most sacred canons of ethics, giving a memorandum of one side of the case, which may or may not be the true facts with regard to the other side. In this case, they are not the true facts. They are relying on confidential documents that were given improperly—through the Department of Justice, I presume. The Administration ought to know better than that.

Those documents are protected under the Department of Justice' own regulations. Once again, this is a politicization of the Justice Department, or the prosecutor's office, one or the other. There is no other way it could be. If the Justice Department has allowed White House people to get these documents, which apparently has been the case here, so they could leak them to Members of Congress to smear again Billy Dale and his colleagues, then that is further evidence of hypocrisy.

One thing I found interesting, is the quote the distinguished Senator from Nevada has on the chart behind him. Notably, it is only part of the quote. Let me read the whole quote. I am reading from a response from Billy Dale's lawyer to an op ed written by Robert Bennett to the Wall Street Journal. In the op ed, Mr. Bennett suggested that Billy Dale had entered a plea agreement of guilty, which he never did. Mr. Bennett was incorrect in his suggestion that the letter of the counsel for Billy Dale of November 30, 1994, constituted a willingness by Billy Dale to admit the charge of embezzlement of which he was acquitted. The attorney for Billy Dale criticized Mr. Bennett because he said that Mr. Bennett accurately quoted the first sentence of that letter which stated that Mr. Dale was prepared to enter a plea of guilty to one single count under 18 U.S.C. 654. However, Mr. Bennett, as well as my friend from Nevada on his chart, chose to omit the sentence that immediately follows. That sentence says that Mr. Dale would not admit to any intent to defraud or to permanently deprive anyone of the money that was represented by the checks he deposited in his personal account.

This admission is imperative in order for the Government to have an actual plea. In order to take a plea, Mr. Dale would have had to have admitted or pled guilty to defrauding the Government. Mr. Dale refused to do that. Now, the quote illustrated by the distinguished Senator from Nevada doesn't give the full facts. Instead of giving the full facts, the distinguished Senator from Nevada is attempting to retry Mr. Dale's case on the Senate floor. I think that it is wholly improper, especially when a jury tried it

and Mr. Dale was acquitted within 2 hours.

I will tell you one more thing. I am going to refer the matter of the leaking of confidential documents by the Administration to the Office of Professional Responsibility, because the Justice Department has acted irresponsibly, or the prosecutor's office has acted irresponsibly.

I oppose the Reid amendment that would strike the provision to reimburse Billy Dale and to refer his case to the claims court. As I reiterated time and again, reimbursement of these legal fees simply remedies the grave miscarriage of justice that resulted in the investigation of Billy Dale and the other former White House Travel Office employees, which they are willing to reimburse. They are unwilling to admit, as really gentlemen ought to, that they have smeared this man, that the White House deliberately did it, that they were acting pursuant to Mrs. Clinton's demands, according to Watkins—that was a memorandum written at or near the time of the demands—that the White House acted out of greed, and that they put Mr. Dale through a half-million dollars of legal fees, not to speak of the loss of reputation, the bad publicity, the tremendous strain of going through a criminal trial when they knew he did nothing wrong. Then, my colleagues on the other side of the aisle come here to the floor of the Senate and claim that Mr. Dale entered a plea of guilty.

Let me tell you something. I have been around courtrooms for many years of my life. I know a number of people who weren't guilty that would enter a plea to some really minor, lesser count so that they would not get bled to death with attorney's fees, court costs, ulcers, bad health, ruination of the family, and 101 other things that happen. Anybody that doesn't understand that has never been in a court of law, or at least doesn't understand, or just plain isn't telling the truth.

For many months, the Congress and the Nation believed President Clinton had supported Mr. Dale's reimbursement. In fact, I publicly commended the President on numerous occasions for his equitable decision to sign the bill if we would pass it up here. Unfortunately, I understand the President Clinton has chosen to retract his support for such reimbursement. That is why I call this a hypocritical White House. Under these facts and circumstances, knowing what has transpired, and knowing the hell they put these people through, not to be willing to reimburse them is just unbelievable.

I am very disappointed that the President has changed his position on this issue, because passing this legislation is the right thing to do. After being fired, the Travel Office employees were forced to seek legal representation to defend themselves against a Federal criminal investigation in which they had become targets. These public servants became the victims of unjust and inappropriate abuse of Federal law enforcement by some White House officials. I continue to be outraged by the arrogance of power demonstrated by this Administration in this matter.

The way these individuals were fired and investigated was unconscionable. Over the course of the last several months, I have worked in a bipartisan effort to get a freestanding Billy Dale reimbursement measure passed. I wanted to pass this measure months ago so that President Clinton could put this ordeal behind him. He said he would sign it. But the Senate has continued to be met with resistance by some Members on the other side of the aisle. First, my colleagues wanted to offer a GATT amendment to the proposal and then they wanted to offer a minimum wage amendment. Then we worked together to advance their objectives on both the GATT and minimum wage issues. We dealt with both of them in the Senate.

Having worked in a bipartisan manner, I thought the Senate would be able to pass a freestanding bill without any additional delays. The last time we tried to bring up this bill, the distinguished minority leader objected, stating Mr. Dale had a fee arrangement with his lawyers that would obligate him to pay only part of his bill, which, for the record, is not true. As well, we were told that some Members on the other side of the aisle had additional amendments—amendments which to this day we have not seen.

Accordingly, Senator SHELBY, the chairman of the Treasury-Postal Subcommittee took this initiative by incorporating the Dale measure in this appropriations bill. Yet, once again, this is an effort to thwart a proposal to restore Dale and his colleagues to the position they were in before being attacked by ''friends'' of President and Mrs. Clinton and their allies on the White House staff.

Mr. Dale and his Travel Office colleagues served at the pleasure of the President. Some of the employees served as many as eight different Presidents, both Republican and Democrat. They provided years of faithful service. For this service, they were fired based upon trumped up charges by political ''friends'' of the President and the First Lady. These loyal public servants were then investigated by the Federal Bureau of Investigation, the Department of Justice, and the Internal Revenue Service. The FBI was intimidated to do this by none other than Mr. KENNEDY at the White House, who no longer is there—and for good reason. Mr. Dale was subsequently indicted and prosecuted for embezzlement. On December 1, 1995, after 2½ years of being investigated by Federal agencies, as well as incurring tremendous legal expenses, Mr. Dale was found not guilty of all charges after only 2 hours of jury deliberation.

You would think our colleagues on the other side would give credibility to that and not try to retry him here in the U.S. Senate. It is unseemly. This questionable use of the Federal criminal justice system created a situation where Mr. Dale had to spend some $500,000 on attorney's fees and even consider accepting a plea agreement, when he had committed no crime, but with the express provision that he would not plead guilty to embezzlement. To make matters worse, the administration went so far as to leak, in violation of its own regulations, a confidential letter in which Mr. Dale's attorney discussed the notion of a plea agreement—something that goes on in almost every criminal case where there is a chance of resolving a case by settlement.

That is what was involved here in that matter.

Mr. Dale's attorney, on behalf of his client, offered to end the case but expressly stated that Mr. Dale would not admit that he converted or stole funds, the necessary elements for an embezzlement prosecution. Faced with the ruinous legal costs, Mr. Dale's lawyers explored the possibility of a settlement, but not as an admission of guilt. The Department of Justice's leaking of the plea agreement discussion was irresponsible. But, this administration does have a troubling record of failing to respect the privacy of individuals. The President himself unfairly repeated information derived from this unconscionable leak, suggesting that the confidential discussions of a possible plea bargain with the prosecutors in the face of his own administration's outrageous abuse of the FBI should somehow count against Mr. Dale.

Mr. Dale and his colleagues recently found themselves in the news again after trying to put the circumstances of this behind them. It was discovered that Mr. Dale's FBI background file was requested by the White House Personnel Security Office 7 months after he was fired. It now appears that the Travel Office Seven were not only fired unjustifiably but in some cases their personal background file summaries were inappropriately requested and possibly reviewed. Some think the whole 900 files that were improperly requested—and possibly reviewed; many of which were reviewed—was as a result of trying to get Billy Dale.

So the invasion of privacy that these individuals have had to endure continued, and to have to put up with these arguments here today, again I say it is unseemly.

What makes President Clinton's opposition to the reimbursement to Mr. Dale all the more astonishing is the fact that no less than 23 White House employees have requested Federal reimbursement of counsel fees in connection with congressional or independent counsel investigations into the White House Travel Office, or Whitewater. Among those who have requested reimbursement are Thomas (Mack) McLarty, George Stephanopoulos, John Podesta, Ricki Seidman, and Bruce

Lindsay —just to mention a few of the 23.

A number of these requests have been approved by the Clinton Justice Department. For instance, Mr. Podesta. I am glad they did in the case of Mr. Podesta. And the Department has said, ''We are continuing to process requests and anticipate acting on some of them in the near future.''

I ask unanimous consent that a letter to me from the Department of Justice dated September 6, and a memorandum from the Department of Justice to Lisa Kaufman, Senior Investigative Counsel of the Senate Judiciary Committee, dated September 5, be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, September 6, 1996.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary, U.S. Senate.

DEAR MR. CHAIRMAN: This supplements our prior informal responses to your letter, dated August 21, 1996, which requested documents and information about recent assertions of executive privilege and requests for reimbursement of private counsel fees arising from certain congressional and Independent Counsel inquiries. We have already provided on an expedited basis the principal documents that are responsive to the first two items of your request. This letter provides further information regarding those two items, as well as information and documents regarding the remaining items. We hope that what we are providing today will be sufficient to complete our response to your request, but we would be pleased to work with Committee staff if you desire additional documents or information.

The first two items of your request seek documents and information concerning the President's two assertions of executive privilege in May 1996 in response to a subpoena issued to the White House by the House Committee on Government Reform and Oversight. This past Friday, August 30, 1996, we provided your staff copies of the submissions to the House Committee on May 9 and May 30, 1996, informing the Committee of the President's privilege assertions. The submissions include the Attorney General's two letter opinions to the President, dated May 8 and May 23, 1996, setting forth the legal basis for the assertions. These documents should provide you with a good understanding of the purpose and scope of the privilege assertions.

The first of the President's assertions of executive privilege, on May 8th, was a protective assertion of privilege over the entire group of confidential White House Counsel's Office documents being sought by House Committee at that time, to be effective only for such time as was necessary for the review and consultations required to determine whether to make a conclusive claim of privilege for particular documents. The Attorney General's May 8th letter to the President summarizes the circumstances necessitating the protective assertion:

''The subpoena covers a large volume of confidential White House Counsel's Office documents. The Counsel to the President notified the Chairman of the Committee today that he was invoking the procedures of the standing directive governing consideration of whether to assert executive privilege, President Reagan's memorandum of November 4, 1982, and that he specifically requested, pursuant to paragraph 5 of that directive, that the Committee hold its subpoena in abeyance pending a final Presidential decision on the matter. This request was necessitated by the deadline imposed by the Chairman, the volume of documents that must be specifically and individually reviewed for possible assertion of privilege, and the need under the directive to consult with the Attorney General, on the basis of that review, before presenting the matter to the President for a final determination. The Chairman rejected the request and indicated that he intends to proceed with a Committee vote on the contempt citation tomorrow.[1]

The Attorney General's letter went on to advise the President as follows:

''Based on these circumstances, it is my legal judgment that executive privilege may properly be asserted with respect to the entire set of White House Counsel's Office documents currently being withheld from the Committee, pending a final Presidential decision on the matter. This would be a protective assertion of executive privilege designed to ensure your ability to make a final decision, after consultation with the Attorney General, as to which specific documents are deserving of a conclusive claim of executive privilege.''

The Counsel to the President's letter to the Committee Chairman the following day, May 9th, informed the Committee of the President's assertion of executive privilege:

''Consistent with [the Attorney General's letter opinion], the President has directed me to inform you that he invokes executive privilege, as a protective matter, with respect to all documents in the categories identified [previously in the letter], until such time as the President, after consultation with the Attorney General, makes a final decision as to which specific documents require a claim of executive privilege. * * *

''I hereby request that your Committee hold its request in abeyance until such time as a Presidential decision as to executive privilege has been made with respect to specific, individual documents.''

The review and consultation process implemented after the May 8th protective assertion of privilege was as follows: The White House Counsel's Office conducted a specific review of all withheld documents and made an initial determination as to which particular documents should be considered further for inclusion in a conclusive assertion of privilege. Then, only the documents that the Counsel's Office had determined as a preliminary matter should be considered further for the conclusive assertion were presented to the Department for the required consultation with the Attorney General.

After this process was completed, the President made a conclusive assertion of privilege with respect to particular documents. The Counsel to the President's May 30th letter informed the Committee of the President's assertion of privilege with respect to the specified documents and also produced to the Committee the remaining documents that had been subject to the May 8th protective assertion of privilege. The Counsel's May 30th letter also enclosed the Attorney General's May 23rd letter to the President setting forth her opinion that executive privilege could properly be asserted with respect to the specified documents. Although the entirety of the letters from the Counsel to the President and the Attorney General should be reviewed in order to understand the rationale for the conclusive assertion of privilege, the essential separation of powers and confidentiality concerns underlying the claim are summarized in the following passage from the Attorney General's letter to the President:

''The Counsel to the President is appropriately concerned that the Committee's demand raises significant separation of powers concerns and that compliance with it beyond the accommodations already reached with the Committee would compromise the ability of his Office to advise and assist the President in connection with the pending Committee and Independent Counsel investigations. It would also have a chilling effect on the Office's discharge of its responsibilities in future congressional investigations, and in all of its other areas of responsibility. I agree that the ability of the White House Counsel's Office to serve the President would be significantly impaired if the confidentiality of its communications and work-product is not protected, especially where the confidential documents are prepared in order to assist the President and his staff in responding to an investigation by the entity seeking the documents. Impairing the ability of the Counsel's Office to perform its important functions for the President would in turn impair the ability of you and future Presidents to carry out your constitutional responsibilities.

''The Supreme Court has expressly (and unanimously) recognized that the Constitution gives the President the power to protect the confidentiality of White House communications. This power is rooted in the ''need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties.'' *United States v. Nixon*. 418 U.S. 683, 705 (1974). ''A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately.'' *Id.* at 708. Executive privilege applies to these White House Counsel's Office documents because of their deliberative nature, and because they fall within the scope of the attorney-client privilege and the work-product doctrine, *see Upjohn Co. V. United States*, 449 U.S. 383 (1981); *Hichman v. Taylor*, 329 U.S. 495 (1947). Both the attorney-client privileges and the work-product doctrine are subsumed under executive privilege.'' *See Response to Congressional Requests for Information Regarding Decisions made Under the Independent Counsel Act*, 10 Op. O.L.C. 68, 78 & n.17 (1986); *Confidentiality of the Attorney General's Communications in Counseling the President*, 6 Op. O.L.C. 481, 490 & n.17, 494 & n.24 (1982).

[1] The background for the protective assertion of privilege is described in letters from the White House to the House Committee. The subpoena issued by the House Committee in January of this year sought a large number of confidential documents held by the White House Counsel's Office. These included confidential deliberative, attorney-client and attorney work-product materials prepared by the Counsel's Office in response to ongoing congressional and independent counsel investigations, as well as other confidential materials such as the personnel files of individual employees. In February, the Counsel to the President met with the Committee Chairman seeking to negotiate an accommodation. We understand that the Counsel to the President offered the Committee at that time the opportunity to review all of the personnel files (which included Mr. Dale's file), but raised objections to making available certain deliberative, attorney-client and attorney work product materials and made an accommodation proposal with respect to these materials. The Committee Chairman agreed to consider the proposals and respond, but no response was received until May 2nd, when the Committee indicated it would vote on May 9th on whether to hold the Counsel to the President in contempt of Congress, unless all withheld documents were turned over beforehand. This one-week notice provided the White House Counsel's Office insufficient time to review all of the materials and consider, together with the Attorney General, whether assertion of executive privilege with respect to particular documents was warranted.

As for the particular focus of your inquiry, the White House Counsel's Office determined during the initial stage of the review process following the protective assertion of privilege to exclude from further consideration for the conclusive assertion of privilege the set of personnel records it had earlier called to the Committee's attention (see note 1, supra). It is our understanding that Mr. Dale's personnel file, including FBI-related material, was among these personnel records. Because of this determination by the Counsel's Office, the personnel records were not presented to the Department for review and they were among the documents the White House produced to the House Committee on May 30th. Thus, there was never an occasion for the Department to be consulted concerning the possibility of an assertion of executive privilege with respect to FBI-related material contained in Mr. Dale's personnel file. Accordingly, we have no documents responsive to your request for ''documents discussing or analyzing whether executive privilege could be asserted with respect to'' such material.

On Thursday, September 5, 1996, we provided information and three documents responsive to the third and fourth items of your request. A copy of our memorandum to Committee staff is enclosed along with an additional copy of the accompanying documents. In summary, the following FBI employees have requested representation with regard to the White House Travel Office matter: James Bourke, David Bowie, John Collingwood, Patrick Foran, Richard Hildreth, Barbara King, Peggy Larson, Sharon MacGargle, Patrick Maloy, Larry Potts, Thomas Renaghan, Therese Rodrique, Gregory Schwarz, Dennis Sculimbrene, Cecilia Woods. The requests of Bourke, Bowie, Collingwood, Foran, Larson, MacGargle, Potts, Renaghan, Schwarz, Sculimbrene, and Woods have been approved. The remaining requests have been held in abeyance because we have been advised that no congressional depositions are anticipated at this time. Enclosed are FBI records regarding these requests.

In addition, Sherry Carner and Janice George initially requested reimbursement for private counsel fees; however, the House Committee ultimately allowed them to be accompanied by FBI counsel, so their requests were withdrawn.

We have completed consultation with the White House and the Independent Counsel in accordance with established executive branch consultation practices and, hence, we are providing the following additional information regarding the fourth and fifth items of your request: The following White House employees requested reimbursement of counsel fees in connection with congressional or Independent Counsel investigations about the White House Travel Office or Whitewater: Mary Beck, Lisa Caputo, Nelson Cunningham, Jonathan Denbo, Nell Doering, Charles Easley, Dwight Holden, Carolyn Huber, Ed Hughes, Bruce Lindsay, Kelli McClure, Thomas McLarty, Douglas Matties, DeeDee Myers, Beth Nolan, Bruce Overton, John Podesta, Ashley Raines, Ricki Seidman, Clifford Sloan, George Stephanopoulos, Kathleen Whalen, Jonathan Yarowsky. The requests of Beck, Holden, Podesta, and Yarowsky have been approved. The remainder are pending, but we are continuing to process requests and anticipate acting on some of them in the near future.

With regard to the fifth item of your request, the Department of Justice has paid no fees to date in connection with these matters. The Department has agreed to pay private counsel fees as indicated in our September 5th memorandum to Committee staff in accordance with the enclosed sample retention agreement.

I hope that this information is helpful. Please do not hesitate to contact me if we can provide additional assistance regarding this or any other matter.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, September 5, 1996.

To: Lisa Kaufman, Senior Investigative Counsel, Senate Judiciary Committee; Karen Robb, Minority Staff Director, Senate Judiciary Committee.

From: Faith Burton, Special Counsel, Office of Legislative Affairs.

Re: Chairman Hatch's Letter of August 21, 1996.

This is to provide information on an expedited basis in response to Lisa's request in connection with Chairman Hatch's August 21, 1996, letter regarding requests for government reimbursement of private counsel. This information, and three enclosed documents, respond to the third and fourth items of the letter.

The following FBI employees have requested representation with regard to congressional inquiries regarding the White House Travel Office matter: James Bourke, David Bowie, John Collingwood, Patrick Foran, Richard Hildreth, Barbara King, Peggy Larson, Sharon MacGargle, Patrick Maloy, Larry Potts, Thomas Renaghan, Therese Rodrique, Gregory Schwarz, Dennis Sculimbrene, Cecilia Woods. The requests of Bourke, Bowie, Collingwood, Foran, Larson, MacGargle, Potts, Renaghan, Schwarz, Sculimbrene, and Woods have been approved. The remaining requests have been held in abeyance because we have been advised that no congressional depositions are anticipated at this time.

In addition, Sherry Carner and Janice George initially requested reimbursement for private counsel fees; however, the House Committee ultimately allowed them to be accompanied by FBI counsel, so their requests were withdrawn.

Please contact me at 514–1653 if you have any questions about this information. We are working on a more complete response to the Chairman's letter and will get it to you as soon as possible.

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former federal employees in civil, congressional, or criminal proceedings.

NATURE OF RETENTION

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former federal employee (hereinafter ''client'') in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;

b. cross claims against do-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;

c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;

d. any legal work that advances only the individual interests of the employee; and

e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set for the above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

The above list is not exhaustive. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

BILLABLE HOURS

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

LEGAL FEES

The Department agrees to pay the retained attorney up to $99.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

a. Lawyer with more than 5 years practicing experience: $99.00 per lawyer hour

b. Lawyer with 3—5 years of practicing experience: $79.00 per lawyer hour

c. Lawyer with 0—3 years of practicing experience: $66.00 per lawyer hour

d. Paralegal or legal assistant: $39.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend federal employees under 28 C.F.R. §50.16. If, during the period of this agreement, the Department revises the

schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as ''overhead''. The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of $250.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding $125.00 in a given month. The Department will pay the per page copying cost at the government rate set forth at 28 C.F.R. §16.10(2).

The retained attorney must itemize and justify facsimile transmission costs exceeding $150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel.

The Department will not provide compensation for client or other entertainment.

The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

FORMAT OF BILLS

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards.

The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

BILLING ADDRESS

The retained attorney should submit all bills to:

Director, Office of Planning, Budget and Evaluation, Civil Division, United States Department of Justice, Washington, D.C. 20530, Attn: Room 7038 Todd Building.

PROMPT PAYMENT

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A–125.

GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of the time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. §50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent John Yarowsky in connection with the House Committee on Government Reform and Oversight's Investigation of the White House Travel Office matter will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Mr. HATCH. Mr. President, here we have the Clinton administration quietly approving reimbursement of legal expenses for its people at a time when President Clinton opposes giving Mr. Dale a ''special preference.'' That was said by the President in his Rose Garden conference of August 1, 1996. It was hypocritically said by the President under these circumstances.

The reimbursement of the legal fees of Billy Dale, and other hard-working, honest civil servants wrongly fired from the White House Travel Office, will right the wrong of an overreaching executive branch. You would think they would want to get this mess behind them. But, no. They come here and besmirch representatives of the other side. These people have been through hell enough. It is unseemly.

This provision is also an attempt, I might add, to make the Travel Office Seven whole at least financially by providing for their attorney's fees. My colleagues on the other side are willing to let the others get reimbursed their attorney's fees because they do not amount to much. They are also, I am sure, in support of reimbursing the 23 White House employees their attorney's fees, but not Mr. Dale.

I believe reimbursing Mr. Dale and all of the Travel Office employees is the least we can do after all that they have been through.

I urge my colleagues on the other side of the aisle not to hold up this measure any longer—no more excuses, no more delays. Let us get this legislation passed today and put an end to it once and for all.

I appreciate the Clinton administration's desire to cover the legal fees of those who have been loyal to the President, and I want to point out that a mechanism exists for the Department of Justice to consider doing so, too. That is OK. Mr. Dale is not so fortunate. He also was loyal to a number of Presidents, including this one. But his reward is to be put through an unseemly, vicious, miserable, costly criminal indictment and trial.

To indict somebody, all you have to show is reasonable suspicion. To convict them, you have to show guilt beyond a reasonable doubt. And that is where the White House, the Justice Department, and the prosecutors failed. And they rightly failed, because Mr. Dale was not guilty.

As I noted, the Clinton White House staff is certainly availing themselves of the current avenues for reimbursement. But for the Clinton administration to oppose the reimbursement of Mr. Dale's legal fees at the same time White House staff are seeking reimbursement through the Department of

Justice is transparent. It is inconsistent, to say the least. And I might add it is hypocritical. It is hypocritical. And it is amazing to me that the people at the White House don't have the guts to admit it and just say, ''Let us do what is right here.''

To me there isn't any question. They can't show any wrongdoing by Billy Dale. To try to besmirch him on the Senate floor in a double-jeopardy type of situation by bringing up what you think is one side of the case facts after a jury of his peers acquitted him, I have to tell you, it is unseemly. Moreover, anybody would consider a guilty plea to something that does not amount to very much if they could get a load of hundreds of thousands of dollars of additional legal fees off their backs. Anybody would do that. To suggest otherwise is just not right. Time after time, I have seen defendants consider plea agreements in unjust prosecutions, and this was one of them.

This provision provides for payment of the legal expenses incurred by Billy Dale, Barney Brasseaux, John Dreylinger, Ralph Maughan, John McSweeney, and Gary Wright incurred after being terminated in May 1993, amid false allegations made by President Clinton's political cronies.

Although Mr. Dale suffered the greatest financial loss, half a million dollars, the remaining six employees collectively incurred about $200,000 in their own defense. The appropriations bill for the Department of Transportation for fiscal 1994 provided approximately $150,000 in reimbursement of legal fees. This provision would provide the balance.

This provision would not provide for compensation of all expenses associated with the investigation into the Travel Office matter, such as legal costs incurred in preparation for appearing before Congress. But it would provide for attorneys' fees and costs that resulted from these seven men defending themselves against criminal charges.

The Travel Office employees will have 120 days after this legislation is enacted to submit verification of valid legal expenses.

Reimbursement is limited up to $500,000, and does not include fees associated with appearances before or in preparation of congressional investigations or hearings.

After the former Travel Office employees were fired due to charges of financial irregularities by political profiteers, they were investigated by the Federal Bureau of Investigation, the Department of Justice, and the Internal Revenue Service. Mr. Dale was subsequently indicted and tried as a result of the investigation and after incurring a tremendous legal debt for his defense, Mr. Dale was acquitted on all charges. The other Travel Office employees also incurred legal expenses for their own defenses.

None of these former Travel Office employees held high-level positions in the administration. Many of them had worked for both Democratic and Republican Presidents. Were it not for their positions as employees of the Federal Government, and because they found themselves in the unfortunate position of having jobs coveted by friends of the Clintons, they would not have been subject to a Federal criminal investigation.

The legal fees placed on these middle-class public servants have been astronomical. The monetary damage they sustained is quantifiable. This provision will not cover the emotional damage of this abuse of power by the Clinton administration. Nor will it return to these faithful Government employees their reputations or faith in the Government they had served. It merely covers the attorneys' fees and costs associated with the criminal investigation.

According to Attorney General Reno, the White House has the authority to seek representation from the Department of Justice for Government employees who have been called to testify regarding matters within the scope of their employment. Customarily, representation of these employees is handled by attorneys for the agency for which the employee works. There are instances however, in which it would be inappropriate for agency attorneys to represent employees of the agency. In these cases, the Department of Justice has authority to provide reimbursement for the fees associated with retaining private counsel. With respect to the Travel Office and FBI files and Whitewater investigations, 23 White House employees have requested reimbursement for the legal fees of their private attorneys.

Should a White House employee want to receive reimbursement for their legal fees for their cooperation in providing testimony, there is a relatively simple procedure they must follow. First, all bills for legal fees for private counsel must be submitted to the White House Counsel's Office. This information is then forwarded to the Civil Division of the Justice Department with a written recommendation as to the merit of the request. The Department will then, either approve or deny the request consistent with their own guidelines. That is the extent of it.

As I stated previously, 23 White House employees have requested Federal reimbursement of counsel fees in connection with congressional or independent counsel investigations into the White House Travel Office or Whitewater. A number of these requests have been approved by the Clinton Justice Department, and the Department has said: ''we are continuing to process requests and anticipate acting on some of them in the near future.''

Today, I am not addressing whether the reimbursement of legal fees for individuals appearing before Congress is appropriate or not. In fact, if the law permits it, I have no objection to employees of the White House seeking reimbursement. My point in raising the issue at all is to expose the hypocrisy of the Clinton administration. The Clinton White House victimized Billy Dale and his colleagues which lead to the political prosecution of Mr. Dale leaving him with $500,000 in legal fees. Even the White House has admitted it improperly handled the White House Travel Office matter. In fact, a document produced to the Senate Judiciary Committee from the White House, which appears to be talking points for a meeting with the House Democratic Caucus, states the following, ''You all may dimly remember the Travel Office affair: in which a number of White House staff—many immature and self-promoting—took impulsive and foolhardy actions to root out problems at the beginning of the Clinton administration and to then gallantly recommend that they take over its operation.'' Now, the White House has the chutspah to authorize the payment of fees to its people and not to Billy Dale. I find this astonishing.

In a press conference on November 16, 1995, months after the Travel Office employees had been fired, President Clinton told the American public that he regretted the hardship that Mr. Dale and his colleagues had endured because of their abrupt firings. He also said that it appeared the White House did not handle the Travel Office dismissals appropriately. This was, in my opinion, a genuine attempt by the President to take responsibility for what happened to these loyal Government employees.

Then on January 30, 1996, White House spokesman Mr. McCurry stated, ''Yes, and he would sign it'', referring to Mr. Clinton's intent to sign this measure. Again, just prior to the recent press conference in the Rose Garden on August 1, 1996, White House Press Secretary, Mr. Toiv, reaffirmed that President Clinton would sign legislation to reimburse the former Travel Office employees. He stated, and I quote, ''I would just repeat that when the bill arrives on the President's desk, he would sign it.''

Despite the administration's previous position, the President said at the August 1, 1996, press conference in response to a question regarding whether he would keep his word and sign this bill, ''I didn't—I never gave my word on that''. He then stated that an error had been made by his spokesman, ''I have made it clear to Mr. McCurry what my position is on this. And if an error was made by my spokesman, I'm sorry, but I have not broken my word to anybody.''

After President Clinton's apparent U-turn on this issue, in an interview with CNN on August 26, 1996, President Clinton took the extraordinary step to state that individuals serving in his administration have been ruined by pure, naked, raw politics''. He then went on to say that he would pursue every avenue, including raising money himself, to pay for the legal expenses of his

aides. He then continued to say in reference to his aides, ''Do I feel terrible about the completely innocent middle-class people who have been wrecked financially by this? I certainly do. But I didn't abuse them. And it's high time that the people who abuse have to take responsibility for what they do''.

I must admit that I am disappointed and shocked by the steps that this administration has taken to smear the Travel Office employees. The President's recent comments are in direct contradiction to his previous statements expressing concern for the former Travel Office employees. He is willing to assist his aides, and criticize the Congress for pursuing an investigation into wrongdoing by his administration, but will not accept responsibility for the wrongful treatment of Billy Dale? Give me a break.

In the embarrassment of having lost a case so blatantly politically motivated, individuals within the Department of Justice chose to leak a document revealing that Mr. Dale considered accepting a plea bargain. Notably, as the Justice Department is fully aware, and is articulated in their own regulations, information regarding plea negotiations is confidential, not for public dissemination. I can only sympathize with Mr. Dale, who after years of constant invasion of his and his family's privacy, and incurring enormous expenses, considered a settlement in the hopes of ending this nightmare. Some of my colleagues have suggested that Mr. Dale admitted his culpability by considering a plea agreement. So too, has President Clinton, a former State attorney general and law professor. Now, we have a ''Dear Colleague'' letter distributed yesterday which also disseminates this confidential information. The facts are, however, that Mr. Dale never agreed to admit to committing the essential elements necessary for an embezzlement prosecution. He simply agreed to settle the case without an admission of guilt. Any suggestion that such a strategic tactic equates to an admission of guilt is outrageous and is yet just a further attempt to smear Mr. Dale's reputation.

Department of Justice guidelines specifically state that information which ''tends to create dangers of prejudice without serving a significant law enforcement function,'' should not be released to the public. The disclosure of a plea agreement clearly fits within this definition. It is troubling to me that the Department of Justice, The President, and some of my colleagues in the Senate continue to ignore this.

Whitewater is the investigation of the possibility of the Clintons using their political positions for personal gain in a virtually risk-free investment, and then, engaging in damage control activities. There has been no credible allegation that the Government somehow abused the Whitewater participants. By contrast, the Travelgate investigation is a case of sheer and utter abuse by the executive branch. By politicizing the Department of Justice and the FBI, the administration literally ruined the livelihood and reputation of seven hard-working civil servants.

I believe a distinction should be made between reimbursement of fees for appearances before Congress and those involving the misuse of the judicial system for purely political purposes. This provision does not allow payment of legal fees in connection with any appearance before Congress. Accordingly, within the parameters of the provision, Whitewater witnesses could not be reimbursed. Appearing before Congress simply would not be covered by this provision.

Unlike Travelgate, however, the Whitewater matter has not been completed. Many questions have been left unanswered in the Whitewater investigation and an Independent Counsel is still trying to determine whether or not there have been any criminal violations. Any perpetrators of a coverup must be brought to justice. Let us not forget it was just this past January when Rose law firm billing records mysteriously surfaced within the residence of the White House. Individuals with access to this area of the White House must be questioned to find the truth. The American people deserve no less.

Unlike the witnesses in the Whitewater hearings, these former employees of the White House Travel Office were targeted by the Office of the President. They were victims of an administration that politicized the Department of Justice and the FBI. In contrast, the Whitewater witnesses have not been subjected to such persecution, and were questioned in the hope of shedding light on the details of the Clinton's investment. These witnesses certainly had information pertinent to the investigation, but they were not the target of the investigation. The individuals in the Travel Office matter were victimized not because they happened to come into contact with an investigation as many ordinary citizens could and is clearly the case with the Whitewater witnesses, but because they held positions in the Government that allowed them to become the subject of an investigative probe. I think this provision affirms that it is appropriate to compensate these people who have been put to such expense under these special circumstances.

Moreover, the victims in the Travelgate matter are clear and identifiable. Mr. Dale and the six other former employees of the White House Travel Office had their reputations marred by the Clinton administration. They endured investigations by the FBI, the IRS, the Department of Justice, as well as that of Peat Marwick. Their families were placed under the strain of having been investigated for 2½ years, all without a single proven instance of wrong-doing on the part of the Travel Office employees.

Mr. President, those on the other side have indicated that this bill which reimburses Billy Dale is unprecedented. I would like to point out that the House passed this bill with overwhelming bipartisan support, and, despite the bipartisan support of the House, some of my colleagues on the other side of the aisle in this Chamber oppose this provision stating it sets a bad precedent.

Let me just quickly quote Congressman BARNEY FRANK, a well-respected Democrat, a memorandum of the Judiciary Committee over there, a person with whom I work on the Judiciary Committee in the Senate as well about this very issue. He said, ''This neither sets a precedent nor precludes someone. Any new case will be judged on the same merits.''

I agree with Congressman FRANK. After all, Congress is not bound by the actions of another Congress.

I might also add that in the Transportation appropriations bill for fiscal year 1995, five of the Travel Office Seven had some of their legal expenses reimbursed. Since receiving reimbursement for their legal expenses at that time, these individuals have incurred more legal debt. Not included in the fiscal year 1995 Transportation appropriations bill were the legal expenses of Billy Dale. The provisions of this bill allow reimbursement for these additional fees, and for Mr. Dale.

When the Transportation appropriations bill was passed, no one made a fuss. These individuals were reimbursed, as they deserved to be. Billy Dale deserves the same treatment. After all, he was sacked just like all the others, sacked unjustly.

I have heard arguments that if we are to reimburse Billy Dale even after being indicted, the floodgates would be opened, and we would be obligated to reimburse anyone who was investigated by the Federal Government and found innocent of all charges.

I do not believe that is the case, nor do I believe that this White House or any White House in the future is going to do the outrageous smearing that occurred in this case. This is a unique case that involved the executive branch at the highest level doing this to decent, honorable, honest people who have been vindicated by the courts of law.

As we are all aware, Congress can decide the merits of all claims on a case-by-case basis. By passing this provision, we are not setting a precedent as is done in a court of law. We are simply passing a judgment based on the circumstances of this case that the firing of the Travel Office Seven was unjust and the manner by which they were investigated was inappropriate and unwarranted.

The Administration erred in the way they dealt with the Travel Office situation. By reimbursing the legal expenses of Billy Dale and his colleagues, Congress would be taking a step to correct the administration's error in judgment.

Now, reimbursing legal expenses is not wholly unprecedented, I might add. Although the circumstances are somewhat different, Hamilton Jordan is an example of someone who, in my opinion, was unfairly investigated after being accused of cocaine use. After an independent counsel was appointed and all the evidence gathered, Mr. Jordan was cleared of all charges. Congress then decided to reimburse Mr. Jordan's legal fees because the charges lodged against him were found to be baseless.

Because unjust situations sometimes arise, the independent counsel statutes have provisions designed to rectify these grievances. Why can't my colleagues treat this matter as decently as those of us who were then in the Senate treated Hamilton Jordan? Why is it we have to go through this? Would it not be in the best interests of the President to put this behind us?

The White House was able to bring the power of Federal law enforcement to bear on the Travel Office employees, and the facts show that they did it improperly for purposes of greed.

In response to the claim that such a payment is unprecedented, I say that the circumstances by which Billy Dale and the others were fired is unprecedented, and it should be treated as such. We are not talking about some low-level bureaucrat in the halls of the bureaucracies of this city. We are talking about right in the halls of the upper levels of the White House itself where this injustice was perpetrated. The circumstances by which Mr. Billy Dale and the others were prosecuted and were investigated and charged and targeted, and prosecuted in Dale's case, were unprecedented.

This is a meritorious case for reimbursement. It is as meritorious as any I have ever seen. What was done to these people never should have occurred in this manner. House Republicans and House Democrats recognize this fact. There was not an attempt to indict him all over, convict him again after a jury acquitted him, or go through the facts in a further attempt to smear Mr. Dale. The fact is, the media knew he was honest, and everybody else knew he was honest, and, above all, a jury of his peers found him to be honest. What was done to these people should not have been done.

We had bipartisan passage in the House—we ought to have that here. I think everyone in this body recognizes that fact. If we in Congress are to reimburse legal fees on a case-by-case basis when the case merits it, as this one does, then it is the right thing to do, and I have never, never seen a case more worthy than this one that could come before the Senate. I can tell some other injustices that were certainly terrible that should be straightened out, too, but nothing like this.

It has also been suggested by my colleagues on the other side of the aisle that H.R. 2937 is a private relief bill, and typically these bills are referred to the Court of Claims for factfinding. First, I would like to point out that H.R. 2937 is not a private relief bill. This bill was passed through the House on the Suspension Calendar, which handles public bills. There is a separate calendar that deals with private relief bills. The CONGRESSIONAL RECORD reflects the fact that H.R. 2937 was on a public bill calendar, and there was a rollcall vote when it finally passed earlier this year.

Second, a private relief bill must name all those making a claim. H.R. 2937 does not name the former Travel Office employees specifically. Even if H.R. 2937 was a private relief bill, however, congressional referrals are typically made to the Court of Claims only if the facts of the claim are complicated and unclear.

In this case, numerous reports as well as 2 years' worth of investigations and House hearings have exposed the facts in this case. The facts are very clear, and there is very little dispute to what occurred. Additionally, the only other reason to refer the matter to the Claims Court would be if there was a dispute as to the amount of money that is being claimed.

Once again, Mr. Dale and his former colleagues submitted their bills to the House Judiciary Committee, and those amounts were included in the House bill. There is no dispute about the bills that have been submitted. In short, there is no reason why my colleagues should want to remove this language from the Treasury-Postal bill on the basis that the facts are unclear. We in this body and the administration know what the facts are and we know where the blame lies.

Mr. President, I hope our colleagues will vote to support the Hatch amendment and will vote to turn down this attempt to throw this matter into the Court of Claims. There is nothing in dispute here. I think everybody who is fair will acknowledge that.

Might I ask, how much of my time remains?

The PRESIDING OFFICER. The Senator has 20 minutes and 35 seconds remaining.

Mr. HATCH. I reserve the remainder of my time.

AMENDMENT NO. 5257, AS MODIFIED

Mr. HATCH. Mr. President, if I could, pursuant to the UC, I send a modified amendment to the desk.

The PRESIDING OFFICER. The Senator has that right.

The amendment (No. 5257), as modified, is as follows:

At the appropriate place, insert the following:

SEC. . (a) REIMBURSEMENT OF CERTAIN ATTORNEY FEES AND COSTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall pay from amounts appropriated in title I of this Act under the heading, ''Departmental Offices, Salaries and Expenses'', up to $499,999 to reimburse former employees of the White House Travel office whose employment in that office was terminated on May 19, 1993, for any attorney fees and costs they incurred with respect to that termination.

(2) VERIFICATION REQUIRED.—The Secretary shall pay an individual in full under paragraph (1) upon submission by the individual of documentation verifying the attorney fees and costs.

(3) NO INFERENCE OF LIABILITY.—Liability of the United States shall not be inferred from enactment of or payment under this subsection.

(b) LIMITATION ON FILING OF CLAIMS.—The Secretary of the Treasury shall not pay any claim filed under this section that is filed later than 120 days after the date of the enactment of this Act.

(c) LIMITATION.—Payments under subsection (a) shall not include attorney fees or costs incurred with respect to any Congressional hearing or investigation into the termination of employment of the former employees of the White House Travel Office.

(d) REDUCTION.—The amount paid pursuant to this section to an individual for attorney fees and costs described in subsection (a) shall be reduced by any amount received before the date of the enactment of this Act, without obligation for repayment by the individual, for payment of such attorney fees and costs (including any amount received from the funds appropriated for the individual in the matter relating to the ''Office of the General Counsel'' under the heading ''Office of the Secretary'' in title I of the Department of Transportation and Related Agencies Appropriations Act, 1994).

(c) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—Payment under this section, when accepted by an individual described in subsection (a), shall be in full satisfaction of all claims of, or on behalf of, the individual against the United States that arose out of the termination of the White House Travel Office employment of that individual on May 19, 1993.

SEC. 529. None of the funds made available in this Act may be used by the Executive Office of the President to request from the Federal Bureau of Investigation any official background investigation report on any individual, except when it is made known to the Federal official having authority to obligate or expend such funds that——

(1) such individual has given his or her express written consent for such request not more than 6 months prior to the date of such request and during the same presidential administration; or

(2) such request is required due to extraordinary circumstances involving national security.

The PRESIDING OFFICER. The majority manager of the bill is recognized.

Mr. SHELBY. Mr. President, the subcommittee has included the $500,000 for the reimbursement of the Travel Office employees terminated by the White House in May 1993. And why? I want to explain that briefly.

Over 3 years later, we are attempting to offset the cost of the tremendous legal fees that these individuals, I believe, were wrongfully forced to assume. The provision here would pay the attorney's fees and costs they incurred with respect to that termination.

Why do we need this legislation? In October 1993, as part of the fiscal year 1994 transportation appropriations bill, the Congress authorized the payment of $150,000 for the legal bills of the five White House Travel Office employees who, after being summarily fired, were placed on administrative leave and

later transferred to other Federal agencies. This sum, $150,000, was insufficient to completely cover the legal costs of the five employees and did not address the attorney's fees of the other two fired Travel Office employees because they were still under investigation. Both employees have since been exonerated of any wrongdoing, and I believe they deserve similar reimbursement for the extraordinary and unnecessary legal expenses they were required to incur. Mr. Dale's attorneys' costs alone are close to half a million dollars.

This is a unique case, to say the least. Each claim against the United States should be judged on a case-by-case basis, and it is not the intent of this provision in this bill to set a precedent that in every case the payment of attorney's fees and costs is justified.

What is the justification of the attorney's fees here? I believe the firing of the White House employees, and especially Mr. Dale, was one of the most appalling abuses of power that I have ever seen, because I think it shows what little regard the White House has had for the plight of these loyal, dedicated public servants and their families.

And it was totally unnecessary, which makes it even worse. The White House could have fired the Travel Office without as much as a whimper. And yet, the White House felt compelled to devise a strategy that would blunt the claims of nepotism and political motivation that would certainly follow replacing a nonpartisan, career Travel office with Little Rock business associates, friends and relatives.

Now, after several years of investigation that has sometimes raised issues of constitutional dimension—claims of executive privilege, contempt citations—the facts make clear that:

No. 1, a concerted effort was undertaken in the White House and by close friends and associates of the President and First Lady to take over the Travel Office.

No. 2, it was not sufficient to simply fire the career civil servants serving in the Office, which it was the prerogative of the White House to do. Instead, White House staff colluded to raise false claims of criminal wrongdoing against the Travel Office staff to justify what was purely a political move to benefit friends and associates of the President and First Lady.

No. 3, the White House improperly used the FBI to initiate a criminal investigation against the White House Travel staff based solely on the allegations of the President's cousin, Catherine Cornelius, who admittedly intended to run the White House Travel Office once the career employees were ousted.

No. 4, the White House publicly made allegations of criminal wrongdoing and financial mismanagement before an accounting audit was ever completed on the Travel Office.

No. 5, the seven long-time career employees were never given an opportunity to respond to the allegations or answer the accusations made against them—they were given minutes notice of their termination, and almost immediately escorted off the White House premises by, none other than Craig Livingstone, the head of White House Personnel Security.

No. 6, the GAO found in its May 1994 report that while senior White House officials said the terminations were based on ''findings of serious financial management weaknesses, we noted that individuals who had personal and business interests in the Travel Office created the momentum and ultimately led to the examination of the Travel Office operations.''

No. 7, the GAO also agreed with the White House's own Management Review of the Travel Office affair that ''the public acknowledgment of the criminal investigation had the effect of tarnishing the employees' reputations, and the existence of the criminal investigation caused the employees to retain legal counsel, reportedly at considerable expense.''

I am saddened to see that the President went back on his commitment to support reimbursing the Travel Office employees. In January of this year, Mike McCurry, the President's spokesman and Press Secretary made it clear that the President was not only sorry for the treatment of Mr. Dale and his colleagues, but that he would sign a bill to reimburse them for their legal costs.

It appears now that the President intends to make a political statement out of their misfortune. Upset with congressional investigations into Whitewater and the Travelgate matter itself, he now intends to hold these long-time career employees hostage to his political posturing.

It was not enough that they were used as an excuse to give his friends and relatives Government jobs.

It was not enough that these employees were accused of criminal conduct without a shred of evidence, other than the allegations of a 24-year-old relative.

It was not enough that these employees were subject to IRS audits, that their FBI files were improperly requested as late as seven months after they were fired. Recall that it was Craig Livingstone who escorted the Travel Office employees out of the White House in May of 1993. We are now supposed to believe that he was not aware that Billy Dale was not working in the White House when his own office requested Mr. Dale's FBI file 7 months later in December of that year?

It was not enough that Mr. Dale was acquitted after only 2 hours of deliberation by the jury. Two hours. The man was acquitted. And what was the White House response? What was the President's personal lawyer doing on all the morning talk shows? He accused Mr. Dale of accepting a plea bargain. Talk about insult to injury.

This decent, loyal employee is set-up by the White House, and then when he is acquitted in a court of law by a jury of his peers, the President's personal attorney gets on national television and implies that Mr. Dale is a criminal that tried to get off easy.

Why is the White House so intent on destroying Billy Dale?

The White House has every reason to be embarrassed by their actions, every reason to want to avoid talking about Billy Dale—but it is an absolute outrage, that the President of the United States would seek to use this man as a foil for his own political gain. It is wrong. It is unjust. It is unkind, uncharitable, and indecent.

The Senators' amendment, Senators REID and LEVIN, is, therefore, misplaced and I urge my colleagues to vote against it.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. REID. Mr. President, it is my understanding the minority leader wishes to speak at this time. I suggest the absence of a quorum and indicate the time not run that is left for the Senator from Utah and the Senators from Michigan and Nevada. He should be here momentarily.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DASCHLE. Mr. President, I am dumbfounded that we are tonight debating whether or not we should, for the first time in history, pay the attorney's fees for an individual who was properly indicted and properly prosecuted. Is the U.S. Congress going to start reimbursing every Federal defendant who is acquitted? If the answer is no, then I must question why are we being asked to do so in this case. There is no argument about reimbursing fees for those who are not indicted. The only argument is about paying the fees for one individual who was, again, properly indicted and properly prosecuted.

Unfortunately, instead of addressing the issues the American people are really concerned about—job security, personal security, retirement security—some of our Republican colleagues have decided to raise this issue in a blatant attempt to score political points in a Presidential election year. They are willing to spend $500,000 of taxpayer dollars in an attempt to embarrass the White House. In this era of tight budgets and competing priorities, we cannot afford to waste that kind of money to pay for Republican attack ads from the Senate floor. There is absolutely no precedent for this legislation to pay Billy Dale's legal expenses.

We have never agreed to pay the legal expenses for anyone who is indicted. The Independent Counsel Act provides for the reimbursement of legal expenses for a person who is not indicted. Billy Dale, however, was indicted and was prosecuted by the Justice Department, not the independent counsel. Moreover, there is absolutely no evidence that Billy Dale was indicted unfairly. Mr. Dale never filed any motions or raised any legal objections to his indictment, and I am unaware of any finding by any court that the indictment was somehow improper or motivated by political purpose. Nor have we held any hearings on the matter. There is no factual basis for violating the Senate precedent and giving half a million dollars to Billy Dale or anyone else.

There are also undisputed facts about this matter that I find somewhat disturbing.

We know that Mr. Dale deposited over 50 Travel Office checks worth approximately $54,000 into his personal account over a 3-year period of time. He never told anyone in the Travel Office or in the Bush or Clinton White Houses about these secret deposits. These deposits only came to light because of a FBI investigation, not because Mr. Dale disclosed this information.

We know that Mr. Dale offered to plead guilty to a felony before the trial. That is fact.

We know that Mr. Dale admitted that it was ''a terrible decision on my part.''

We know that at the end of the trial, the judge ruled that there was sufficient evidence for a reasonable jury to convict Dale of all charges brought against him.

In the end, the jury acquitted Mr. Dale of the charges, but that does not mean the taxpayers should pay his legal expenses. If we gave a half a million dollars to every defendant who was acquitted, I am sure we would have people lining up for criminal trials in every courthouse in America. The fact is, we have never reimbursed anyone who was indicted, even if they were later acquitted by a jury.

So why do my Republican colleagues seek special treatment for Mr. Dale? Why should Mr. Dale be treated differently than every other criminal defendant in America?

It seems to me that he is being treated differently because my Republican colleagues are using the Travel Office matter for purely political purposes. Of course, my colleagues on the other side of the aisle say that Mr. Dale deserves to be reimbursed and that Democrats are blocking reimbursement for political reasons.

To put an end to partisan bickering over the issues, we Democrats have offered a very reasonable amendment. And let me just commend the distinguished Senators from Michigan and Nevada for their tenacity and for their willingness to bring this issue to the floor in a way that is certainly eminently reasonable, that recognizes past precedent, that recognizes the importance of a procedure that has been used over and over again in circumstances just like this.

Let us send, as they suggest in their proposal, this issue to the neutral arbiter, the U.S. Claims Court, to determine whether it is appropriate to reimburse Mr. Dale. Why not do what we have done in the past? Why not use the procedure that we have in law that will allow us a fair and objective hearing, a fair and objective analysis as to whether or not this ought to be done?

The claims court can hold hearings to obtain all the facts outside of the world of partisan politics 2 months before a Presidential election and render a recommendation that will not be tainted by partisan motivations and bias. The claims court has extensive experience in resolving these types of claims.

The Parliamentarian has already indicated that the provision to reimburse Mr. Dale is a private relief provision. There is a law in place that allows the Senate to send requests for private relief to the claims court so the court can decide whether the relief is sought in a legal way and is legally appropriate.

Mr. President, this is a fair and well-established method for resolving a dispute. It has worked before. Passage of this amendment would allow the Senate to make a decision based on legal rather than political considerations. If the claims court recommends reimbursement for Mr. Dale, then the public would know what he actually deserves, and we will not worry that he is the beneficiary of some political windfall. We are willing to live by the decision made by the claims court.

On the other hand, if the court would rule that Mr. Dale does not deserve to be reimbursed, then he will not be given a half a million dollars of taxpayers' money improperly. There is one-half million dollars at stake.

The public deserves a neutral determination on this issue, and there is an important Senate precedent at stake. We owe it to this institution to act carefully and thoughtfully, even in the heat of a Presidential election year.

Again, let me commend my colleagues, and for all these reasons, I urge all of our colleagues to join them in favor of the amendment.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, how much time is left to Senator REID?

The PRESIDING OFFICER. Twenty-two and a half minutes.

Mr. REID. Mr. President, I am wondering if the 8½ minutes the leader used can be charged to leader time, and we can have the full half hour?

Mr. DASCHLE. Mr. President, I ask unanimous consent that the time that I have consumed in the presentation of my remarks be taken from my leader time.

The PRESIDING OFFICER. The Democratic leader has that right.

Mr. DASCHLE. I thank the Chair.

Mr. LEVIN. Mr. President, parliamentary inquiry. I understand there is time for debate in the morning. Is that debate part of the time which the Chair just indicated Senator REID has left?

The PRESIDING OFFICER. There has been no order entered yet with respect to the debate tomorrow.

Mr. HATCH. As I understand it, there will be 15 minutes divided equally, and I think that is the way we should go.

Mr. LEVIN. I also had the same understanding. I am not sure whether that was part of a UC. I ask Senator REID if he will yield 5 minutes to me.

Mr. HATCH. Can we ask unanimous consent that the 15 minutes, from 9:30 to 9:45 before the vote, be divided equally between Senator REID and myself or Senator SHELBY?

Mr. REID. I think they are planning to do that in wrapup.

Mr. HATCH. I will let it go then.

Mr. LEVIN. Mr. President, I ask if Senator REID might yield 5 minutes.

Mr. REID. I yield as much time as the Senator may consume.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, there is plenty of evidence of White House mistakes and errors in the firing. Those have been acknowledged now for years. They have been recounted here again tonight. They have been acknowledged, as they should be. People who had legal fees that resulted from that firing should have those legal fees reimbursed, those who were not indicted. They have been reimbursed except for $50,000. That $50,000 is part of this bill. That is not what is at issue.

What is at issue is the $450,000 which would go to someone who was properly indicted, properly prosecuted, and whether or not this Senate, for the first time in our history, will be approving legal fees to someone who was legally indicted. And that is the issue.

It was not the White House that carried out the criminal investigation of Billy Dale. That was the FBI, and there is no evidence that has been alleged that I know of that the FBI investigation that led to the indictment was improper. There was no allegation at trial, there was no allegation in the House committee report that the FBI investigation that led to the criminal proceeding, that led to the attorney's fees which are at issue here, was an improper investigation.

It was not the White House which decided to prosecute. It was a very professional Department of Justice which made a decision to prosecute based not on anything that the White House had done, but on what Billy Dale had done, relative to the deposit of checks that belonged to the Travel Office, in his own personal account, and relative to

cashing checks that were intended for petty cash that didn't end up going through the petty cash ledger.

It was his actions which the FBI investigation determined were indictable.

It was his actions, not the White House action, it was his deposit of checks in his personal account, mingling money that did not belong to him in his private bank account. It was those actions that led to the indictment, led to the prosecution, not the White House action.

It was his own actions which led to an indictment which resulted in legal fees which are the subject of this issue.

Should we, for the first time without a Senate hearing, without a House report which makes even a reference to any impropriety in the indictment and prosecution, should this Senate decide that this defendant, unlike any other defendant, should have his legal fees paid, although he was indicted?

Our good friend from Utah said, ''What about Ham Jordan?'' Ham Jordan was not indicted. That is the dividing line which we are asked to cross, the dividing line between people who were indicted and people who were not.

The White House Travel Office people, except for Billy Dale, were not indicted. Ham Jordan was not indicted. People who were investigated by the independent counsel who were not indicted are entitled to legal fees if legal fees result because of the existence of an independent counsel. We have provided for legal fee reimbursement for people not indicted. We have awarded legal fees for people not indicted. The independent counsel statute provides for legal fees for people not indicted.

Should we cross that line? I think we ought to be very careful of setting a precedent, so careful that we ought to simply say, OK, these fees will be paid subject to one thing, and that is, that we got a law which says that we can refer a private claim, a private bill, to the Court of Claims, and the Court of Claims can determine if there is a legal or equitable basis for the claim.

Is there an equitable basis for this claim? The Senator from Utah feels that there is. He feels that with great intensity, as does the Senator from Alabama. I would propose to both of them that we test their hypothesis. There is a test. There is a test in law. We wrote the law. It is a reference to the Court of Claims. I propose to them that they test their hypothesis that there was anything wrong, that there was something wrong with the prosecution, investigation and indictment here. Because unless there was, there is no basis for the payment of legal fees. Test that hypothesis.

I call upon them to support an amendment which simply says, yes, we will pay those fees if the Court of Claims finds that there was an inequity here. That is the way to test their hypothesis. We can argue these facts back and forth all night. But one thing is indisputable, we have put in law a process to give us an objective evaluation of a private claim of this kind. Take it out of politics. It does not belong there. When you set a precedent of this kind, be sure you are acting on firm ground, free it from any political taint, any political coloration, refer it to the body that we have set up in law to determine whether or not a claim of this kind is based on an equitable claim.

Mr. President, I made an inquiry of the Chair back on May 14 relative to the Senate bill that Senator HATCH introduced, which would provide relief for the Travel Office employees. That inquiry which I made to the Chair on May 14 was whether or not the bill before us, which was that freestanding bill of Senator HATCH, is a private bill. The Presiding Officer ruled, after, if my recollection is clear, he consulted with the Parliamentarian, that it is a private bill.

My parliamentary inquiry at this time is, is the Senator correct that that was the ruling of the Chair on May 14 relative to that parliamentary inquiry?

The PRESIDING OFFICER. That was the response of the Chair to that inquiry.

Mr. LEVIN. Mr. President, I thank the Chair for that, and I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. There has been some talk about there should not be talk on this floor about the prosecution memo, about a plea of guilty. Mr. President, we are not in court. We are in the Senate of the United States, some say the greatest debating society in the history of the world. I think it is appropriate, in a great debating arena, to talk about the facts. This is not a court of law where there are objections as to hearsay, objections as to questions having already been asked, or it is repetitive, or you do not understand it. We are here to bring out the facts, the facts from wherever we might find them. We have found facts relating to this case that for a long time have been covered up. They have been hidden in the bowels of wherever they are hidden in this big city.

The fact is that in this instance we have learned that there was an instance in a document called the prosecution memo, where among other things they found: ''We propose to charge Billy Ray Dale . . . with converting to his own use approximately $54,000 in checks and $14,000 in cash''—and I put here recognizing that they could only get 1 year of the money that he stole; there was a lot more money he stole, but the records, as indicated, have been destroyed—''received by him in connection with his official duties. The FBI has investigated this matter and strongly supports these charges.'' Justice Department, Public Integrity Section.

We are here in the Senate of the United States to talk about the facts. And the facts are, this man was indicted, and he was properly indicted. There was never a question of whether or not he was properly indicted. Had it been on the basis of the legislation talked about by my friend from Michigan, these facts would have never been given to the American public, they would have never been given to the American public that he wrote a letter through his attorney saying he would plead guilty, that the prosecution memo, line after line, indicates that this man did a lot of things that were criminal in nature. The fact, Mr. President, that he was acquitted by a jury is really too bad. But it happens, it happens in our system of justice.

It is simply wrong to accuse this administration of leaking the memo. I do not think it is my obligation to indicate where the prosecution memo was obtained, but I do know that I obtained it, and I do know it did not come from anybody in the Justice Department, did not come from anybody in the White House, directly or indirectly. It is a reckless charge, lacking in merit. We are entitled, in this Senate Chamber, to talk about letters written admitting guilt. We are entitled, in this Senate Chamber, to talk about facts as determined in a prosecution memo.

Mr. HATCH. Would the Senator yield on that for just a question?

Mr. REID. I will be happy to yield for a question.

Mr. HATCH. I appreciate my colleague yielding.

My question is this. I know the Senator did not get it from the White House directly or from the Justice Department directly, because the Senator told me where he got it. The Senator got it from the House of Representatives, which I presume whomever they got it from got it from the White House or the Justice Department. Those are the only two places it could have been obtained. I am not accusing the Senator from Nevada, although I question—I question—whether a document that so one sided should be used especially a document that is confidential. I question whether that sort of document should be used on the floor of the Senate.

Mr. REID. I say to my friend from Utah, and he is my friend from the neighboring State of Utah, that the prosecution memo sets forth facts in the case. We are entitled in this body to have facts in the case. We have heard a lot of facts over these many months from the other side about this poor Billy Dale, how he has just been put upon by everybody. The fact of the matter is, he has not been. The fact of the matter is, he was indicted, properly indicted. After having been indicted, he had a letter written saying, ''I want to plead guilty.'' And I think we are entitled to hear that. The American taxpayers are entitled to hear it. I think it is important to acknowledge, not only that, but his admissions during the trial phase.

Mr. LEVIN. Will the Senator yield for an additional question?

Mr. REID. I will be happy to yield for an additional question.

Mr. LEVIN. It is in line with the question of the Senator from Utah. Is it not true that when the Justice Department was asked for that prosecution memo by the House, it did everything in its power not to give that prosecution memo to the House, and, as a matter of fact, it was only after the House subpoenaed that prosecution memo that it was then delivered to the House? So it is not as though the Department of Justice just handed it over to the House. They told the House, this is a sensitive document. They did not want to turn that over to the House. The House, Representative Clinger insisted on it, issued a subpoena, and that is when this document was delivered to the House of Representatives. Is that correct?

Mr. REID. Absolutely, that is correct. It is not just that the Justice Department was hoping who would read it. They did not want to give it up.

Mr. HATCH. Will the Senator yield on that point?

Mr. REID. Yes.

Mr. HATCH. The Justice Department was not subpoenaed for that document. If anybody was, it was the White House. Why would they have that document?

Mr. REID. I do not know how they got it. But it was by virtue of the subpoena.

Mr. HATCH. But you do not know?

Mr. REID. I say to my friend from Michigan and my friend from Utah, I do not know how it wound up in the House. It got there as a result of Chairman CLINGER wanting it and having gotten it, and it worked its way to this body, as it should.

Now, I repeat, if the Billy Dale constituency is so confident that they have merits on their side, they should allow for this to be removed from this political arena during this Presidential election time and decided by an independent body. That is why we have the Court of Claims.

There has been a lot of talk here tonight about other Travel Office employees. The other Travel Office employees were not indicted, and they have been or will be fully reimbursed. They have gotten most of their money now, except for a few incidentals, and everyone acknowledges they should be paid. We are willing to do that.

The House and others at the time they acted simply did not have the facts. Billy Dale is not an honest person. The jury did not find that he was honest. They acquitted him. The jury in the Menendez brothers case did not find they were good sons. They acquitted them on the first go-round. They were acquitted. It was a hung jury—hung jury. They did not find that they were nice young men who were good to their parents, just as this jury did not find that Billy Dale was honest. That was not a requirement of their findings. They looked at jury instructions and ruled upon those jury instructions in weighing the fact that he was not guilty as charged.

I disagree with them. I think any reasonable person would. But the prosecution did a lousy job of presenting the case to the jury. It happens.

He admitted being dishonest, and I think it is important we recognize that there are many disputed facts. My good friend, the distinguished senior Senator from Utah, says there are no disputed facts. There are lots of disputed facts. That is why, in my opinion, it is not right to give him attorney's fees. This is raw politics. This money is not for trial. Some of the money in the time sheets that have been presented deal with even press events. He had to appear at press events.

Mr. President, the prosecution memo, we should not leave that memo so soon. We will go to a few pages on the prosecution memo in summation.

Shortly after the Travel Office employees were fired, the FBI began its investigation under our supervision. The vast majority of the allegations we examined prove meritless as to other Travel Office employees. However, we found substantial evidence that Dale, in fact, stole at least $14,000 in petty cash, and he converted approximately $54,000 worth of travel checks to his own use.

We found no evidence of illegal conduct by any other member of the Travel Office. That is why we have agreed to reimburse them. The media checks selected by Dale for deposit in his account were not for Main Street press organizations but English, Japanese, German, and Hispanic media.

The selection is significant. The refunds were generated by the vendors on their own and arrived unexpectedly, and their absence would not be missed. Similarly, the checks from the esoteric news services were less likely to be scrutinized.

Mr. President, I think it is also of note in the prosecution memo—because until I read this, this is the first I knew about this—the petty cash logs covering the period prior to February 1992 are missing. Dale had no explanation for the missing logs. These deal with petty cash. This is where he got the cash. He did not deal with checks in this instance.

Another few lines from the prosecution memo:

> The evidence indicates that Dale stole this missing $14,000 in cash.

Next:

> There was simply no need to cash these sizable checks at the time they were presented.

Next:

> He cannot claim credibly he used the relatively large amounts of unrecorded cash to pay trip expenses during this period.

Finally:

> Dale's explanation is not credible.

That is what this case is all about. That is why the Court of Claims should review this.

Mr. President, this is important that we go forward on this to the Court of Claims. It would take politics out of this. It would send it to a body that is designated under our laws and the Constitution to deal with cases like this. Hundreds and hundreds of cases have been forwarded to them—private claims cases.

Now, if this amendment offered by the Senators from Nevada, Michigan, and Delaware, if it does not pass, if this amendment does not pass, the next thing that will be said is that the Senate approved the payment of $500,000 to Billy Ray Dale. The fact of the matter is that the right way to handle this is not in the political arena, where people are crowing over what was done or not done. The fact is, it should be referred to the Court of Claims, and let this body decide this disputed factual case on the facts and on the money.

We are given $500,000, or $499,999 to approve this. This is the dispute, the amount of money. And there is a dispute whether he is entitled to it and whether he is entitled to the amount of money requested.

We have done, I think, the honorable thing. We have come before this body, as many have suggested, in an outright denial in the amendment of giving him this money. We have done it, we think, in a reasonable manner, and we have an independent third party determine whether or not this money should be paid to Billy Ray Dale and, if so, how much should be paid.

I reserve the balance of my time.

Mr. HATCH. How much time is remaining?

The PRESIDING OFFICER. The Senator has 20 minutes remaining, and the other side has 7 minutes remaining.

Mr. HATCH. Mr. President, let me just say a few words, and then I will again yield the floor. I would like not to use all of my time, if my colleagues are willing to yield back.

The distinguished Senator from Michigan has repeatedly stated time and time again that Mr. Dale put money into his own account. No one disputes that. That is the way it was done through the years, and there was nothing illegal about doing that, either. The White House Travel Office is run for the benefit of the White House and the media. As part of that job, Mr. Dale had to have access to funds on short notice. No one has complained about that fact. Most importantly, the media did not care that Mr. Dale put their money, the media's money, into his account.

However, Mr. Dale does deny, and the jury agreed, that he did not steal or convert that money or those funds, and was found not guilty of the charges that were levied against him. In fact, one of the distinguished members of the media testified for him, Sam Donaldson, one of the most well-known people in the press today, a person for whom I have a lot of respect.

The fact of the matter is that the Justice Department can indict anybody they want to. Grand juries generally do what the prosecutors tell them to do.

That is no big deal. I find it unconscionable that after having been tried, having incurred legal expenses of half a million dollars, and then having a jury of his peers acquit him that my colleagues here on the Senate floor are suggesting that they think Mr. Dale is still guilty.

I do not find that in good form. Frankly, it really is a sin, especially when you go to the real facts of how this man and his partners, his colleagues in the Travel Office, were screwed by the White House, for greedy purposes, by people who just got the White House, thought they had total power, and wanted to move their friends into the lucrative Travel Office business. I am specifically speaking of Mr. and Mrs. Thomasson and a personal relative of the President. Not only did they do that, but they even used White House counsel to intimidate the FBI in this matter. They did an inadequate accounting in this matter. It was anything to get rid of these people so they could put their cronies into this lucrative position.

These people had served the White House for years, various Presidents, and had done so with the respect of all prior White Houses. The White House itself, in the memo I read earlier, found in the material sent by the White House, said they had messed this up, and they had acted improperly.

This is from the White House:

> You all may dimly remember the Travel Office affair, in which a number of the White House staff—many immature and self-promoting—took impulsive and foolhardy actions to root out problems at the beginning of the Clinton administration and to then gallantly recommend that they take over its operation.

That was straight out of a document provided by the White House.

The fact is that I don't think anybody who looks at this fairly could deny that these people deserve to be treated fairly. This is a question of fairness. It is a question of justice. It is a question of making amends for a White House that acted improperly, and did so, for the most part based on personal greed.

To clarify the record, I have done some investigation in the interim period here. I want to discuss, for a minute, the exposure of the plea agreement and the prosecution memo. I believe these are the accurate facts. We have checked with the parties concerned. The White House called us and said they were not responsible. I don't want to accuse the White House. I just said it has to be the Justice Department or the White House, one or the other. That is all it could be. In fact, the plea agreement was leaked from the Department of Justice or the White House to U.S. News and World Report. In addition, the Department of Justice, when they did produce that document to Chairman CLINGER's committee, failed, in violation of their own regulations, to treat that document in a sensitive and confidential manner. The second document, the prosecution memorandum, was produced after the trial to the House of Representatives. Once again, someone on the Democrat side of the House of Representatives leaked this very confidential memo. Once again, it is my contention that this Administration and their friends in Congress would do anything to harass Mr. Dale.

It is hypocritical. It is hypocritical for the White House to take care of their own people and not be willing to right this wrong. I can't imagine anybody who looks at the facts, clearly, coming to any other conclusion other than that this is an injustice to these people, a terrible ordeal to Mr. Dale and his family, and it ought to be rectified. That is what the Congress is trying to do at this point. That is certainly what I am trying to do. I think that is what any fair-minded person would try to do.

To come in here and make a case that they don't believe that Mr. Dale was innocent, after he was proven innocent, after a jury of his peers found him to be innocent, after members of the media, whose money was involved, testified he was innocent, is pretty astounding to me. Once again, I oppose the motion of the Senator from Nevada to strike the language to reimburse the legal expenses of the seven White House Travel Office employees who were victimized by the Clinton administration for nothing more than political favoritism.

The only crime that Mr. Dale and his colleagues committed was having the bad fortune of holding a job which political cronies of the White House wanted. The politicization of the Department of Justice and the FBI in bringing numerous investigations, and finally a bogus prosecution against Mr. Dale, is unconscionable and it should not be tolerated. My colleagues on the other side of the aisle claim that such a payment is unprecedented, in response to which, I say, the circumstances by which Billy Dale was persecuted and smeared, and the others fired, is unprecedented. It deserves unprecedented treatment and resolution. And it should be treated as such. This is a meritorious case. If I have ever seen one, this is one. What was done to these people should never have occurred in this manner. House Republicans and House Democrats recognize this fact. Why can't Senate Republicans and Senate Democrats recognize this fact? I think everybody in this body really knows this to be the fact. If we in Congress are to reimburse legal fees on a case-by-case basis when the case merits it, then that is a good thing. I have never seen a case more worthy than this particular case.

Now, there is no reason to go to the court of claims in this matter. Let's just do what is right. There is no doubt in my mind that part of the reason why our colleagues on the other side want the court of claims to decide this matter is so they get it beyond the election. Frankly, this should not involve the election. This is doing what is right. If I were the President, I would say, if you could get rid of this, do what's right, pass the bill, and let it be forgotten.

But I will tell you some people who are never going to forget this, even if this bill passes and the President signs it into law, and that is Billy Dale and the people with him. No amount of reimbursement of attorney fees, no amount of compensation, no amount of money, compensatory, punitive, or otherwise, will make up for what they have been through. I can tell you right now that Billy Dale undoubtedly has lost 8 or 10 years of his life because of this ordeal, and so would anybody in this body.

I want you to know that if we have any self-respect at all, this body will do what is right here. I am asking my colleagues to do what's right here. I hope there are some on the other side that will see their way clear to do what's right in this matter. That is what I ask.

If my colleagues are prepared to yield back their time, I will yield back mine.

Mr. LEVIN. I ask for 2 additional minutes.

Mr. HATCH. I will reserve the balance of my time then.

Mr. LEVIN. Will the Senator from Nevada yield 2 minutes?

Mr. REID. Yes.

Mr. LEVIN. Mr. President, I have a couple of quick comments. First of all, I believe I heard the Senator from Utah, some minutes back, say that the Justice Department leaked the prosecution memo. I now ask unanimous consent to have printed in the RECORD a letter from the Justice Department to Representative WILLIAM CLINGER, saying that the only reason they are presenting this prosecution memo, as Representative CLINGER was insisting upon, is because they were threatening the Attorney General with contempt, unless that prosecution memo was provided to the House committee.

So this was not a memo that was provided to anybody willingly, as far as I know, by the Justice Department. This was a memo that was subpoenaed and obtained upon threat of contempt of the Attorney General herself.

I ask unanimous consent that the letter from the Department of Justice, not from the White House, to Representative CLINGER, dated May 8, saying that they were now enclosing this, despite their very strong reluctance to do so, and it was all set forth in this letter, be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. What I said was that somebody from either the Justice Department or White House leaked it to the U.S. News & World Report before Chairman CLINGER asked for this material.

Mr. LEVIN. I don't know what the basis of the Senator's statement is—

Mr. HATCH. The U.S. News & World Report.

Mr. LEVIN. The basis of the Senator's statement 10 minutes ago that the Justice Department leaked this, it seems to me, is not established by any factual evidence that he has provided.

Mr. HATCH. If the Senator will yield, the point I was making is this. Although Representative CLINGER had a right to ask for it, I am not sure they should have given it to him. But they did. But at least before they gave it to him, somebody leaked it to U.S. News & World Report. That somebody had to be somebody in the Justice Department or the White House, which were the only two bodies who could possibly have had it. The White House called me, and, in all fairness to them, they said it wasn't them.

So it had to be. If it was not them, the Justice Department, or somebody who got into the Justice Department, stole it. I do not think that is possible.

The PRESIDING OFFICER. Is there objection to the request?

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, May 8, 1996.

Hon. WILLIAM F. CLINGER, Jr.,
Chairman, Committee on Government Reform and Oversight, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Based upon my conversation with Barbara Olson this morning, we understand that the Attorney General will be removed from the Committee's contempt proceedings agenda as a result of our providing the enclosed documents.

The enclosed documents are the prosecution memorandum for Billy Ray Dale and a related prosecutorial decisionmaking document plus two declination memoranda concerning decisions not to bring criminal charges against other individuals. As our February 26th letter explained other individuals. As our February 26th letter explained, extremely sensitive criminal justice documents of this kind are made available outside the Department only under the most extraordinary circumstances. We made these particular documents available for committee review only as a result of the Committee's subpoena; we brought them to the Committee's offices for review three times and advised the staff that we would return with them as often as necessary to accommodate the Committee's oversight needs.

We would prefer to continue to provide these core deliberative documents to the Committee on that basis. In light of the Committee's announced intention to hold the Attorney General of the United States in contempt of Congress, we are forwarding these documents to you. In doing so, we do not intend to prejudice in any way the Department's response to any future requests from the Committee or any other congressional committee.

We are very concerned that the public disclosure of this deliberative process and attorney work product material might inhibit the candor of our internal deliberations. We have requested and Committee staff have agreed that access to these types of documents will be limited to Members and Committee staff and that the Committee will not disclose the documents outside the Committee without first affording the Department an opportunity to confer with staff further about our concerns regarding such disclosure. We reiterate that request as to these documents and, further, urge the Committee to limit access to Committee staff only and make no copies.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

Mr. LEVIN. The document in question had been brought to the committees, and I am now here quoting the letter, prior to its being delivered pursuant to the threat of contempt of the Attorney General, that these documents, according to the letter, were made ''available for committee review only as a result of the committee's subpoena; we brought them to the committee's offices for review three times and advised the staff that we would return with them as often as necessary to accommodate the committee's oversight needs. We would prefer to continue to provide these core deliberative documents to the committee on that basis.''

But then they go on to say, ''In light of the committee's announced intention to hold the Attorney General of the United States in contempt of Congress, we are forwarding these documents to you.''

They have previously shared the document with Members three times. So to attribute leaks to any particular source without evidence under these circumstances, it seems to me, is without foundation.

No. 2, I may have misheard the Senator from Utah on this. I may have misheard the Senator from Utah on another point. If I did, then I would stand corrected. I believe, however, that the Senator from Utah said that he had deposited checks that belonged to the Travel Office for 30 years in his own account.

Mr. HATCH. No, I didn't say that. I said he had been depositing some of the checks of the media.

Mr. LEVIN. That this was done regularly.

Mr. HATCH. It was done regularly for years.

Mr. LEVIN. No one knew it.

Mr. HATCH. The people there knew it.

Mr. LEVIN. Oh, no. May I make this very clear? No one knew that he was depositing checks in his own personal checking account.

Mr. HATCH. The media has never objected. The point I was making is the media, when they knew about it, never objected—never objected at any time. And, in fact, one major representative of the media testified—

Mr. LEVIN. His colleagues did not know. The FBI was not informed when they were investigating the practices in the office. Peat Marwick, when they looked at this, were not informed by him that he had done this.

So the point that that practice being somehow or other appropriate because it had been going on for a long time, it seems to me, begs the question.

Finally, I would urge my friend from Utah to test this course of action. He said that he cannot imagine anyone coming to any other conclusion than the one that he has come to, that there was an injustice for these people. Again, I urge him to test that hypothesis by doing what we do regularly with private bills, which is to refer them to the Court of Claims. This will be the only defendant in history legally indicted whose legal fees will be paid. It will be the only defendant whose legal fees will have been paid who was properly indicted.

The Senator from Utah feels, with great certainty under his hypothesis, that no one else can come to any other conclusion that an injustice was done here should be tested by doing what we have done with private bills over and over and over again. This would be the exception to a rule that we do not pay legal fees to people properly indicted.

Test the hypothesis, Senator. Send this claim to the Court of Appeals. And, if you are right, that they find, and that any reasonable person would find, that there was an inequity here, in fact, not only will the fees be paid, but they should be paid. But that should be done by an objective person, an objective party, an objective institution, the Court of Claims, and not by this body 2 months before an election in the heat of a political campaign.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, because the question has been raised from the trial transcript at pages 129 and 130, Dale admitted that he didn't tell anyone else at the Travel Office that he was putting these checks into his own account and not the Travel Office account. He admitted that he didn't even tell the individual he worked with in the Travel Office for 30 years, his chief assistant, Gary Wright, of this practice.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I will take a couple of minutes, Mr. President.

For the record, in the House interview with the Peat Marwick representative that was so mightily represented here, the Peat Marwick representative said that this case, meaning the White House Travel Office audit, was the only one he has been involved in where he was told the outcome before the investigation was completed.

This was a trumped-up case against decent people, and even though everybody admits that it would have been better for Mr. Dale to not have put the money in his account, that it was a mistake to do that, nevertheless, nobody that I know of accuses him of having taken that money for his own use. In fact, to the contrary, the testimony in the trial, and that which resulted in his acquittal, was that he used the money properly, that he had to have access to it to be able to solve the problems with the media.

So I think it is really overreaching to try to say because a person is indicted, that an injustice could not have occurred. I can give a lot of cases where

people have been unjustly indicted. This is one of them. This is an exceptional case. It ought to be treated exceptionally.

The fact of the matter is that the White House was trying to please four people, Harry Thomasson and his wife, Linda, Catherine, Cornelius, and Clerissa Cerda. The David Watkins memo makes that clear. I do not think anybody could read that memo and then fail to get outraged by the way these people were treated.

Finally, just to make the Record clear, the plea agreement was leaked by someone in the Justice Department, or the White House, to U.S. News & World Report. The prosecution memo was provided to Chairman CLINGER, who shared it with his minority counterparts, and somebody on the minority staff gave it to the media. The plea agreement had to be leaked by either the White House or the Justice Department. I am willing to take the White House word that they did not do that. Then, it had to be somebody in the Justice Department who did, because they are the only other people who had access to it. And it was improper. It was wrong. It was unethical.

But be that as it may, that does not change the facts of this case that these were decent people who had served successive Presidencies, who had decent reputations, who did their job well and who pleased both the White House and the media, who were just plain mistreated, unjustly, by a superaggressive White House that was acting in its own greedy interests. And if there is ever a case where we ought to stand up and say this is an exceptional situation, we ought to provide this exceptional remedy, this is the case to do it in.

So I am asking my colleagues to vote for the Hatch amendment, which would grant these funds, and to vote down the Reid-Levin amendment, which would again force this man to get attorneys and go to the Court of Claims to get that which is justly his to begin with. That is what you call justice in America: making wrongs right.

Having said all of that, I understand I still have some time. So I yield the remainder of my time, and I do not want to keep my colleagues any longer than I have to.

The PRESIDING OFFICER. All time is yielded back.

LIVE ANIMAL HOLDING FACILITY AT BOISE STATE UNIVERSITY

Mr. CRAIG. Mr. President, I would like to discuss with the Chairman a process that has been initiated between the General Services Administration [GSA] and several Federal, State and local agencies, of which the Appropriations Committee would want to take cognizance. This process concerns the feasibility of designing and constructing a live animal research and holding facility at Boise State University.

The facility would be used for basic and applied ecological research, providing biological information and related technical support to natural resource managers and policymakers, and education and information transfer. It would directly serve the Raptor Research Center at Boise State University.

A first meeting has been held between GSA representatives and some of the agencies that will use the proposed facility, including the U.S. Fish and Wildlife Service, the Idaho Department of Fish and Game, the Peregrine Fund, and Boise State University, which would be the site of the facility. GSA believes this is the kind of project that falls within its purview and is something that may be beneficial to undertake.

Mr. SHELBY. I thank the Senator from Idaho for providing this information and would ask what are the goals of this process at this time?

Mr. CRAIG. The discussions currently underway are preliminary and should lead to a determination of whether to initiate a formal feasibility study.

Mr. SHELBY. Does the Senator foresee any costs associated with these preliminary steps?

Mr. CRAIG. No. These initial contacts are necessary to determine if the project can and should be pursued by GSA and other agencies involved.

Mr. SHELBY. I thank the Senator for this information and assure him the committee will follow the outcome of these meetings with interest. Such activities would be under this subcommittee's jurisdiction and we will want to continue to monitor any progress on this project and keep it under consideration for the future.

REGULATORY ACCOUNTING

Mr. STEVENS. Mr. President, I want to address the regulatory accounting provision in section 645 of the Treasury-postal appropriations bill, H.R. 3756. I believe the public has the right to know the benefits of Federal regulatory programs, as well as their costs, which have been estimated to be $600 billion per year.

To address concerns raised by Senators GLENN and LEVIN, I made technical changes. First, subsection 645(a)(1) requires OMB to provide estimates of the total annual costs and benefits of Federal regulatory programs in the upcoming fiscal year. This includes impacts from rules issued before fiscal year 1997, not just new rules. But OMB need not assess costs and benefits realized in preceding years. I deleted the word ''cumulative'' to clarify that. OMB should use the valuable information already available, and supplement it where needed. Where agencies have, or can produce, detailed information on the costs and benefits of individual programs, they should use it. I expect a rule of reason will prevail: Where the agencies can produce detail that will be informative to the Congress and the public, they should do so. Where it is extremely burdensome to provide such detail, broader estimates should suffice.

Subsection 645(a)(3) requires OMB to assess the direct and indirect impacts of Federal rules on the private sector, State and local government, and the Federal Government. Beyond compliance costs, regulation also creates a drag on real wages, economic growth, and productivity. OMB should use available information, where relevant, to assess the direct and indirect impacts of Federal rules. OMB also should discuss the serious problem of unfunded Federal mandates and inform Congress what it is doing about the problem.

In the end, I expect OMB to produce a credible and reliable picture of the regulatory process—a picture that highlights the costs and benefits of regulatory programs and that allows Congress to determine which programs and program elements are working well, and which are not.

ERIE FEDERAL COURTHOUSE PROJECT

Mr. SPECTER. Mr. President, I would like to address the issue of funding for the Erie Federal Complex construction project, which includes a courthouse annex. The current courthouse provides inadequate space and is not consolidated at a single location. The new facility will accommodate the existing and anticipated future demands of the courts and will allow for the consolidation of the courts in one convenient location. The House bill for fiscal year 1997 provides the $3.3 million required for site acquisition and design work, as requested by the General Services Administration. I am troubled, however, that the Senate bill does not include funding for the Erie Federal Complex.

I join with my constituents in Erie in recognizing the importance of this project to the community and support funding the Erie project in fiscal year 1997. This project is duly authorized. Further, $3.135 million for site acquisition and design was contained in both the House and Senate versions of the fiscal year 1995 Treasury, postal appropriations bill, but was dropped in conference that year because of an internal House decision to defund certain projects which I am advised was not based on the merits of the proposed Erie project.

I would ask the distinguished Chairman, my good friend from Alabama, for his views on the Erie project and whether he believes it merits favorable consideration during conference.

Mr. SHELBY. I thank my colleague from Pennsylvania for his comments in support of the Federal Complex project, which will benefit the administration of justice in Erie, PA. I regret that the Senate funding levels are constrained and that it has been difficult to identify funds for a number of worthwhile courthouse projects. As we proceed to conference with the House, I intend to work closely with the senior Senator from Pennsylvania to obtain funds for site acquisition and design, as requested by the Administration. The Erie project has been approved for funds by the Senate in previous legislation and thus deserves our best efforts.

Mr. KOHL. Mr. President, I would ask for just a few moments to discuss my amendment, which the Senate unanimously adopted during yesterday's debate. First, let me thank Senators SHELBY and KERREY for their support and hard work in crafting the Treasury-postal appropriations legislation before us.

My amendment, which expresses the sense of the Congress, relates to the Internal Revenue Service telephone assistance program, one which the IRS advertises as a first line of assistance to the American taxpayer. I am pleased that it is now included in this bill because when it comes to telephone assistance, the IRS customer service record is abysmal. In fact, it's an embarrassment.

In fiscal year 1995, IRS assistors reportedly answered 38 percent of taxpayers' calls. In fiscal year 1996, the figure improved slightly, but still only 46 percent of taxpayers got through to IRS assistance personnel. In other words, currently, less than half of the taxpayers in need of help even get through to an IRS assistor, and that may be after trying once or trying 10 times. In terms of pure accessibility, the statistics are even more startling. During the fiscal year 1996 filing season, a mere 20 percent of taxpayers got through to an IRS assistor on their first try.

As many of my colleagues know, before coming to the United States Senate, I ran a business. And if there's one simple bit of wisdom learned from my years in business, and practiced to the best of my ability, it is that the customer always comes first. In adopting my amendment, I am pleased that the Senate has spoken with one voice in sending that same message to the IRS—take whatever steps necessary to put your customers, the taxpayers of this country, first.

I would add that I know customer service is of great concern to the distinguished ranking member, Senator KERREY of Nebraska, who cochairs the National Commission to Restructure the Internal Revenue Service. I hope that we can continue to work together on this issue when the Commission reports to Congress next July.

Mr. President, each year Americans in all walks of life and from every income bracket encounter questions when filling out tax forms and calculating tax obligations. And since few people dispute the challenges of navigating the current tax code, it comes as no surprise that many Americans seek help in order to fulfill their civic duty responsibly and accurately. The IRS' toll free 1–800 assistance service would seem a logical first step. But the IRS, on the receiving end, if you will, picks up the line less than half the time. Thus, the majority of callers do not even have the opportunity to pose, let alone work out, their questions.

This fact is troubling, very troubling, particularly when considered in light of other problems. For example, many constituents in my homestate of Wisconsin who have the good fortune, or should I say the good luck, to get through to IRS assistors, have then been put on hold and subjected to significant waits that have sometimes ended with a random and inexplicable disconnection of the line.

Simply put, this level of service is unacceptable. And in the end, it's not unreasonable to speculate that it works against our overall efforts to streamline the government. After all, if taxpayer questions are not being answered, more mistakes are being made and more IRS follow-up and investigation is required.

The IRS is aware of the problems. The General Accounting Office has issued reports. The Social Security Administration and private sector interests provide numerous examples of ways to improve telephone assistance. And now Congress has made the first of what may be many calls to the IRS, urging them to establish performance goals, operating standards and management practices—whatever it takes to get the lines answered and put the customer first.

ATF ''DISABILITY RELIEF'' PROGRAM

Mr. SIMON. Mr. President, I say to Senator LAUTENBERG, I would like to raise an issue of great importance. The current version of this appropriations bill would not fund the Bureau of Alcohol, Tobacco and Firearms' [ATF] disability relief program. Under current Federal law, someone who has been convicted of a crime punishable by more than 1 year is ineligible, or disabled, from possessing a firearm—a sensible idea. However, Congress created a loophole in 1965 whereby convicted felons could apply to ATF to have their firearm privileges restored, at an estimated taxpayer cost of $10,000 per waiver granted.

We have fought to end this program and have succeeded in stripping the program's funding in annual appropriations bills since 1992.

This year, we face an additional challenge in our efforts to keep guns out of the hands of convicted felons. A recent court case in Pennsylvania has misinterpreted our intentions and opened the door for these convicted felons to apply for judicial review of their disability relief applications.

In this case, Rice versus United States, the Third Circuit Court of Appeals found that the current funding prohibition does not make clear congressional intent to bar all avenues of relief for convicted felons. By their reasoning, since ATF is unable to consider applications for relief, felons are entitled to ask the courts to review their applications.

This misguided decision could flood the courts with felons seeking the restoration of their gun rights, effectively shifting from ATF to the courts the burden of considering these applications. Instead of wasting taxpayer money and the time of ATF agents—which could be much better spent on important law enforcement efforts, such as the investigation of church arsons—we would now be wasting court resources and distracting the courts from consideration of serious criminal cases.

Fortunately, another decision by the fifth circuit in U.S. versus McGill found that congressional intent to prohibit any Federal relief—either through ATF or the courts—is clear. The fifth circuit concluded that convicted felons are therefore not eligible for judicial review of their relief applications.

Given this conflict in the circuit courts, we should clarify our original and sustaining intention. The goal of this provision has always been to prohibit convicted felons from getting their guns back—whether through ATF or the courts. It was never our intention to shift the burden to the courts.

Congressman DURBIN and his colleagues succeeded in their efforts to include language in the House appropriations bill to make clear that convicted felons may not use the courts in their efforts to get their guns back. I applaud the House committee for its wise vote on this issue.

During the same markup, Congressman DURBIN'S efforts were undermined by a related exemption offered by Congressman OBEY. This exemption would allow those individuals convicted of nonviolent felonies the ability to appeal for judicial review of their relief application.

According to Congressman OBEY's amendment, the opportunity to appeal to the courts would be closed to those ''felons convicted of violent crimes, firearms violations, or drug-related crimes.'' All other felons would be allowed to apply to the courts for review of their relief applications.

Mr. OBEY's exemption is clearly inconsistent with the original intent of this provision for three simple reasons:

First, one need only consider people like Al Capone and countless other violent criminals who were convicted of lesser, nonviolent felonies, to understand how dangerous this ''Capone amendment'' will be to public safety. Our intent when we first passed this provision—and every year thereafter—has been to prohibit anyone who was convicted of a crime punishable by more than 1 year from restoring their gun privileges via the ATF procedure or a judicial review.

Second, as Dewey Stokes, the former President of the Fraternal Order of Police noted, most criminals do not commit murder as their first crime. Rather, most criminals start by committing non-violent crimes which escalate into violent crimes. An ATF analysis shows that between 1985 and 1992, 69 non-violent felons were granted firearms relief and subsequently re-arrested for violent crimes such as attempted murder, first degree sexual assault, child molestation, kidnaping/abduction, and drug trafficking.

Third, there is no reason in the world for the taxpayers' money and court resources to be wasted by allowing the review of any convicted felons' application to get their guns back. It made no sense for ATF to take agents away from their important law enforcement work, and it makes even less sense for the courts, which have no experience or expertise in this area, to be burdened with this unnecessary job. Let me make this point perfectly clear: It was never our intent, nor is it now, for the courts to review a convicted felon's application for firearm privilege restoration.

Mr. LAUTENBERG. I thank the Senator for clearly laying out the facts. As the coauthor of this provision, I share his interest and concern about this issue. I agree with his analysis completely and intend to closely follow this situation in the coming year to see if any further legislation is necessary to clarify our intent. I would also like to take this opportunity to let my colleague know how much I enjoyed working on this issue with him as well as so many other matters. I want to ensure him that although he will not be here next year to continue his work in the Senate on this matter, I fully intend to carry on the fight for us both.

FLEXIBILITY FOR TELECOMMUTING CENTERS

Mr. WARNER. Mr. President, in an effort to meet the changing needs of the Federal work force, I rise in support of a provision contained in the Treasury postal appropriations bill which authorizes the General Services Administration to begin work on a series of flexiplace work telecommuting centers.

Currently, many Federal employees from both the legislative and executive branches are enjoying the convenience and efficiency of six completed telecommuting centers located throughout the Metropolitan Washington, DC area.

While Federal employees enjoy the advantages of working at these telecommuting centers, their employer, the Federal Government, reaps the benefits of increased productivity and improved work quality.

As the Senate accepts the important responsibility to reign in Federal spending and control our Federal debt, we surely realize that these telecommuting centers must be economically self-supporting or they will not succeed.

For that reason, I, along with my friend in the House of Representatives, Congressman FRANK WOLF, have asked our respective Appropriations Committees to insert language granting much needed flexibility to the General Services Administration in regard to telecommuting centers.

In order to maintain these centers as self-sufficient entities, the Congress must allow non-Federal employees to fill any vacant slots in the telecommuting centers. Currently, Federal employees cannot fill all of the slots all of the time, so it only makes sense to allow non-Federal employees utilize these facilities and increase the revenue going to these important centers.

This legislation also permits the Administrator of General Services Administration to transfer control of any or all of the telecommuting centers to State, local, or nonprofit organizations. This step will further ensure the economic viability of these telecommuting centers.

While maintaining the necessary commitments to our Federal work force, this language will provide the necessary flexibility to let these telecommuting centers thrive and prosper without Federal micromanagement and increased Government spending.

MORNING BUSINESS

Mr. SHELBY. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak for up to 2 minutes each.

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

U.S. FOREIGN OIL CONSUMPTION: HERE IS WEEKLY BOX SCORE

Mr. HELMS. Mr. President, the American Petroleum Institute reports that for the week ending September 6, the United States imported 7,400,000 barrels of oil each day, 1,300,000 less than the 8,700,000 imported during the same week a year ago.

Nevertheless, Americans relied on foreign oil for 53 percent of their needs last week, and there are no signs that the upward spiral will abate. Before the Persian Gulf war, the United States obtained about 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970's, foreign oil accounted for only 35 percent of America's oil supply.

Anybody else interested in restoring domestic production of oil—by U.S. producers using American workers? Politicians had better ponder the economic calamity sure to occur in America if and when foreign producers shut off our supply—or double the already enormous cost of imported oil flowing into the United States—now 7,400,000 barrels a day.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, September 10, the Federal debt stood at $5,217,211,394,956.03.

Five years ago, September 10, 1991, the Federal debt stood at $3,617,377,000,000.

Ten years ago, September 10, 1986, the Federal debt stood at $2,103,341,000,000.

Fifteen years ago, September 10, 1981, the Federal debt stood at $979,625,000.000.

Twenty-five years ago, September 10, 1971, the Federal debt stood at $415,728,000,000. This reflects an increase of more than $4 trillion ($4,801,483,394,956.03) during the 25 years from 1971 to 1996.

ZION NO. 1, MISSIONARY BAPTIST CHURCH 126TH ANNIVERSARY

Mr. HEFLIN. Mr. President, on Sunday, August 11, 1996, the Zion No. 1, Missionary Baptist Church celebrated its 126th anniversary. Zion No. 1 was formed in 1870, only a few miles from its present location in Barton, AL. It is one of the oldest in the State of Alabama.

Arthur Barton, a white landowner, donated the land for this church as a gift to its organizers, who had a phenomenal zeal for worshipping God. The church they built stood for many years. A second building, home of the Pine Grove Methodist Episcopal Church, located on a hill just off Highway 72 in west Colbert County, was purchased from the Methodist Conference by the small Zion No. 1 congregation in 1891 for $300.

This church building was held together by wooden pegs. It is reported that there are no nails in the building. Kerosene or coal oil lamps were used for light. Two enormous pillars were visible in the center of the sanctuary running from the floor to the ceiling. These are still in place today.

During the Civil War, the Pine Grove Methodist Episcopal Church building had been used as a temporary hospital for wounded soldiers. It is said that two cannon balls were found in the walls as a result of a battle which took place between the town of Barton and the Tennessee River. There were blood stains on the floor and on portions of its baseboards and gunshot holes were visible in the walls. The basic structure which exists today remains largely as it was when it was constructed before the Civil War. Subsequent renovations have hidden evidence that it was once a hospital and church for wounded Confederate soldiers.

In 1969, brick was added, as well as new fixtures, carpeting, and a public address system. In 1977, a new roof was added, carpeting was laid in the educational annex, and folding doors were added.

The years between 1978 and 1986 were a time of rapid growth for Zion No. 1, Missionary Baptist Church. The congregation purchased three acres of land to expand the cemetery, and the central heating system was installed. A second educational annex, which includes a baptismal pool, was constructed. Previously, the Tennessee River had been used for baptizing new members.

The Reverend Wayne S. Bracy became the 16th and current pastor on February 8, 1992. He has brought a fervent spiritual atmosphere and a commitment to teaching and training to Zion No. 1.

I am pleased to congratulate the Zion No. 1, Missionary Baptist Church on the occasion of its 126th anniversary.

Its rich heritage and dedicated leaders and members are testaments to the tremendous role religion continues to play in America's culture and development.

TRIBUTE TO SHERIFF JOHN L. ALDRIDGE

Mr. HEFLIN. Mr. President, my longtime friend, Sheriff John L. Aldridge, is one of the giants of law enforcement in the State of Alabama. He has spent over 30 years in law enforcement and is presently serving his sixth term as sheriff of Colbert County, AL, having first been elected in 1975. He was the commissioner of public safety for the city of Tuscumbia from 1960 through 1969. He is a loyal and dedicated public servant whose service and commitment to law enforcement in general and his community in particular have been impeccable.

Sheriff Aldridge received his bachelor of science degree in law enforcement from the University of North Alabama. He is a past president of the Alabama Sheriff's Association and is a member of the board of trustees of the Alabama Sheriff's Boys-Girls Ranches. He has received many honors and awards, including County Officer of the Year from the Sheffield Elks' Lodge and the Colbert County American Legion. He is a past State Officer of the Year and Officer of the Year for Colbert, Lauderdale, and Franklin Counties. In 1977, he received the Liberty Bell Award from the Colbert County Bar Association. Under former Governor George Wallace, he served on the executive board of the Alabama Law Enforcement Agency.

He is also a past president of the Lions Club and past commander of American Legion Post 31. He is a Mason and first vice president of the Sheffield, Alabama Kiwanis Club, as well as a former member of the Tuscumbia Utility Board and of the Colbert County Hospital Board. He served for a time as a board member of the Colbert-Lauderdale Attention Home for Delinquent Boys and Girls.

He is a loyal Democrat whose enthusiasm for the party has never wavered. In 1992, he served on the Steering Committee for the Clinton-Gore Campaign. He strongly endorsed the ticket that year and, although the Democrats did not carry Alabama, campaigned tirelessly for his party's candidates.

Sheriff Aldridge's leadership and service have gone far beyond what we traditionally think of as law enforcement duties. He initiated a rape counseling program for the Muscle Shoals Mental Health Center to assure victims of rape were interviewed by a female professional counselor rather than a male. When the program was begun, there were no female officers in law enforcement in Colbert County. Sheriff Aldridge made a firm commitment to change this. He received an award from the Muscle Shoals Mental Health Center for initiating this program.

Under his tenure as chairman of the Sheffield Kiwanis Club Major Emphasis Program on ''Safeguard Against Crime,'' the club received the Silver Bell Award for his work in organizing a county-wide program aimed at reducing crime and spurring public interest in law enforcement.

I am proud to commend and congratulate Sheriff John Aldridge for his many years of outstanding leadership in terms of law enforcement and community service. I look forward to seeing more of the fruits of his labors first-hand when I return home to Colbert County next year.

GREATER RECOGNITION FOR TAIWAN

Mr. HELMS. Mr. President, on July 17, the European Parliament passed a resolution urging that Taiwan be granted greater recognition in international organizations, and calling for a study of the issues surrounding Taiwan's participation in the United Nations.

I find this resolution both impressive and appropriate, Mr. President, and I fully agree that Taiwan deserves a greater role in international organizations. The Republic of China is a full democracy, with a remarkably successful economy. Furthermore, Taiwan plays an important role in world affairs.

It is high time that Taiwan be accorded its well-deserved stature in international organizations.

Mr. President, I find it gratifying that Taiwan has won this recognition aforementioned from the European Parliament, and I ask unanimous consent that the resolution be printed in the RECORD at the conclusion of my remarks.

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

EUROPEAN PARLIAMENT

Having regard to Article J.7 of the Treaty on European Union.

A. Satisfied with the current state of Taiwan's democracy and Taiwan's respect for the principles of justice, human rights, and fundamental freedom,

B. welcoming the fact that the elections in Taiwan were conducted democratically and peacefully despite the overt aggression and provocation by the People's Republic of China,

C. having regard to Taiwan's wish to participate in international aid to developing countries,

D. having regard to the significance of developments in the political situation in Taiwan for the whole of East Asia at the geopolitical and economic level and in terms of a policy of stability, security and peace in the Western Pacific region,

E. welcoming the attitude of reconciliation displayed by President Lee Teng-hui towards the People's Republic of China and looking forward to a dialogue spanning both sides of the Taiwan Straits,

F. convinced that the people of Taiwan ought to be better represented in international organizations than they are at present, which would benefit both Taiwan and the whole of the international community,

G. whereas neither the European Union nor any of its Member States have diplomatic relations with the Government of Taiwan, recognizing only the People's Republic of China,

H. whereas Taiwan is very important to the European Union and its Member States as a trade partner,

I. whereas it is important for the European Union and its Member States to develop their relations with the governments of both the People's Republic of China and Taiwan in an amicable and constructive spirit,

J. urging the governments of the People's Republic of China and Taiwan to intensify their cooperation,

K. stressing that participation by Taiwan in certain international organizations can assist with finding common ground between China and Taiwan and facilitate reconciliation between the two sides,

L. regretting the fact that Taiwan at present is prevented from making a full contribution to the United Nations and its agencies, and stressing that, for the efficiency of the UN. Taiwan's participation would be desirable and valuable.

1. Urges:

(a) the Council and Member States to support Taiwan's attempts to secure better representation than it currently enjoys in international organizations in the fields of human and labour rights, economic affairs, the environment and development cooperation following the precedent of certain cases, known to international law, of countries recognized as independent and sovereign even though the nature of their diplomatic connections and the person of then head of state did not display the full symbolic panoply of complete sovereignty (e.g. Her Britannic Majesty's Dominions, American Samoa, or, until recently the Ukraine and Belarus);

(b) the Council and Member States to ask the United Nations to investigate the possibility of setting up a UN working group to study the scopes for Taiwan to participate in the activities of bodies answerable to the UN General Assembly;

(c) the Council and Member States to encourage the governments of the People's Republic of China and Taiwan to intensify their cooperation in a constructive and peaceful spirit;

(d) the Council to Urge the Commission to adopt measures with a view to opening a European Union information office in Taipei;

2. Instructs its President to forward this resolution to the Council and to the Commission.

CAM NEELY

Mr. KERRY. Mr. President, I come to the floor today to recognize the achievements and contributions of one of Massachusetts' most beloved sports personalities, Mr. Cam Neely of the Boston Bruins.

Last week, Cam announced his retirement from the Boston Bruins after 5 years of struggle and pain caused by nagging injuries. He had played 13 years in the National Hockey League, 3 with the Vancouver Canucks and the last 10 seasons with the Bruins. Through his decade with the Bruins, Cam has become the prototype NHL power forward by combining bone-crushing power with overwhelming talent and grace.

In addition to his presence on the ice, he has made a continuing contribution

to the community off the ice by establishing the Cam Neely Foundation and planning the Neely House, which will provide a place to stay in Boston for families of cancer patients undergoing treatment at area hospitals.

Throughout his career, Cam Neely rose to the challenge of being a top tier player in the NHL, setting records, redefining his position, and setting the standard by which forwards in the NHL are measured today. He played with courage and finesse. His career is a string of highlight films peppered with accomplishments and awards. In his first season with the Bruins, he was awarded the coveted Seventh-Player Award which is given to the Bruin who makes the most significant sustained contribution to the club over the duration of the season. That same season he led the team in scoring with 36 goals. In 1988, Cam provided the spark that lit the fire behind the Bruins' playoff series victory over the Montreal Canadiens—the first such victory in 45 years. During the 1989–90 season, Cam became only the fifth Bruin in history to reach the 50 goals mark and in 1990–91 he became only the second Bruin ever to reach 50 goals in consecutive seasons, joining the great Phil Esposito.

Cam was at the height of his talent and skills in the 1991 playoff series against the Pittsburgh Penguins when he suffered an injury that would change his career. The hit resulted in an injury to his thigh that never fully healed. That injury led to another, and then another, and the pain never ceased. For 5 years, Cam Neely was the epitome of perseverance as he worked to keep his body in shape and prepared to play. He never let up and he never gave up. Every season marked a triumphant return to the ice for Boston's most admired hockey player. He would play in pain until the pain became unbearable. He would play whenever he was needed and his body would allow him. He kept coming back, and the Bruins' fans loved him dearly for his efforts.

Cam rose above the issues of money and contracts and salary disputes and always seemed to be smiling and happy. He played hockey because he loved the game and it was part of him. During his announcement last week he said, ''I've always wanted to stay in this game as long as I could [while] achieving results and making positive contributions to my team. I never, ever wanted to play the game for the money or simply to go through the motions. Believe me, I loved playing in the big game. I loved the competitiveness of the sport. Since the day I arrived in Boston, I gave 100 percent to our team, to my teammates, and our fans.''

Nobody would argue that fact. Cam worked hard for the Bruins. Even his teammates, opponents, and coaches agree.

''There'll be a lot of highlight clips. I'll just remember him running over people, things like him grabbing the puck and splitting the defense to score against [Patrick] Roy the year we finally beat the Canadiens,'' Bruins captain Ray Bourque said. ''And I'll remember seeing stars when he ran over me during a Canada Cup practice. It was fun to know you had Cam on your side.''

''You know when I realized how great he was?'' asked Don Sweeney, defenseman and long time teammate of Neely's. ''When he was back for a game and then out for a game, then back for a game, then out for a game. The difference when we had him and when we didn't was tremendous. There was a ripple effect he had on every player in that locker room.''

Adam Oates, Cam's longtime line mate and the man who with him comprised one of the most feared scoring combinations in the NHL, said that Cam's announcement was ''something that we knew was going to happen all along. And today's the black day that it's happening.''

Former Bruin standout Derek Sanderson has always considered Cam Neely one of the game's best forwards. ''His teammates will miss him, and no one will miss him more than Oates. Guys like him don't come along very often. No one can score like Cam; no one can hit like Cam,'' he said. ''You can't replace him, you go along without him.''

Derek's words echo the feelings of most of the Bruins' faithful. Cam Neely cannot be replaced. The team will go on without him. Like Bobby Orr, Gord Kluzak, and Normand Leveille, Cam is forced to leave the game he loves too soon, and before the fans are ready to let him go. But for every game, every period, and every shift, I, and every other Bruins fan, will look to the right wing and imagine the hulking No. 8 streaking along the boards, taking the puck onto his stick, and blazing it past the netminder into the mesh netting of the goal. And, quietly, we will cheer.

TRIBUTE TO HOWELL HEFLIN: MY FRIEND, THE ''JUDGE''

Mr. PRESSLER. Mr. President, today I would like to pay tribute to Senator HOWELL HEFLIN, a dear friend and colleague who is retiring from the Senate this year. Senator HEFLIN and I are classmates, having been elected to the Senate at the same time. During the past 18 years, I have had the opportunity to watch my friend from Alabama establish himself as a distinguished leader and statesman. As a U.S. Senator and Alabama Supreme Court Justice, he has served his country and his State well. Alabamians should be proud of their country judge.

HOWELL HEFLIN continues a family tradition of public service. As the nephew of U.S. Senator Thomas Heflin, Senator HEFLIN brought to the Senate a bloodline of conviction to America's foundation and potential. His character and background as Chief Justice of the Alabama Supreme Court have shone brightly during his chairmanship of the Ethics Committee and during his service on the Senate Judiciary Committee. As a champion of ethics and an independent thinker, it is no wonder Senator HEFLIN still is referred to as the judge by his fellow Senators.

Mr. President, as a farm State Senator, I salute HOWELL HEFLIN's commitment to Alabama agriculture. As chairman of the Senate Commerce, Science, and Transportation Committee, I commend him for his work on rural electrification. As a member of the Senate Agriculture Committee, Nutrition, and Forestry Committee, he has fought for the interests of Alabama's cotton, peanut, and soybean industries. He also has strived for Federal crop insurance and flood relief for Alabama farmers. Alabama farmers and farm families surely will miss his undying dedication to their industry.

Mr. President, one of the toughest jobs for members of Congress occurs when we have to vote on legislation that has sparked strong division within our constituencies. As an infamous storyteller, Senator HEFLIN often relays metaphors that shed light on the difficulty of this predicament. For example, HOWELL HEFLIN once told us a story about a hunter who is caught in a treetop and is being chased by a bobcat. The hunter yells to his friend, ''Hurry up and shoot it!'' Unsure of his aim, his comrade yells back, ''I'm not sure I can hit him. I might hit you!'' In return, the trapped hunter yells, ''Shoot anyway. I need some relief!''

Another account of HOWELL HEFLIN's lightheartedness was a speech he delivered during a Senate floor discussion regarding the status of the rose as the official national flower. As the Senate deliberated whether or not to designate the rose as America's flower, Senator HEFLIN took to the floor with a poem. He remarked that, ''Roses are red, violets are blue, why must I choose between the two?'' Remarks such as this have provided the members of this body—and his Alabama constituents—with many moments of fond repose over the past 18 years. Senator HEFLIN's sense of humor will be missed dearly.

So soon we will bid farewell to our dear friend from Alabama—HOWELL HEFLIN. My wife, Harriet and I wish Senator HEFLIN and his lovely wife, Elizabeth Ann, the very best. They are a wonderful couple, and we will miss them very much. As the 104th Congress draws to a close, they can look forward to being able to return to their home State of Alabama and enjoy one of their favorite pastimes: spending time with their grandchildren. Mr. President, I again would like to wish Senator HEFLIN godspeed as he leaves the U.S. Senate. He leaves in his wake a career, character, and reputation marked by excellence.

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 2:03 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2428. An act to encourage the donation of food and grocery products to nonprofit organizations for distribution to needy individuals by giving the Model Good Samaritan Food Donation Act the full force and effect of law.

H.R. 4018. An Act to make technical corrections in the Federal Oil and Gas Royalty Management Act of 1992.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2512. An act to provide for certain benefits of the Pick-Sloan Missouri River basin program to the Crow Creek Sioux Tribe, and for other purposes.

H.R. 2710. An act to provide for the conveyance of certain land in the State of California to the Hoopa Valley Tribe.

H.R. 3056. An act to permit a county-operated health insuring organization to qualify as an organization exempt from certain requirements otherwise applicable to health insuring organizations under the Medicaid program notwithstanding that the organization enrolls Medicaid beneficiaries residing in another country.

H.R. 3640. An act to provide for the settlement of issues and claims related to the trust lands of the Torress-Martinez Dzert Cahuilla Indians, and for other purposes.

H.R. 3642. An act to provide for the transfer of public lands to certain California Indian Tribes.

H.R. 3910. An act to provide emergency drought relief to the city of Corpus Christi, Texas, and the Canadian River Municipal Water Authority, Texas, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 2710. An act to provide for the conveyance of certain land in the State of California to the Hoopa Valley Tribe; to the Committee on Indian Affairs.

H.R. 3056. An act to permit a county-operated health insuring organization to qualify as an organization exempt from certain requirements otherwise applicable to health insuring organizations under the Medicaid program notwithstanding that the organization enrolls Medicaid beneficiaries residing in another county; to the Committee on Finance.

H.R. 3642. An act to provide for the transfer of public lands to certain California Indian Tribes; to the Committee on Indian Affairs.

H.R. 3910. An act to provide emergency drought relief to the city of Corpus Christi, Texas, and the Canadian River Municipal Water Authority, Texas, and for other purposes; to the Committee on Energy and Natural Resources.

MEASURES PLACED ON THE CALENDAR

The following measure was placed on the calendar under the order of February 10, 1995:

S. 391. A bill to authorize and direct the Secretaries of the Interior and Agriculture to undertake activities to halt and reverse the decline in forest health on Federal lands, and for other purposes.

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

H.R. 2512. An act to provide for certain benefits of the Pick-Sloan Missouri River basin program to the Crow Creek Sioux Tribe, and for other purposes.

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–4004. A communication from the Acting Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the sequestration update report dated August 20, 1996; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Agriculture, Nutrition, and Forestry, to the Committee on Armed Services, to the Committee on Banking, Housing, and Urban Affairs, to the Committee on Commerce, Science, and Transportation, to the Committee on Energy and Natural Resources, to the Committee on Environment and Public Works, to the Committee on Finance, to the Committee on Foreign Relations, to the Committee on Governmental Affairs, to the Committee on the Judiciary, to the Committee on Labor and Human Resources, to the Committee on Rules and Administration, to the Committee on Small Business, to the Committee on Veterans' Affairs, to the Committee on Indian Affairs, and to the Select Committee on Intelligence.

EC–4005. A communication from the Chief of the Regulations unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report concerning a rule regarding Revenue Procedure (RP–242645–96), received on September 6, 1996; to the Committee on Finance.

EC–4006. A communication from the Chief of the Regulations unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report concerning a rule regarding Notice 96–43, received on September 6, 1996; to the Committee on Finance.

EC–4007. A communication from the Chief of the Regulations unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report concerning a rule regarding Revenue Ruling 96–44, received on September 6, 1996; to the Committee on Finance.

EC–4008. A communication from the Chief of the Regulations unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report concerning a rule regarding Announcement 96–92, received on September 6, 1996; to the Committee on Finance.

EC–4009. A communication from the Chief of the Regulations unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report concerning a rule regarding Revenue Ruling 96–46, received on September 6, 1996; to the Committee on Finance.

EC–4010. A communication from the Chief of the Regulations unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report concerning a rule regarding Revenue Procedure 96–47, received on September 6, 1996; to the Committee on Finance.

EC–4011. A communication from the Chief of the Regulations unit of the Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report concerning a rule regarding Revenue Procedure 96–42, received on September 6, 1996; to the Committee on Finance.

EC–4012. A communication from the Deputy Excecutive Director and Chief Operating Officer of the Pension Benifit Guaranty Coporation, transmitting, pursuant to law, a rule with respect to allocation of assets in single employer plans, received on September 10, 1996; to the Committee on Labor and Human Resources.

EC–4013. A communication from the Acting Director of the Office of Management and Budget in the Executive Office of the President, transmitting, pursuant to law, a report concerning direct spending or receipts legislation within five days of enactment (P.L. 104–193), received on September 10, 1996; to the Committee on Budget.

EC–4014. A communication from the Director of the Fish and Wildlife Service of the U.S. Department of the Interior, transmitting, pursuant to law, a rule entitled ''Endangered and Threatened Wildlife Plants: Listing of the Umpqua River Cutthroat Trout in Oregon'' (RIN 1018–AD96) received on September 10, 1996; to the Committee on Environment and Public Works.

EC–4015. A communication from the Inspector General of the U.S. Railroad Retirement Board, transmitting, pursuant to law, the budget submission for fiscal year 1998; to the Committee on Labor and Human Resources.

EC–4016. A communication from the Assistant Secretary of Labor for Mine Safety and Health in the Department of Labor, transmitting, a report concerning an examination of working places; to the Committee on Labor and Human Resources.

EC–4017. A communication from the Secretary of Health and Human Services, tranmsmitting, pursuant to law, a rule entitled ''Reduction of Reporting Requirements for the State Systems Advance Planning Document (APD) Process,'' (RIN 0970–AB46) received on August 8, 1996; to the Committee on Labor and Human Resources.

EC–4018. A communication from the Executive Director of the U.S. Architectural and Transportation Barriers Compliance Board, transmitting, pursuant to law, a rule entitled ''Americans with Disabilities Act Accessibility Guidelines; Detectable Warnings,'' (RIN 3014–AA18) received on August 7, 1996; to the Committee on Labor and Human Resources.

EC–4019. A communication from the Director of the Office of Regulatory Management and Information, U.S. Environmental Protection Agency, transmitting, pursuant to law, a rule regarding control of air pollution, (FRL5548–8) received on September 10, 1996; to the Committee on Environment and Public Works.

EC–4020. A communication from the Director of the Office of Regulatory Management and Information, U.S. Environmental Protection Agency, transmitting, pursuant to law, three rules including a rule entitled ''Approval and Promulgation of Implementation Plans for Louisiana: General Conformity Rules'' (FRL5549–7, 5549–9, 5549–6) received on September 5, 1996; to the Committee on Environment and Public Works.

EC–4021. A communication from the General Counsel of the U.S. Department of Transportation, transmitting, pursuant to law, a report concerning a rule regarding procedures for abatement of highway traffic noise (RIN 2125–AD97) received on September

5, 1996; to the Committee on Environment and Public Works.

EC–4022. A communication from the Secretary of the Air Force, transmitting, pursuant to law, a report relative to a Program Acquisition Unit Cost(PAUC); to the Committee on Armed Services.

EC–4023. A communication from the Secretary of Defense, transmitting, pursuant to law, a report regarding Cooperative Threat Reduction [CTR]; to the Committee on Armed Services.

EC–4024. A communication from the Under Secretary of Defense, transmitting, pursuant to law, a report regarding Department of Defense purchases from foreign entities for fiscal year 1995; to the Committee on Armed Services.

EC–4025. A communication from the Office of the Secretary of Defense, transmitting, pursuant to law, a rule entitled ''Provision of Early Intervention and Special Education to Eligible DoD Dependents in Overseas Areas,'' (received on September 10, 1996); to the Committee on Armed Services.

EC–4026. A communication from the Secretary of the Securities and Exchange Commission, transmitting, pursuant to law, a report regarding a rule entitled ''Exemptions for Certain Open-End Management Investment Companies to Impose Deferred Sales Loads,'' (RIN 3235–AD18) received on September, 10, 1996; to the Committee on Banking, Housing, and Urban Affairs.

EC–4027. A communication from the Attorney-Advisor of the Federal Register Certifying Officer, Financial Management Service of the Department of the Treasury, transmitting, pursuant to law, a rule entitled ''Depositaries for Federal Taxes'' (RIN 1510–AA54) received on August 21, 1996; to the Committee on Banking, Housing, and Urban Affairs.

EC–4028. A communication from the Vice President and Treasurer of Farm Credit Financial Partners, transmitting, a notice regarding the Retirement Plan for Agricultural Credit Associations and Farm Credit Banks in the First Farm Credit District; to the Committee on Govermental Affairs.

EC–4029. A communication from the Deputy Director of the U.S. Office of Personnel Management, transmitting, pursuant to law, a rule entitled ''Prevailing Rate Systems,'' (RIN 3206–AH–60) received on September 10, 1996; to the Committee on Governmental Affairs.

EC–4030. A communication from the Secretary of the Securities and Exchange Commission, transmitting, pursuant to law, a report regarding the Sunshine Act for calendar year 1994; to the Committee on Governmental Affairs.

EC–4031. A communication from the Acting Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report entitled ''The Information Resources Management (IRM) Plan of the Federal Government'' for fiscal year 1995; to the Committee on Governmental Affairs.

EC–4032. A communication from the General Counsel of the Department of Energy, transmitting, pursuant to law, a rule regarding debarment and suspention in procurement and nonprocurement activities (RIN 1991–AB24) received on August 27, 1996; to the Committee on Governmental Affairs.

EC–4033. A communication from the Administrator of the Agricultural Marketing Service, U.S. Department of Agriculture, transmitting, pursuant to law, a rule entitled ''Termination Order-Black Hills,'' received on September 9, 1996; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4034. A communication from the Administrator of the Agricultural Marketing Service, U.S. Department of Agriculture, transmitting, pursuant to law, a rule entitled ''Assessment Rates for Specified Marketing Orders,'' (FV96–927–2 IFR) received on September 9, 1996; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4035. A communication from the Congressional Review Coordinator, transmitting, pursuant to law, a rule entitled ''Scrapie Indemnification Program,'' received on September 9, 1996; to the Committee on Agriculture, Nutrition, and Forestry.

EC–4036. A communication from the Under Secretary of Defense, transmitting, pursuant to law, the report of a violation of the Antideficiency Act, case number 95–01; to the Committee on Appropriations.

EC–4037. A communication from the Deputy Assistant Director for Fisheries, National Marine Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule regarding fisheries of the Caribbean, (RIN 0648–AG26) received on September 10, 1996; to the Committee on Commerce, Science, and Transportation.

EC–4038. A communication from the Acting Director Office of Sustainable Fisheries, National Marine Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule regarding trip limit reductions (received on September 10, 1996); to the Committee on Commerce, Science, and Transportation.

EC–4039. A communication from the Acting Director Office of Sustainable Fisheries, National Marine Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a rule regarding fisheries of the exclusive economic zone off Alaska (received on September 10, 1996); to the Committee on Commerce, Science, and Transportation.

EC–4040. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report regarding environmental compliance and restoration program for fiscal year 1995; to the Committee on Commerce, Science, and Transportation.

EC–4041. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, a rule regarding revision of class E airspace (RIN 2120–AA66 (1996–0122) received on September 9, 1996); to the Committee on Commerce, Science, and Transportation.

EC–4042. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, a rule entitled ''Compressed Natural Gas Fuel Integrity'' (RIN AF14); to the Committee on Commerce, Science, and Transportation.

EXECUTIVE REPORTS OF COMMITTEES

The following executive report of committees was submitted:

By Mr. Helms, from the Committee on Foreign Relations: Treaty Doc. 103–35 The Chemical Weapons Convention (Exec. Rept. 104–33)

TEXT OF THE COMMITTEE RECOMMENDED RESOLUTION OF ADVICE AND CONSENT

Resolved (two-thirds of the Senators present concurring therein), That (a) the Senate advise and consent to the ratification of the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, opened for signature and signed by the United States at Paris on January 13, 1993, including the following annexes and associated documents, all such documents being integral parts of and collectively referred to in this resolution as the ''Convention'' (contained in Treaty Document 103–21), subject to the conditions of subsection (b) and the declarations of subsection (e):

(1) The Annex on Chemicals.

(2) The Annex on Implementation and Verification (also known as the ''Verification Annex'').

(3) The Annex on the Protection of Confidential Information (also known as the ''Confidentiality Annex'').

(4) The Resolution Establishing the Preparatory Commission for the Organization for the Prohibition of Chemical Weapons.

(5) The Text on the Establishment of a Preparatory Commission.

(b) CONDITIONS.—The advice and consent of the Senate to the ratification of the Convention is subject to the following conditions, which shall be binding upon the President:

(1) AMENDMENT CONFERENCES.—The United States will be present and participate fully in all Amendment Conferences and will cast its vote, either affirmatively or negatively, on all proposed amendments made at such conferences, to ensure that—

(A) the United States has an opportunity to consider any and all amendments in accordance with its Constitutional processes; and

(B) no amendment to the Convention enters into force without the approval of the United States.

(2) PRESIDENTIAL CERTIFICATION ON DATA DECLARATIONS.—(A) Not later than 10 days after the Convention enters into force, or not later than 10 days after the deposit of the Russian instrument of ratification of the Convention, whichever is later, the President shall either—

(i) certify to the Senate that Russia has complied satisfactorily with the data declaration requirements of the Wyoming Memorandum of Understanding; or

(ii) submit to the Senate a report on apparent discrepancies in Russia's data under the Wyoming Memorandum of Understanding and the results of any bilateral discussions regarding those discrepancies.

(B) For purposes of this paragraph, the term ''Wyoming Memorandum of Understanding'' means the Memorandum of Understanding Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding a Bilateral Verification Experiment and Data Exchange Related to Prohibition on Chemical Weapons, signed at Jackson Hole, Wyoming, on September 23, 1989.

(3) PRESIDENTIAL CERTIFICATION ON THE BILATERAL DESTRUCTION AGREEMENT.—Before the deposit of the United States instrument of ratification of the Convention, the President shall certify in writing to the Senate that—

(A) a United States-Russian agreement on implementation of the Bilateral Destruction Agreement has been or will shortly be concluded, and that the verification procedures under that agreement will meet or exceed those mandated by the Convention, or

(B) the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons will be prepared, when the Convention enters into force, to submit a plan for meeting the Organization's full monitoring responsibilities that will include United States and Russian facilities as well as those of other parties to the Convention.

(4) NONCOMPLIANCE.—If the President determines that a party to the Convention is in violation of the Convention and that the actions of such party threaten the national security interests of the United States, the President shall—

(A) consult with, and promptly submit a report to, the Senate detailing the effect of such actions on the Convention;

(B) seek on an urgent basis a meeting at the highest diplomatic level with the Organization for the Prohibition of Chemical Weapons (in this resolution referred to as the ''Organization'') and the noncompliant party with the objective of bringing the noncompliant party into compliance;

(C) in the event that a party to the Convention is determined not to be in compliance with the convention, request consultations with the Organization on whether to—

(i) restrict or suspend the noncompliant party's rights and privileges under the Convention until the party complies with its obligations;

(ii) recommend collective measures in conformity with international law; or

(iii) bring the issue to the attention of the United Nations General Assembly and Security Council; and

(D) in the event that noncompliance continues, determine whether or not continued adherence to the Convention is in the national security interests of the United States and so inform the Senate.

(5) FINANCING IMPLEMENTATION.—The United States understands that in order to ensure the commitment of Russia to destroy its Chemical stockpiles, in the event that Russia ratifies the Convention, Russia must maintain a substantial stake in financing the implementation of the Convention. The costs of implementing the Convention should be borne by all parties to the Convention. The deposit of the United States instrument of ratification of the Convention shall not be contingent upon the United States providing financial guarantees to pay for implementation of commitments by Russia or any other party to the Convention.

(6) IMPLEMENTATION ARRANGEMENTS.—If the Convention does not enter into force or if the Convention comes into force with the United States having ratified the Convention but with Russia having taken no action to ratify or accede to the Convention, then the President shall, if he plans to implement reductions of United States Chemical forces as a matter of national policy or in a manner consistent with the Convention.

(A) consult with the Senate regarding the effect of such reductions on the national security of the United States; and

(B) take no action to reduce the United States Chemical stockpile at a pace faster than that currently planned and consistent with the Convention until the President submits to the Senate his determination that such reductions are in the national security interests of the United States.

(7) PRESIDENTIAL CERTIFICATION AND REPORT ON NATIONAL TECHNICAL MEANS.—Not later than 90 days after the deposit of the United States instrument of ratification of the Convention, the President shall certify that the United States National Technical Means and the provisions of the Convention on verification of compliance, when viewed together, are sufficient to ensure effective verification of compliance with the provisions of the Convention. This certification shall be accompanied by a report, which may be supplemented by a classified annex, indicating how the United States National Technical Means, including collection, processing and analytic resources, will be marshalled, together with the Convention's verification provisions, to ensure effective verification of compliance. Such certification and report shall be submitted to the Committee on Foreign Relations, the Committee on Appropriations, the Committee on Armed Services, and the Select Committee on Intelligence of the Senate.

(c) DECLARATIONS.—The advice and consent of the Senate to ratification of the Convention is subject to the following declarations, which express the intent of the Senate:

(1) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the Resolution of Ratification with respect to the INF Treaty, approved by the Senate on May 27, 1988. For purposes of this declaration, the term ''INF Treaty'' refers to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter Range Missiles, together with the related memorandum of understanding and protocols, approved by the Senate on May 27, 1988.

(2) FURTHER ARMS REDUCTION OBLIGATIONS.—The Senate declares its intention to consider for approval international agreements that would obligate the United States to reduce or limit the Armed Forces or armaments of the United States in a militarily significant manner only pursuant to the treaty power set forth in Article II, Section 2, Clause 2 of the Constitution.

(3) RETALIATORY POLICY.—The Senate declares that the United States should strongly reiterate its retaliatory policy that the use of chemical weapons against United States military forces or civilians would result in an overwhelming and devastating response, which may include the whole range of available weaponry.

(4) CHEMICAL DEFENSE PROGRAM.—The Senate declares that ratification of the Convention will not obviate the need for a robust, adequately funded Chemical defense program, together with improved national intelligence capabilities in the nonproliferation area, maintenance of an effective deterrent through capable conventional forces, trade-enabling export controls, and other capabilities. In giving its advice and consent to ratification of the Convention, the Senate does so with full appreciation that the entry into force of the Convention enhances the responsibility of the Senate to ensure that the United States continues an effective and adequately funded Chemical defense program. The Senate further declares that the United States should continue to develop theater missile defense to intercept ballistic missiles that might carry Chemical weapons and should enhance defenses of the United States Armed Forces against the use of chemical weapons in the field.

(5) ENFORCEMENT POLICY.—The Senate urges the President to pursue compliance questions under the Convention vigorously and to seek international sanctions if a party to the Convention does not comply with the Convention, including the ''obligation to make every reasonable effort to demonstrate its compliance with this Convention'', pursuant to paragraph 11 of Article IX. It should not be necessary to prove the noncompliance of a party to the Convention before the United States raises issues bilaterally or in appropriate international fora and takes appropriate actions.

(6) APPROVAL OF INSPECTORS.—The Senate expects that the United States will exercise its right to reject a proposed inspector or inspection assistant when the facts indicate that this person is likely to seek information to which the inspection team is not entitled or to mishandle information that the team obtains.

(7) ASSISTANCE TO RUSSIA.—The Senate declares that, if the United States provides limited financial assistance for the destruction of Russian chemical weapons, the United States should, in exchange for such assistance, require Russia to destroy its chemical weapons stocks at a proportional rate to the destruction of United States chemical weapons stocks, and to take the action before the Convention deadline. In addition, the Senate urges the President to request Russia to allow inspections of former military facilities that have been converted to commercial production, given the possibility that these plants could one day be reconverted to military use, and that any United States assistance for the destruction of the Russian chemical stockpile be apportioned according to Russia's openness to these broad based inspections.

(8) EXPANDING CHEMICAL ARSENALS IN COUNTRIES NOT PARTY TO THE CHEMICAL WEAPONS CONVENTION.—It is the sense of the Senate that, if during the time the Convention remains in force the President determines that there has been an expansion of the chemical weapons arsenals of any country not a party to the Convention so as to jeopardize the supreme national interests of the United States, then the President should consult on an urgent basis with the Senate to determine whether adherence to the Convention remains in the national interest of the United States.

(9) COMPLIANCE.—Concerned by the clear pattern of Soviet noncompliance with arms control agreements and continued cases of noncompliance by Russia, the Senate declares the following:

(A) The Convention is in the interest of the United States only if both the United States and Russia, among others, are in strict compliance with the terms of the Convention as submitted to the Senate for its advice and consent to ratification, such compliance being measured by performance and not be efforts, intentions, or commitments to comply.

(B)(i) Given its concern about compliance issues, the Senate expects the President to offer regular briefings, but not less than several times a year, to the Committees on Foreign Relations and Armed Services and the Select Committee on Intelligence of the Senate on compliance issues related to the Convention. Such briefings shall include a description of all United States efforts in diplomatic channels and bilateral as well as the multilateral Organization fora to resolve the compliance issues and shall include, but would not necessarily be limited to a description of—

(I) any compliance issues, other than those requiring challenge inspections, that the United States plans to raise with the Organization; and

(II) any compliance issues raised at the Organization, within 30 days.

(ii) Any Presidential determination that Russia is in noncompliance with the Convention shall be transmitted to the committees specified in clause (i) within 30 days of such a determination, together with a written report, including all unclassified summary, explaining why it is in the national security interests of the United States to continue as a party to the Convention.

(10) SUBMISSION OF FUTURE AGREEMENTS AS TREATIES.—The Senate declares that after the Senate gives its advice and consent to ratification of the Convention, any agreement or understanding which in any material way modifies, amends, or reinterprets United States and Russian obligations, or those of any other country, under the Convention, including the time frame for implementation of the Convention, should be submitted to the Senate for its advice and consent to ratification.

(11) RIOT CONTROL AGENTS.—(A) The Senate, recognizing that the Convention's prohibition on the use of riot control agents as a ''method of warfare'' precludes the use of such agents against combatants, including use for humanitarian purposes where combatants and noncombatants intermingled, urges the President—

(i) to give high priority to continuing efforts to develop effective nonchemical, nonlethal alternatives to riot control agents for

use in situations where combatants and noncombatants are interminglied; and

(ii) to ensure that the United States actively participates with other parties to the Convention in any reassessment of the appropriateness of the prohibition as it might apply to such situations as the rescue of downed air crews and passengers and escaping prisoners or in situations in which civilians are being used to mask or screen attacks.

(B) For purposes of this paragraph, the term ''riot control agents'' is used within the meaning of Article II(4) of the Convention.

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. DOMENICI (for himself and Mr. BINGAMAN):

S. 2063. A bill to limit the authority of the Secretary of the Army to acquire land adjacent to Abiquiu Dam in New Mexico; to the Committee on Environment and Public Works.

By Ms. SNOWE:

S. 2064. A bill to amend the Public Health Service Act to extend the program of research on breast cancer; to the Committee on Labor and Human Resources.

By Mrs. FEINSTEIN:

S. 2065. A bill to amend the Higher Education Act of 1965 to require open campus security crime logs at institutions of higher education; to the Committee on Labor and Human Resources.

By Mr. DASCHLE (for himself, Mr. CONRAD, Mr. DORGAN, Mr. EXON, Mr. KERREY, Mr. WELLSTONE, Mr. PRESSLER, Mr. GRASSLEY, and Mr. HARKIN):

S. 2066. A bill to amend the Northern Great Plains Rural Development Act to the duration of the Northern Great Plains Rural Development Commission, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 2063. A bill to limit the authority of the Secretary of the Army to acquire land adjacent to Abiquiu Dam in New Mexico; to the Committee on Environment and Public Works.

ABIQUIU DAM LEGISLATION

● Mr. DOMENICI. Mr. President, today I introduce a bill that clarifies the intent of Congress regarding Public Law 100–522. That law authorized the Army Corps of Engineers to store water at Abiquiu Dam in northern New Mexico. The law also authorized the corps to acquire lands adjacent to Abiquiu Dam for recreational access purposes.

For the past several years, the corps' Albuquerque office has been working to determine how the area around the dam should be developed. During that time, it became clear that the local community was extremely concerned that the corps might proceed with condemnation of all 6,000 acres of flood easement lands around the lake. Such an action would be extremely disruptive to the Abiquiu community.

In response to those concerns, I introduced legislation last Congress that would have clarified that the acquisition of lands adjacent to the dam by the corps would be from willing sellers only. Since that time, the corps and the local Abiquiu Reservoir Advisory Council have been meeting to address the concerns of the local community.

Both the local community and I are very appreciative of the outreach and involvement that the Army Corps' Albuquerque district engineer has shown on this issue since I introduced my legislation last Congress. Indeed, in July of 1995 the corps released its master plan/environmental assessment for Abiquiu Reservoir, a plan which specifically reflected the intent of Public Law 100–522 by recommending that acquisition of land around the reservoir should only be from willing sellers.

However, because of the inherent short-term nature of the position of Albuquerque district engineer, and because of past concerns about corps policy toward condemnation of land at the reservoir, the local community still believes, as do I, that there should be an express clarification of congressional intent to protect the local community at Abiquiu from unreasonable condemnation proceedings.

Consequently, today I am again introducing legislation that will clarify congressional intent that land acquired by the corps at Abiquiu Dam is to be acquired from willing sellers only. This legislation will give the citizens of the Abiquiu area the peace of mind that they deserve about the integrity of their property. As one long-time Abiquiu resident told me recently, ''I don't want my grandchildren to have to go through this terrible threat of the Government taking away our ranch.'' My legislation will put an end to that threat, and I urge my colleagues to support this bill.

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

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

S. 2063

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

SECTION 1. LIMITATION ON LAND ACQUISITION.

Section 1 of the Act entitled ''An Act to authorize continued storage of water at Abiquiu Dam in New Mexico'', approved October 24, 1988 (43 U.S.C. 620a note), is amended by inserting immediately following ''acquire lands'' the following: ''only from willing sellers''.●

By Ms. SNOWE:

S. 2064. A bill to amend the Public Health Service Act to extend the program of research on breast cancer; to the Committee on Labor and Human Resources.

THE BREAST CANCER RESEARCH EXTENSION ACT OF 1996

● Ms. SNOWE. Mr. President, I introduce legislation which authorizes increased funding for breast cancer research.

Over the past 5 years, Congress has demonstrated an increased commitment to the fight against breast cancer. Back in 1991, less than $100 million was spent on breast cancer research. Since then, Congress has steadily increased this allocation. These increases have stimulated new and exciting research that has begun to unravel the mysteries of this devastating disease and is moving us closer to a cure. Today, we must send a message through our authorization level to scientists and research policymakers that we are committed to continued funding for this important research.

This increase in funding is necessary because breast cancer has reached crisis levels in America. This year alone, 184,000 new cases of breast cancer will be diagnosed in this country, and more than 44,000 women will die from this disease. Breast cancer is the most common form of cancer and the second leading cause of cancer deaths among American women. Today, over 2.6 million American women are living with this disease. In my home State of Maine, it is the most commonly diagnosed cancer among women, representing more than 30 percent of all new cancers in Maine women.

In addition to these enormous human costs, breast cancer also exacts a heavy financial toll—over $6 billion of our health care dollars are spent on breast cancer annually.

Today, however, there is cause for hope. Recent scientific progress made in the fight to conquer breast cancer is encouraging. Researchers have isolated the genes responsible for heritable breast cancer, and are beginning to understand the mechanism of the cancer cell itself. It is imperative that we capitalize upon these advances by continuing to support the scientists investigating this disease and their innovative research.

For this reason, my bill increases the fiscal year 1997 funding authorization level for breast cancer research to $575 million. This level is just $20 million over the National Cancer Institute's fiscal year 1997 bypass budget, representing the funding level scientists believe is necessary to make progress against this disease. This increased funding will contribute substantially toward solving the mysteries surrounding breast cancer. Our continued investment will save countless lives and health care dollars, and prevent undue suffering in millions of American women and families.

On behalf of the 2.6 million women living with breast cancer, I urge my colleagues to support this important bill.●

By Mrs. FEINSTEIN:

S. 2065. A bill to amend the Higher Education Act of 1965 to require open campus security crime logs at institutions of higher education; to the Committee on Labor and Human Resources.

THE OPEN CAMPUS POLICE LOGS ACT OF 1996

● Mrs. FEINSTEIN. Mr. President, today I introduce the Open Campus Police Logs Act of 1996.

Mr. President, every year around this time thousands of students leave home to begin their pursuit of a college degree. These students—and their parents—expect not only a quality education, but also a campus on which they can study and live in safety. Yet, statistics show that during a 4-year-period, one in four college students will become a victim of violent crime. And according to the Chronicle of Higher Education, the number of crimes on college campuses are on the rise.

Under the Campus Security Act of 1990, colleges and universities are required to make crime statistics available to students, applicants and school employees. However, under-reporting of crime statistics by school administrators and the utilization of internal campus disciplinary systems, which are protected by privacy laws, have rendered the existing law ineffective.

All too often, we hear stories of college administrators who pressure victims to use discretion and to settle cases internally—without resort to the criminal justice system. Offenders then come before the campus tribunal, and are never publicly processed for the crimes. Sometimes, even the victims themselves cannot find out what happened in these internal trials.

And all too often, Mr. President, colleges and universities concerned about their image have been found to underreport crime and hide the true statistics from applicants and the media.

Students are unable to discover the true rate of campus crime, and are therefore unable to make informed decisions about where to go and how safe certain areas truly are.

The bill I am proposing today would extend the current law, in order to further inform students of the crimes occurring on college campuses so that they can better protect themselves.

This bill would continue to require that schools receiving Federal money compile statistics on crimes like murder and rape. However, it would also require schools to maintain a daily log—one that is open to public inspection—of all crimes committed against person or property.

These daily logs would chronicle not only the time, place and date of the crime, but also the names and addresses of all those arrested by the campus police or security force. No more could colleges hide statistics in annual reports and with secret, unreported disciplinary hearings. Every student or employee would have access, every day, to information about every arrest occurring on campus.

Some colleges and universities will argue that this bill is too burdensome. But this legislation should not be viewed by college administrators as an added burden for the campus security office, but rather as an effective tool to better inform the collegiate community. Students and employees have a right to know what dangers they face on campus. It is through this improved awareness that students and faculty will be able to better protect themselves. After all, one of the best weapons we have for deterring crime is accurate and timely information.

A New York Times reporter recently wrote about a woman who had been raped in February of last year—by a fellow student at her university in Ohio. Although the university's disciplinary board found the accused guilty of violating the student code regarding sexual assault, he was merely placed on student probation. He never went through a criminal trial.

As a result, the offending student was free to come and go on a campus where most women did not—and indeed could not—realize that he had committed any crime at all.

At this same school, Mr. President—where the student rapist was placed on probation—possession of a beer by an underage student can result in automatic suspension.

Furthermore, when the university published their official crime statistics later that fall, no rapes were reported. It is clear that compliance with reporting requirements could be far better.

Colleges and universities have made it their mission to provide a quality education in a suitable environment to America's students. By failing to disclose the true nature of crime on their campuses, administrations are not living up to this goal. We must make our campuses safer, by allowing students to better protect themselves from potential crime through the daily, public disclosure of past incidents and potential dangers.

Mr. President, it is an unfortunate fact that today's students must take care to protect themselves from serious crime on our college campuses. Yes, protecting the privacy of accused students is important. But protecting the safety of potential victims is equally vital to providing an enriching and safe experience for each and every one of the many children who leave home each year in search of a future full of promise and prosperity.

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

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

S. 2065

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Open Campus Police Logs Act of 1996''.

SEC. 2. DAILY RECORD AND DISCLOSURE OF REPORTED CRIMES.

(a) AMENDMENT.—Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f) is amended by adding at the end the following new paragraph:

''(8) Each institution participating in any program under this title which maintains either a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording in chronological order all crimes against persons or property reported to its police or security department, the date, time, and location of such crimes, and, if an arrest has been made, the names and addresses of all persons arrested and charges against such persons arrested. The provision of this paragraph shall not be construed to require an institution to identify in its log, unless otherwise provided by law, the names of the persons reporting the crime, the victim or victims, any witnesses or suspects who have not been arrested, or other information relating to any investigation of the crime. All entries in such daily logs shall, unless otherwise provided by State or Federal law, be open to public inspection.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act.●

By Mr. DASCHLE (for himself, Mr. CONRAD, Mr. DORGAN, Mr. EXON, Mr. KERREY, Mr. WELLSTONE, Mr. PRESSLER, Mr. GRASSLEY, and Mr. HARKIN):

S. 2066. A bill to amend the Northern Great Plains Rural Development Act to the duration of the Northern Great Plains Rural Development Commission, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

THE NORTHERN GREAT PLAINS RURAL DEVELOPMENT ACT AMENDMENT ACT OF 1996

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

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

S. 2066

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

SECTION 1. EXTENSION OF NORTHERN GREAT PLAINS RURAL DEVELOPMENT COMMISSION.

Section 11 of the Northern Great Plains Rural Development Act (Public Law 103–318; 7 U.S.C. 2661 note) is amended by striking ''the earlier'' and all that follows through the period at the end and inserting ''September 30, 1997.''.

ADDITIONAL COSPONSORS

S. 607

At the request of Mr. SIMPSON, his name was added as a cosponsor of S. 607, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 684

At the request of Mr. HATFIELD, the name of the Senator from Alaska [Mr. MURKOWSKI] was added as a cosponsor of S. 684, a bill to amend the Public Health Service Act to provide for programs of research regarding Parkinson's disease, and for other purposes.

S. 1189

At the request of Mr. DEWINE, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 1189, a bill to provide procedures

for claims for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products.

S. 1505

At the request of Mr. LOTT, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 1505, a bill to reduce risk to public safety and the environment associated with pipeline transportation of natural gas and hazardous liquids, and for other purposes.

S. 1898

At the request of Mr. SIMON, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 1898, a bill to protect the genetic privacy of individuals, and for other purposes.

S. 1929

At the request of Mr. WELLSTONE, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1929, a bill to extend the authority for the Homeless Veterans' Reintegration Projects for fiscal years 1997 through 1999, and for other purposes.

S. 1944

At the request of Mr. HATFIELD, the names of the Senator from Hawaii [Mr. INOUYE], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of S. 1944, a bill to establish a commission to be known as the Harold Hughes Commission on Alcoholism.

S. 1951

At the request of Mr. FORD, the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor of S. 1951, a bill to ensure the competitiveness of the United States textile and apparel industry.

S. 1963

At the request of Mr. ROCKEFELLER, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 1963, a bill to establish a demonstration project to study and provide coverage of routine patient care costs for Medicare beneficiaries with cancer who are enrolled in an approved clinical trial program.

S. 1967

At the request of Mr. BROWN, the names of the Senator from New Mexico [Mr. BINGAMAN], the Senator from Massachusetts [Mr. KERRY], the Senator from Illinois [Mr. SIMON], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of S. 1967, a bill to provide that members of the Armed Forces who performed services for the peacekeeping efforts in Somalia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes.

S. 2030

At the request of Mr. LOTT, the names of the Senator from South Dakota [Mr. PRESSLER], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Kentucky [Mr. FORD], and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of S. 2030, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles, and for other purposes.

AMENDMENT NO. 5224

At the request of Mr. THOMAS the names of the Senator from Alaska [Mr. STEVENS], and the Senator from Kansas [Mrs. FRAHM] were added as cosponsors of amendment No. 5224 proposed to H.R. 3756, a bill making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1997, and for other purposes.

AMENDMENT NO. 5232

At the request of Mr. KERREY the names of the Senator from Maine [Ms. SNOWE], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Kentucky [Mr. MCCONNELL] were added as cosponsors of amendment No. 5232 proposed to H.R. 3756, a bill making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1997, and for other purposes.

AMENDMENTS SUBMITTED

THE TREASURY DEPARTMENT APPROPRIATIONS ACT, 1997

DASCHLE (AND DORGAN) AMENDMENT NO. 5234

(Ordered to lie on the table.)

Mr. DASCHLE (for himself, Mr. DORGAN, and Mr. SIMON) submitted an amendment intended to be proposed by them to the bill (H.R. 3756) making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 1997, and for other purposes; as follows:

At the appropriate place in the bill, insert the following:

TITLE ___—HEALTH INSURANCE EQUITY FOR CONGRESSIONAL AND CONTRACT EMPLOYEES

SEC. ___01. SHORT TITLE OF TITLE.

This title may be cited as the ''Congressional Contractor Health Insurance Equity Act''.

SEC. ___02. DEFINITIONS.

For purposes of this title:

(1) CONTRACT.—The term ''contract'' means any contract for items or services or any lease of Government property (including any subcontract of such contract or any sublease of such lease)—

(A) the consideration with respect to which is greater than $75,000 per year,

(B) with respect to a contract for services, requires at least 1000 hours of services, and

(C) entered into between any entity or instrumentality of the legislative branch of the Federal Government and any individual or entity employing at least 15 full-time employees.

(2) EMPLOYEE.—The term ''employee'' has the meaning given such term under section 3(6) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(6)).

(3) ENTITY OF THE LEGISLATIVE BRANCH.—The term ''entity of the legislative branch'' includes the following:

(A) The House of Representatives.

(B) The Senate.

(C) The Capitol Guide Service.

(D) The Capitol Police.

(E) The Congressional Budget Office.

(F) The Office of the Architect of the Capitol.

(G) The Office of the Attending Physician.

(H) The Office of Compliance.

(4) GROUP HEALTH PLAN.—The term ''group health plan'' means any plan or arrangement which provides, or pays the cost of, health benefits that are actuarially equivalent to the benefits provided under the standard option service benefit plan offered under chapter 89 of title 5, United States Code.

(5) INSTRUMENTALITY OF THE LEGISLATIVE BRANCH.—The term ''instrumentality of the legislative branch'' means the following:

(A) The General Accounting Office.

(B) The Government Printing Office.

(C) The Library of Congress.

SEC. ___03. GENERAL REQUIREMENTS CONCERNING CONTRACTS COVERED UNDER THIS ACT.

(a) IN GENERAL.—Any contract made or entered into by any entity or instrumentality of the legislative branch of the Federal Government shall contain provisions that require that—

(1) all persons employed by the contractor in the performance of the contract or at the location of the leasehold be offered health insurance coverage under a group health plan; and

(2) with respect to the premiums for such plan with respect to each employee—

(A) the contractor pay a percentage equal to the average Government contribution required under section 8906 of title 5, United States Code, for health insurance coverage provided under chapter 89 of such title; and

(B) the employee pay the remainder of such premiums.

(b) OPTION TO PURCHASE.—

(1) IN GENERAL.—Notwithstanding section 8914 of title 5, United States Code, a contractor to which subsection (a) applies that does not offer health insurance coverage under a group health plan to its employees on the date on which the contract is to take effect, may obtain any health benefits plan offered under chapter 89 of title 5, United States Code, for all persons employed by the contractor in the performance of the contract or at the location of the leasehold. Any contractor that exercises the option to purchase such coverage shall make any Government contributions required for such coverage under section 8906 of title 5, United States Code, with the employee paying the contribution required for such coverage for Federal employees.

(2) CALCULATION OF AMOUNT OF PREMIUMS.—Subject to paragraph (3)(B), the Director of the Office of Personnel Management shall calculate the amount of premiums for health benefits plans made available to contractor employees under paragraph (1) separately from Federal employees and annuitants enrolled in such plans.

(3) REVIEW BY OFFICE OF PERSONNEL MANAGEMENT.—

(A) ANNUAL REVIEW.—The Director of the Office of Personnel Management shall review at the end of each calendar year whether the

nonapplication of paragraph (2) would result in higher adverse selection, risk segmentation in, or a substantial increase in premiums for such health benefits plans. Such review shall include a study by the Director of the health care utilization and risks of contractor employees. The Director shall submit a report to the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate which shall contain the results of such review.

(B) NONAPPLICATION OF PARAGRAPH (2).—Beginning in the calendar year following a certification by the Director of the Office of Personnel Management under subparagraph (A) that the nonapplication of paragraph (2) will not result in higher adverse selection, risk segmentation in, or a substantial increase in premiums for such health benefits plans, paragraph (2) shall not apply.

(4) REQUIREMENT OF OPM.—The Director of the Office of Personnel Management shall take such actions as are appropriate to enable a contractor described in paragraph (1) to obtain the health insurance described in such paragraph.

(c) ADMINISTRATIVE FUNCTIONS.—

(1) IN GENERAL.—The office within the entity or instrumentality of the legislative branch of the Federal Government which administers the health benefits plans for Federal employees of such entity or instrumentality shall perform such tasks with respect to plan coverage purchased under subsection (b) by contractors with contracts with such entity or instrumentality.

(2) WAIVER AUTHORITY.—Waiver of the requirements of this title may be made by such office upon application.

SEC. ___04. EFFECTIVE DATE.

(a) IN GENERAL.—This title shall apply with respect to contracts executed, modified, or renewed on or after January 1, 1997.

(b) TERMINATION.—

(1) IN GENERAL.—This title shall not apply on and after October 1, 2001.

(2) TRANSITION RULE.—In the case of any contract under which, pursuant to this title, health insurance coverage is provided for calendar year 2001, the contractor and the employees shall, notwithstanding section ___03(a)(2), pay 1⅓ of the otherwise required monthly premium for such coverage in monthly installments during the period beginning on January 1, 2001, and ending before October 1, 2001.

KASSEBAUM AMENDMENT NO. 5235

Mrs. KASSEBAUM proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the end of the committee amendment, insert the following new section:

SEC. . PROTECTION OF PATIENT COMMUNICATIONS.

(a) FINDINGS.—Congress finds that—

(1) the health care market is dynamic, and the rapid changes seen in recent years can be expected to continue;

(2) the transformation of the health care market has promoted the development of innovative new treatments and more efficient delivery systems, but has also raised new and complex health policy challenges, touching on issues such as access, affordability, cost containment, and quality;

(3) appropriately addressing these challenges and the trade-offs they involve will require thoughtful and deliberate consideration by lawmakers, providers, consumers, and third-party payers; and

(4) the Patient Communications Protection Act of 1996 (S. 2005, 104th Congress) was first introduced in the Senate on July 31, 1996, and has not been subject to hearings or other review by the Senate or any of its committees.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Committee on Labor and Human Resources of the Senate, taking into account any relevant findings of the National Commission on Health Care Quality and other public and private entities with expertise in quality health care service delivery, should act expeditiously in the first session of the 105th Congress to schedule hearings and executive session consideration of legislation designed to ensure that patients be given access to all relevant information concerning their health care so as to permit such patients, in consultation with their physicians, to make appropriate decisions regarding their health care, and that the Senate should promptly consider that legislation.

SIMON (AND JEFFORDS) AMENDMENT NO. 5236

(Ordered to lie on the table.)

Mr. SIMON (for himself and Mr. JEFFORDS) submitted an amendment intended to be proposed by them to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, insert the following new title:

TITLE ___—PENSION AUDIT IMPROVEMENT ACT OF 1996

SEC. ___. SHORT TITLE.

This title may be cited as the ''Pension Audit Improvement Act of 1996''.

SEC. ___. PROVISIONS RELATING TO LIMITED SCOPE AUDIT.

(a) IN GENERAL.—Subparagraph (C) of section 103(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)(C)) is amended by adding at the end the following new clause:

''(ii) If an accountant is offering his opinion under this section in the case of an employee pension benefit plan, the accountant shall, to the extent consistent with generally accepted auditing standards, rely on the work of any independent public accountant of any bank or similar institution or insurance carrier regulated and supervised and subject to periodic investigation by a State or Federal agency that holds assets or processes transactions of the employee pension benefit plan.''

(b) CONFORMING AMENDMENTS.—

(1) Section 103(a)(3)(A) of such Act (29 U.S.C. 1023(a)(3)(A)) is amended by striking ''subparagraph (C)'' and inserting ''subparagraph (C)(i)''.

(2) Section 103(a)(3)(C) of such Act (29 U.S.C. 1023(a)(3)(C)) is amended by striking ''(C) The'' and inserting ''(C)(i) In the case of an employee benefit plan other than an employee pension benefit plan, the''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to opinions required under section 103(a)(3)(A) of the Employee Retirement Income Security Act of 1974 for plan years beginning on or after January 1 of the calendar year following the date of the enactment of this Act.

SEC. ___. REPORTING AND ENFORCEMENT REQUIREMENTS FOR EMPLOYEE PENSION BENEFIT PLANS.

(a) IN GENERAL.—Part 1 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021 et seq.) is amended—

(1) by redesignating section 111 as section 112, and

(2) by inserting after section 110 the following new section:

''REPORTING OF CERTAIN EVENTS INVOLVING PENSION PLANS

''SEC. 111. (a) REQUIRED NOTIFICATIONS.—

''(1) NOTIFICATIONS BY ACCOUNTANT TO PLAN ADMINISTRATOR.—

''(A) DETERMINATION OF LIKELIHOOD OF CRIMINAL ACTIVITY.—If an accountant engaged by the administrator of an employee pension benefit plan under section 103(a)(3)(A) detects or otherwise becomes aware of information indicating that a criminal activity may have occurred with respect to the plan, the accountant shall, in accordance with generally accepted auditing standards, determine whether it is likely that the criminal activity has occurred.

''(B) NOTIFICATION.—If an accountant determines under subparagraph (A) that it is likely that the criminal activity has occurred, the accountant shall, as soon as practicable—

''(i) notify and fully inform the plan administrator of the criminal activity in writing, or

''(ii) if the accountant has determined that the criminal activity involved an individual who is the plan administrator or who is a senior official of the plan administrator, notify and fully inform the named fiduciary of the plan who is not the plan administrator and who is designated under section 402(b)(5) to receive such notice of the criminal activity in writing.

''(2) NOTIFICATION BY ACCOUNTANT WHERE FAILURE TO TAKE REMEDIAL ACTION.—If, after providing the notification required under paragraph (1)(B), the accountant concludes that—

''(A) the plan administrator or the designated named fiduciary has been fully informed of the criminal activity,

''(B) the criminal activity has a material effect on the financial statements of the plan, and

''(C) the plan administrator or the designated named fiduciary has not taken timely and appropriate remedial actions with respect to the criminal activity,

the accountant shall, as soon as practicable, report its conclusions in writing to the plan administrator or designated named fiduciary, as applicable.

''(3) NOTIFICATION OF SECRETARY.—

''(A) IN GENERAL.—A plan administrator or designated named fiduciary of a plan receiving a report under paragraph (2) shall, not later than 5 business days after receipt of such report—

''(i) notify the Secretary of such report, and

''(ii) furnish to the accountant making such report a copy of the notice furnished to the Secretary under clause (i).

''(B) FAILURE TO RECEIVE NOTICE.—If an accountant does not receive a copy of the notice under subparagraph (A)(ii) within the time period prescribed therein, the accountant shall—

''(i) resign from engagement with the plan, or

''(ii) furnish to the Secretary a copy of its report under paragraph (2) not later than 1 business day following the close of such time period.

''(4) RESPONSE BY SECRETARY.—

''(A) IN GENERAL.—Any investigation by the Secretary in response to the notification under subparagraph (A)(i) or (B)(ii) of paragraph (3) shall be completed within 180 days of the receipt of such notification, unless the Secretary determines that additional time is necessary to complete the investigation due to—

''(i) the complexity of the investigation,

''(ii) the lack of cooperation by plan representatives, or

''(iii) the need for coordination with other law enforcement agencies.

The Secretary's failure to comply with this subparagraph shall not be a defense to any civil complaint or criminal charge arising

from notification under subparagraph (A)(i) or (B)(ii) of paragraph (3).

''(B) DISCLOSURE OF REPORT PROHIBITED.—

''(i) IN GENERAL.—Notwithstanding section 106 and except as provided in clause (ii), an officer or employee of the United States shall not disclose to the public any report described in paragraph (2) which is furnished to the Secretary under paragraph (3).

''(ii) EXCEPTIONS.—Clause (i) shall not be construed to prohibit the disclosure of such report by an officer or employee of the United States—

''(I) in carrying out their duties under this title (other than section 106), or

''(II) to any law enforcement authority of any Federal agency, any State or local government or political subdivision thereof, or any foreign country for purposes of carrying out their official duties.

''(iii) PENALTY FOR DISCLOSURE.—Any person who knowingly or willfully discloses any report in violation of this subparagraph shall, upon conviction, be guilty of a felony and punished by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution. In addition to any other punishment, such person shall be dismissed from office or discharged from employment upon conviction for such offense.

''(5) CRIMINAL ACTIVITY DEFINED.—

''(A) For purposes of this subsection, the term 'criminal activity' means—

''(i) a theft, embezzlement, or a violation of section 664 of title 18, United States Code (relating to theft or embezzlement from an employee benefit plan);

''(ii) an extortion or a violation of section 1951 of such title 18 (relating to interference with commerce by threats or violence);

''(iii) a bribery, a kickback, or a violation of section 1954 of such title 18 (relating to offer, acceptance, or solicitation to influence operations of an employee benefit plan);

''(iv) a violation of section 1027 of such title 18 (relating to false statements and concealment of facts in relation to employer benefit plan records); or

''(v) a violation of section 411, 501, or 511 of this title (relating to criminal violations).

''(B) The term 'criminal activity' shall not include any act or omission described in this paragraph involving less than $1,000 unless there is reason to believe that the act or omission may bear on the integrity of plan management.

''(b) NOTIFICATION UPON TERMINATION OF ENGAGEMENT OF ACCOUNTANT.—

''(1) NOTIFICATION BY PLAN ADMINISTRATOR.—Within 5 business days after the termination of an engagement for auditing services under section 103(a)(3)(A) with respect to an employee pension benefit plan, the administrator of such plan shall—

''(A) notify the Secretary in writing of such termination, giving the reasons for such termination, and

''(B) furnish the accountant whose engagement was terminated with a copy of the notification sent to the Secretary.

''(2) NOTIFICATION BY ACCOUNTANT.—If the accountant referred to in paragraph (1)(B) has not received a copy of the administrator's notification to the Secretary as required under paragraph (1)(B), or if the accountant disagrees with the reasons given in the notification of termination of the engagement for auditing services, the accountant shall notify the Secretary in writing of the termination, giving the reasons for the termination, within 10 business days after the termination of the engagement.

''(c) DETERMINATION OF PERIODS REQUIRED FOR NOTIFICATION.—In determining whether a notification required under this section with respect to any act or omission has been made within the required number of business days—

''(1) the day on which such act or omission begins shall not be included; and

''(2) Saturdays, Sundays, and legal holidays shall not be included.

For purposes of this subsection, the term 'legal holiday' means any Federal legal holiday and any other day appointed as a holiday by the State in which the person responsible for making the notification principally conducts his business.

''(d) IMMUNITY FOR GOOD FAITH NOTIFICATION OR REPORT.—Except as provided in this Act, no accountant, plan administrator, or designated named fiduciary shall be liable to any person for any finding, conclusion, or statement made in any notification or report made pursuant to subsection (a) or (b), or pursuant to any regulations issued thereunder, if such finding, conclusion, or statement is made in good faith.''

(b) DESIGNATION OF NAMED FIDUCIARY.—Section 402(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1102(b)) is amended by striking ''and'' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting '', and'', and by adding at the end the following new paragraph:

''(5) if such plan engages an independent qualified public accountant under section 103(a)(3)(A), designate a named fiduciary other than the plan administrator to receive any notification from such accountant required under section 111(a)(1)(B)(ii).''

(c) CIVIL PENALTY.—

(1) IN GENERAL.—Section 502(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended by adding at the end the following new paragraph:

''(5) The Secretary may assess a civil penalty of up to $50,000 against any plan administrator or accountant who knowingly and willfully fails to provide the Secretary with any notification as required under section 111.''

(2) CONFORMING AMENDMENT.—Section 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) is amended by striking ''subsection (c)(2) or (i) or (l)'' and inserting ''paragraph (2), (4), or (5) of subsection (c) or subsection (i) or (l)''.

(d) CLERICAL AMENDMENTS.—

(1) Section 514(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(d)) is amended by striking ''111'' and inserting ''112''.

(2) The table of contents in section 1 of such Act is amended by striking the item relating to section 111 and inserting the following new items:

''Sec. 111. Reporting of certain events involving pension plans.
''Sec. 112. Repeal and effective date.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any criminal activity or termination of engagement described in such amendments only if the 5-day period described in such amendments in connection with such criminal activity or termination commences at least 90 days after the date of the enactment of this Act.

SEC. ___. ADDITIONAL REQUIREMENTS FOR QUALIFIED PUBLIC ACCOUNTANTS.

(a) IN GENERAL.—Section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)(D)) is amended—

(1) by inserting ''(i)'' after ''(D)'';

(2) by inserting '', with respect to any engagement of an accountant under subparagraph (A)'' after ''means'';

(3) by redesignating clauses (i), (ii), and (iii) as subclauses (I), (II), and (III), respectively;

(4) by striking the period at the end of subclause (III) (as so redesignated) and inserting a comma;

(5) by adding after subclause (III) (as so redesignated), and flush with clause (i), the following:

''but only if such person meets the requirements of clauses (ii) and (iii) with respect to such engagement.''; and

(6) by adding at the end the following new clauses:

''(ii) A person meets the requirements of this clause with respect to an engagement of such person as an accountant under subparagraph (A) if such person—

''(I) has in operation an appropriate internal quality control system;

''(II) has undergone a qualified external quality control review of the person's accounting and auditing practices, including such practices relevant to employee pension benefit plans (if any), during the 3-year period immediately preceding such engagement; and

''(III) has completed, within the 2-year period immediately preceding such engagement, at least 80 hours of continuing education or training which contributes to the accountant's professional proficiency and which meets such requirements as may be prescribed by the Secretary in regulations.

The Secretary shall issue the regulations under subclause (III) no later than December 31, 1997.

''(iii) A person meets the requirements of this clause with respect to an engagement of such person as an accountant under subparagraph (A) if such person meets such additional requirements and qualifications of regulations which the Secretary deems necessary to ensure the quality of plan audits.

''(iv) For purposes of clause (ii)(II), an external quality control review shall be treated as qualified with respect to a person referred to in clause (ii) if—

''(I) such review is performed in accordance with the requirements of external quality control review programs of recognized auditing standard-setting bodies, as determined under regulations of the Secretary, and

''(II) in the case of any such person who has, during the peer review period, conducted one or more previous audits of employee pension benefit plans, such review includes the review of an appropriate number (determined as provided in such regulations, but in no case less than one) of plan audits in relation to the scale of such person's auditing practice.

The Secretary shall issue the regulations under subclause (I) no later than December 31, 1997.''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to plan years beginning on or after the date which is 3 years after the date of the enactment of this Act.

(2) RESTRICTIONS ON CONDUCTING EXAMINATIONS.—Clause (iii) of section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)(6)) shall take effect on the date of enactment of this Act.

SEC. ___. CLARIFICATION OF FIDUCIARY PENALTIES.

(a) MODIFICATION OF PROHIBITION OF ASSIGNMENT OR ALIENATION.—

(1) AMENDMENT TO ERISA.—Section 206(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(d)) is amended by adding at the end the following new paragraphs:

''(4) Paragraph (1) shall not apply to any offset of a participant's accrued benefit in an employee pension benefit plan against an amount that the participant is ordered or required to pay to the plan if—

''(A) the order or requirement to pay arises—

''(i) under a judgment of conviction for a crime involving such plan,

''(ii) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of this subtitle, or

''(iii) pursuant to a settlement agreement between the Secretary and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of this subtitle,

''(B) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's accrued benefit in the plan, and

''(C) if the participant has a spouse at the time at which the offset is to be made—

''(i) such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan,

''(ii) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of this subtitle, or

''(iii) in such judgment, order, decree, or settlement, such spouse retains the right to receive the value of the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 205(a)(1) and under a qualified preretirement survivor annuity provided pursuant to section 205(a)(2), determined in accordance with paragraph (5).

''(5)(A) The value of the survivor annuity described in paragraph (4)(C)(iii) shall be determined as if—

''(i) the participant terminated employment on the date of the offset,

''(ii) there was no offset,

''(iii) the plan permitted retirement only on or after normal retirement age,

''(iv) the plan provided only the minimum-required qualified joint and survivor annuity, and

''(v) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

''(B) For purposes of this paragraph, the term 'minimum-required qualified joint and survivor annuity' means the qualified joint and survivor annuity which is the actuarial equivalent of a single annuity for the life of the participant and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.''

(2) AMENDMENT TO INTERNAL REVENUE CODE.—Section 401(a)(13) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraphs:

''(C) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS.—Subparagraph (A) shall not apply to any offset of a participant's accrued benefit in a plan against an amount that the participant is ordered or required to pay to the plan if—

''(i) the order or requirement to pay arises—

''(I) under a judgment of conviction for a crime involving such plan,

''(II) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

''(III) pursuant to a settlement agreement between the Secretary of Labor and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of such Act,

''(ii) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's accrued benefit in the plan, and

''(iii) if the participant has a spouse at the time at which the offset is to be made—

''(I) such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan,

''(II) such spouse is ordered or required to pay in such judgment, order, decree, or settlement an amount to the plan in connection with a violation of part 4 of subtitle B of title I of such Act, or

''(III) in such judgment, order, decree, or settlement, such spouse retains the right to receive the value of the survivor annuity under a qualified joint and survivor annuity provided pursuant to paragraph (11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to paragraph 11(A)(ii), determined in accordance with subparagraph (D).

''(D) DETERMINATION OF VALUE OF SURVIVOR ANNUITY IN CONNECTION WITH OFFSET.—The value of the survivor annuity described in subparagraph (C)(iii)(III) shall be determined as if—

''(i) the participant terminated employment on the date of the offset,

''(ii) there was no offset,

''(iii) the plan permitted retirement only on or after normal retirement age,

''(iv) the plan provided only the minimum-required qualified joint and survivor annuity, and

''(v) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

For purposes of this subparagraph, the term 'minimum-required qualified joint and survivor annuity' means the qualified joint and survivor annuity which is the actuarial equivalent of a single annuity for the life of the participant and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

''(E) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS.—With respect to the requirements of subsections (a) and (k) of section 401, section 403(b), and section 409(d), a plan shall not be treated as failing to meet such requirements solely by reason of an offset under subparagraph (C).''

(3) EFFECTIVE DATE.—The amendment made by this subsection shall apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after the date of enactment of this Act.

(b) CIVIL PENALTIES FOR BREACH OF FIDUCIARY RESPONSIBILITY.—

(1) IMPOSITION AND AMOUNT OF PENALTY MADE DISCRETIONARY.—Section 502(l)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(l)(1)) is amended—

(A) by striking ''shall'' and inserting ''may'', and

(B) by striking ''equal to'' and inserting ''not greater than''.

(2) APPLICABLE RECOVERY AMOUNT.—Section 502(l)(2) of such Act (29 U.S.C. 1132(l)(2)) is amended to read as follows:

''(2) For purposes of paragraph (1), the term 'applicable recovery amount' means any amount which is recovered from (or on behalf of) any fiduciary or other person with respect to a breach or violation described in paragraph (1) on or after the 30th day following receipt by such fiduciary or other person of written notice from the Secretary of the violation, whether paid voluntarily or by order of a court in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5). The Secretary may, in the Secretary's sole discretion, extend the 30-day period described in the preceding sentence.''

(3) OTHER RULES.—Section 502(l) of such Act (29 U.S.C. 1132(l)) is amended by adding at the end the following new paragraphs:

''(5) A person shall be jointly and severally liable for the penalty described in paragraph (1) to the same extent that such person is jointly and severally liable for the applicable recovery amount on which the penalty is based.

''(6) No penalty shall be assessed under this subsection unless the person against whom the penalty is assessed is given notice and opportunity for a hearing with respect to the violation and applicable recovery amount.''

(4) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to any breach of fiduciary responsibility or other violation of part 4 of subtitle B of title I of the Employment Retirement Income Security Act of 1974 occurring on or after the date of the enactment of this Act.

(B) TRANSITION RULE.—In applying the amendment made by paragraph (2) (relating to applicable recovery amount), a breach or other violation occurring before the date of the enactment of this Act which continues after the 180th day after such date (and which may be discontinued at any time during its existence) shall be treated as having occurred after such date of enactment.

GRAMS AMENDMENT NO. 5237

(Ordered to lie on the table.)

Mr. GRAMS submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At appropriate place insert the following section:

''SEC. . IMPROVEMENT OF THE IRS 1–800 HELP LINE SERVICE.

''(a) Funds made available by this or any other Act to the Internal Revenue Services shall be available for improved facilities and increased manpower to provide sufficient and effective 1–800 help line for taxpayers.

(b) The Commissioner shall make the improvement of the IRS 1–800 help line service a priority and allocate resources necessary to ensure the increase in phone lines and staff to improve the IRS 1-800 help line service.

BRYAN AMENDMENT NO. 5238

(Ordered to lie on the table.)

Mr. BRYAN submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. ___. FEDERAL RETIREMENT PROVISIONS RELATING TO MEMBERS OF CONGRESS AND CONGRESSIONAL EMPLOYEES.

(a) SHORT TITLE.—This section may be cited as the ''Congressional Annuity Reform Act of 1996''.

(b) RELATING TO THE YEARS OF SERVICE AS A MEMBER OF CONGRESS AND CONGRESSIONAL EMPLOYEES FOR PURPOSES OF COMPUTING AN ANNUITY.—

(1) CSRS.—Section 8339 of title 5, United States Code, is amended—

(A) in subsection (a) by inserting ''or Member'' after ''employee'';

(B) by striking subsections (b) and (c); and

(C) in subsection (h)—

(i) in the first sentence by striking out ''subsections (a), (b)'' and inserting in lieu thereof ''subsections (a),''; and

(ii) in the second sentence by striking out ''subsections (c) and (f)'' and inserting in lieu thereof ''subsections (a) and (f)''.

(2) FERS.—Section 8415 of title 5, United States Code, is amended—

(A) by striking subsections (b) and (c);

(B) in subsections (a) and (g) by inserting ''or Member'' after ''employee'' each place it appears; and

(C) in subsection (g)(2) by striking out ''Congressional employee''.

(c) CONTRIBUTION RATES.—

(1) CSRS.—(A) Section 8334(a)(1) of title 5, United States Code, is amended—

(i) by striking out ''of an employee, 7½ percent of the basic pay of a Congressional employee,'' and inserting in lieu thereof ''of an employee, a Member,''; and

(ii) by striking out ''basic pay of a Member,'' and inserting in lieu thereof ''basic pay of''.

(B) The table under section 8334(c) of title 5, United States Code, is amended—

(i) in the item relating to Member or employee for Congressional employee service by striking out

''	7½.....	After December 31, 1969.''

and inserting in lieu thereof

''	7½.....	December 31, 1969 to (but not including) the effective date of the Congressional Annuity Reform Act of 1996.
''	7.....	On and after the effective date of the Congressional Annuity Reform Act of 1996.'';

and

(ii) in the item relating to Member for Member service by striking out

''	8.....	After December 31, 1969.''

and inserting in lieu thereof

''	8.....	December 31, 1969 to (but not including) the effective date of the Congressional Annuity Reform Act of 1996.
''	7.....	On and after the effective date of the Congressional Annuity Reform Act of 1996.''.

(2) FERS.—Section 8422(a)(2) of title 5, United States Code, is amended—

(A) in subparagraph (A) by striking out ''employee (other than a law enforcement officer, firefighter, air traffic controller, or Congressional employee)'' and inserting in lieu thereof ''employee or Member (other than a law enforcement officer, firefighter, or air traffic controller)''; and

.(B) in subparagraph (B)—

(i) by striking out ''a Member,''; and

(ii) by striking out ''air traffic controller, or Congressional employee,'' and inserting in lieu thereof ''or air traffic controller,''.

(d) ADMINISTRATIVE REGULATIONS.—The Office of Personnel Management, in consultation with the Secretary of the Senate and the Clerk of the House of Representatives, may prescribe regulations to carry out the provisions of this section and the amendments made by this section for applicable employees and Members of Congress.

(e) EFFECTIVE DATES.—

(1) SHORT TITLE.—Subsection (a) shall take effect on the date of the enactment of this Act.

(2) COLA ADJUSTMENTS.—The amendments made by subsection (b) shall take effect on the date of the enactment of this Act and shall apply with respect to annuities commencing on or after such date.

(3) YEARS OF SERVICE; ANNUITY COMPUTATION.—(A) The amendments made by subsection (c) shall take effect on the date of the enactment of this Act and shall apply only with regard to the computation of an annuity relating to—

(i) the service of a Member of Congress as a Member or as a Congressional employee performed after such date; and

(ii) the service of a Congressional employee as a Congressional employee performed after such date.

(B) An annuity shall be computed as though the amendments made under subsection (c) had not been enacted with regard to—

(i) the service of a Member of Congress as a Member or a Congressional employee or military service performed before the date of the enactment of this Act; and

(ii) the service of a Congressional employee as a Congressional employee or military service performed before the date of the enactment of this Act.

(4) CONTRIBUTION RATES.—The amendments made by subsection (d) shall take effect on the first day of the first applicable pay period beginning on or after the date of the enactment of this Act.

(5) REGULATIONS.—The provisions of subsection (e) shall take effect on the date of the enactment of this Act.

(6) ALTERNATIVE EFFECTIVE DATE RELATING TO MEMBERS OF CONGRESS.—If a court of competent jurisdiction makes a final determination that a provision of this subsection violates the 27th amendment of the United States Constitution, the effective date and application dates relating to Members of Congress shall be January 3, 1997.

FAIRCLOTH AMENDMENT NO. 5239

(Ordered to lie on the table.)

Mr. FAIRCLOTH submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following:

SEC. . (a) SENSE OF THE SENATE REGARDING TRANSFERS FROM MEDICARE TRUST FUNDS.—It is the sense of the Senate that none of the funds made available in this Act under the heading ''Title II—Department of Health and Human Services—Health Care Financing Administration—Program Management'' for transfer from the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund should be used for expenditures for official time for employees of the Department of Health and Human Services pursuant to section 7131 of title 5, United States Code, or for facilities or support services for labor organizations pursuant to policies, regulations, or procedures referred to in section 7135(b) of such title.

(b) SENSE OF THE SENATE REGARDING TRANSFERS FROM OASDI TRUST FUND.—It is the sense of the Senate that none of the funds made available in this Act under the heading ''Title IV—Related Agencies—Social Security Administration—Limitation on Administrative Expenses'' for transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund should be used for expenditures for official time for employees of the Social Security Administration pursuant to section 7131 of title 5, United States Code, or for facilities or support services for labor organizations pursuant to policies, regulations, or procedures referred to in section 7135(b) of such title.

WARNER AMENDMENT NO. 5240

Mr. WARNER proposed an amendment to the bill, H.R. 3756, supra; as follows:

One page 53, beginning on line 23, strike ''and in compliance with the reprogramming guidelines of the appropriate Committee of the House and Senate.''

LAUTENBERG AMENDMENTS NOS. 5241–5243

(Ordered to lie on the table.)

Mr. LAUTENBERG submitted three amendments intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

AMENDMENT NO. 5241

At the end of the committee amendment insert the following:

SEC. . GUN BAN FOR INDIVIDUALS COMMITTING DOMESTIC VIOLENCE.

(a) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following new paragraph:

''(33) The term 'crime involving domestic violence' means a felony or misdemeanor crime of violence, regardless of length, term, or manner of punishment, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim under the domestic or family violence laws of the jurisdiction in which such felony or misdemeanor was committed.''.

(b) UNLAWFUL ACTS.—Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)—

(A) by striking ''or'' at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting ''; or''; and

(C) by inserting after paragraph (8) the following new paragraph:

''(9) has been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel.'';

(2) in subsection (g)—

(A) by striking ''or'' at the end of paragraph (7);

(B) in paragraph (8), by striking the comma and inserting ''; or''; and

(C) by inserting after paragraph (8) the following new paragraph:

''(9) has been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel,''; and

(3) in subsection (s)(3)(B)(i), by inserting before the semicolon the following: ''and has not been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel''.

(c) RULES AND REGULATIONS.—Section 926(a) of title 18, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting ''; and''; and

(3) by inserting after paragraph (3) the following new paragraph:

''(4) regulations providing for the effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(9) or (g)(9) of section 922.''.

AMENDMENT NO. 5242

At the end of amendment No. — insert the following:

SEC. . GUN BAN FOR INDIVIDUALS COMMITTING DOMESTIC VIOLENCE.

(a) DEFINITIONS.—Section 921(a) of title 18, United States Code, is emended by adding at the end the following new paragraph:

''(33) The term 'crime involving domestic violence' means a felony or misdemeanor crime of violence, regardless of length, term, or manner of punishment, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim under the domestic or family violence laws of the jurisdiction in which such felony or misdemeanor was committed.''.

(b) UNLAWFUL ACTS.—Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)—

(A) by striking ''or'' at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting ''; or''; and

(C) by inserting after paragraph (8) the following new paragraph:

''(9) has been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel.'';

(2) in subsection (g)—

(A) by striking ''or'' at the end of paragraph (7);

(B) in paragraph (8), by striking the comma and inserting ''; or''; and

(C) by inserting after paragraph (8) the following new paragraph:

''(9) has been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel,''; and

(3) in subsection (s)(3)(B)(i), by inserting before the semicolon the following: ''and has not been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel''.

(c) RULES AND REGULATIONS.—Section 926(a) of title 18, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting ''; and''; and

(3) by inserting after paragraph (3) the following new paragraph:

''(4) regulations providing for the effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(9) or (g)(9) of section 922.''.

AMENDMENT NO. 5243

At the appropriate place, insert the following:

SEC. . GUN BAN FOR INDIVIDUALS COMMITTING DOMESTIC VIOLENCE.

(a) DEFINITIONS.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following new paragraph:

''(33) The term 'crime involving domestic violence' means a felony or misdemeanor crime of violence, regardless of length, term, or manner of punishment, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim under the domestic or family violence laws of the jurisdiction in which such felony or misdemeanor was committed.''.

(b) UNLAWFUL ACTS.—Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)—

(A) by striking ''or'' at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting ''; or''; and

(C) by inserting after paragraph (8) the following new paragraph:

''(9) has been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel.'';

(2) in subsection (g)—

(A) by striking ''or'' at the end of paragraph (7);

(B) in paragraph (8), by striking the comma and inserting ''; or''; and

(C) by inserting after paragraph (8) the following new paragraph:

''(9) has been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel.''; and

(3) in subsection (s)(3)(B)(i), by inserting before the semicolon the following: ''and has not been convicted in any court of any crime involving domestic violence, if the individual has been represented by counsel or knowingly and intelligently waived the right to counsel''.

(c) RULES AND REGULATIONS.—Section 926(a) of title 18, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting ''; and''; and

(3) by inserting after paragraph (3) the following new paragraph:

''(4) regulations providing for the effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(9) or (g)(9) of section 922.''.

KOHL AMENDMENT NO. 5244

(Ordered to lie on the table.)

Mr. KOHL submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, add the following new section:

SEC. . PROHIBITION.

Section 922(q) of title 18, United States Code, is amended to read as follows:

''(q)(1) The Congress finds and declares that—

''(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

''(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

''(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary the House of Representatives and the Committee on the Judiciary of the Senate;

''(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

''(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

''(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

''(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

''(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

''(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

''(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

''(B) Subparagraph (A) does not apply to the possession of a firearm—

''(i) on private property not part of school grounds;

''(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

''(iii) that is—

''(I) not loaded; and

''(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

''(iv) by an individual for use in a program approved by a school in the school zone;

''(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

''(vi) by a law enforcement officer acting in his or her official capacity; or

''(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

''(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

''(B) Subparagraph (A) does not apply to the discharge of a firearm—

''(i) on private property not part of school grounds;

''(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

''(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

''(iv) by a law enforcement officer acting in his or her official capacity.

''(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.''.

GRAHAM AMENDMENTS NOS. 5245–5246

(Ordered to lie on the table.)

Mr. GRAHAM submitted two amendments intended to be proposed by him to the bill, H.R. 5245, supra; as follows:

AMENDMENT NO. 5245

At the appropriate place, insert the following:

SEC. . REQUIREMENTS FOR MEDICARE MANAGED CARE.

(a) ACCESS TO EMERGENCY SERVICES.—Subparagraph (B) of section 1876(c)(4) of the Social Security Act (42 U.S.C. 1395mm(c)(4)) is amended to read as follows:

''(B) meet the requirements of section 3 of the Access to Emergency Medical Care Act of 1995 with respect to members enrolled with an organization under this section.''.

(b) TIMELY AUTHORIZATION FOR PROMPTLY NEEDED CARE IDENTIFIED AS A RESULT OR REQUIRED SCREENING EVALUATION.—Section 1876(c) of such Act (42 U.S.C. 1395mm(c)) is amended by adding at the end the following:

''(9)(A) The organization must provide access 24 hours a day, 7 days a week to individuals who are authorized to make any prior authorizations required by the organization for coverage of items and services (other than emergency services) that a treating physician or other emergency department personnel identify, pursuant to a screening evaluation required under section 1867(a), as being needed promptly by an individual enrolled with the organization under this part.

''(B) The organization is deemed to have approved a request for such promptly needed items and services if the physician or other emergency department personnel involved—

''(i) has made a reasonable effort to contact an individual described in subparagraph (A) for authorization to provide an appropriate referral for such items and services or to provide the items and services to the individual and access to the person has not been provided (as required in subparagraph (A)), or

''(ii) has requested such authorization from the person and the person has not denied the authorization within 30 minutes after the time the request is made.

''(C) Approval of a request for a prior authorization determination (including a deemed approval under subparagraph (B)) shall be treated as approval of a request for any items and services that are required to treat the medical condition identified pursuant to the required screening evaluation.

''(D) In this paragraph, the term 'emergency services' means—

''(i) health care items and services furnished in the emergency department of a hospital (including a trauma center), and

''(ii) ancillary services routinely available to such department, to the extent they are required to evaluate and treat an emergency medical condition (as defined in subparagraph (E)) until the condition is stabilized.

''(E) In subparagraph (D), the term 'emergency medical condition' means a medical condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

''(i) placing the person's health in serious jeopardy,

''(ii) serious impairment to bodily functions, or

''(iii) serious dysfunction of any bodily organ or part.''.

''(F) In subparagraph (D), the term 'stabilization' means, with respect to an emergency medical condition, that no material deterioration of the condition is likely, within reasonable medical probability, to result or occur before an individual can be transferred in compliance with the requirements of section 1867 of the Social Security Act.''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall be effective for contract years beginning on or after the date of this Act.

AMENDMENT NO. 5246

At the appropriate place, insert the following:

TITLE ___—WELFARE FORMULA FAIRNESS COMMISSION

SECTION ___01. SHORT TITLE.

This title may be cited as the ''Welfare Formula Fairness Commission Act of 1996''.

SEC. ___02. WELFARE FORMULA FAIRNESS COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Welfare Formula Fairness Commission (in this title referred to as the ''Commission'').

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 13 members, of whom—

(A) 3 shall be appointed by the President, of whom not more than 2 shall be of the same political party;

(B) 3 shall be appointed by the Majority Leader of the Senate;

(C) 2 shall be appointed by the Minority Leader of the Senate;

(D) 3 shall be appointed by the Speaker of the House of Representatives; and

(E) 2 shall be appointed by the Minority Leader of the House of Representatives.

(2) DATE.—The appointments of the members of the Commission shall be made not later than 30 days after the date of the enactment of this Act.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) MEETINGS.—The Commission shall meet at the call of the Chair.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIR AND VICE CHAIR.—The Commission shall select a Chair and Vice Chair from among its members.

(h) DUTIES OF THE COMMISSION.—

(1) STUDY.—The Commission shall study—

(A) the temporary assistance for needy families block grant program established under part A of title IV of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; and

(B) the funding formulas applied, the bonus payments provided, the penalties imposed, and the work requirements established under such program.

(2) CONSULTATION.—In addressing the issue described in paragraph (1)(B), the Commission shall consult with the Comptroller General of the United States and shall consider the following:

(A) The rate of poverty in each State.

(B) The total taxable resources in each State.

(C) Differences in the efficient operation of the temporary assistance for needy families block grant program among the States.

(D) Per capita income in each State.

(E) The cost of living in each State.

(3) REPORTS.—

(A) FIRST REPORT.—

(i) IN GENERAL.—The Commission shall submit a first report to the Congress by not later than June 1, 1997.

(ii) REQUIREMENT.—The report submitted to the Congress under clause (i) shall include the Commission's recommendation with respect to the issue described in paragraph (1)(B) in the form of an implementation bill containing such statutory provisions as the Commission may determine are necessary or appropriate to implement such recommendation. Only an implementation bill submitted to the Congress under this paragraph shall be considered under the procedures established under section ___03.

(B) SUBSEQUENT REPORTS.—The Commission shall issue subsequent reports to the Congress by not later than December 31, 1997, and December 31, 1998.

(i) POWERS OF THE COMMISSION.—

(1) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this title.

(2) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this title. Upon request of the Chair of the Commission, the head of such department or agency shall furnish such information to the Commission.

(3) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(j) PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall serve without compensation. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(3) STAFF.—

(A) IN GENERAL.—The Chair of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(B) COMPENSATION.—The Chair of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed

the rate payable for level V of the Executive Schedule under section 5316 of such title.

(4) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(5) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chair of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(k) TERMINATION OF THE COMMISSION.—The Commission shall terminate not later than December 31, 1998.

(l) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary to carry out the purposes of this title.

SEC. ___03. CONGRESSIONAL CONSIDERATION OF COMMISSION RECOMMENDATIONS.

(a) IMPLEMENTING BILL.—An implementing bill described in section ___02(h)(3)(A)(ii) shall be considered by the Congress under the procedures for consideration described in subsection (b).

(b) CONGRESSIONAL CONSIDERATION.—

(1) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of an implementing bill described in subsection (a), and supersedes other rules only to the extent that such rules are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(2) INTRODUCTION AND REFERRAL.—On the day on which the implementing bill described in subsection (a) is transmitted to the House of Representatives and the Senate, such bill shall be introduced (by request) in the House of Representatives by the Majority Leader of the House, for himself or herself and the Minority Leader of the House, or by Members of the House designated by the Majority Leader and Minority Leader of the House and shall be introduced (by request) in the Senate by the Majority Leader of the Senate, for himself or herself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate. If either House is not in session on the day on which the implementing bill is transmitted, the bill shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session. If the implementing bill is not introduced within 5 days of its transmission, any Member of the House and of the Senate may introduce such bill. The implementing bill introduced in the House of Representatives and the Senate shall be referred to the appropriate committees of each House.

(3) PERIOD FOR COMMITTEE CONSIDERATION.—If the committee or committees of either House to which an implementing bill has been referred have not reported the bill at the close of July 1, 1997 (or if such House is not in session, the next day such House is in session), such committee or committees shall be automatically discharged from further consideration of the implementing bill and it shall be placed on the appropriate calendar.

(4) FLOOR CONSIDERATION IN THE SENATE.—

(A) IN GENERAL.—Within 5 days after the implementing bill is placed on the calendar, the Majority Leader, at a time to be determined by the Majority Leader in consultation with the Minority Leader, shall proceed to the consideration of the bill. If on the sixth day after the bill is placed on the calendar, the Senate has not proceeded to consideration of the bill, then the presiding officer shall automatically place the bill before the Senate for consideration. A motion in the Senate to proceed to the consideration of an implementing bill shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) TIME LIMITATION ON CONSIDERATION OF BILL.—

(i) IN GENERAL.—Debate in the Senate on an implementing bill, and all amendments and debatable motions and appeals in connection therewith, shall be limited to not more than 30 hours. The time shall be equally divided between, and controlled by, the Majority Leader and the Minority Leader or their designees.

(ii) DEBATE OF AMENDMENTS, MOTIONS, POINTS OF ORDER, AND APPEALS.—In the Senate, no amendment which is not relevant to the bill shall be in order. Debate in the Senate on any amendment, debatable motion or appeal, or point of order in connection with an implementing bill shall be limited to—

(I) not more than 2 hours for each first degree relevant amendment,

(II) one hour for each second degree relevant amendment, and

(III) 30 minutes for each debatable motion or appeal, or point of order submitted to the Senate,

to be equally divided between, and controlled by, the mover and the manager of the implementing bill, except that in the event the manager of the implementing bill is in favor of any such amendment, motion, appeal, or point of order, the time in opposition thereto, shall be controlled by the Minority Leader or designee of the Minority Leader. The Majority Leader and Minority Leader, or either of them, may, from time under their control on the passage of an implementing bill, allot additional time to any Senator during the consideration of any amendment, debatable motion or appeal, or point of order.

(C) OTHER MOTIONS.—A motion to recommit an implementing bill is not in order.

(D) FINAL PASSAGE.—Upon the expiration of the 30 hours available for consideration of the implementing bill, it shall not be in order to offer or vote on any amendment to, or motion with respect to, such bill. Immediately following the conclusion of debate in the Senate on an implementing bill that was introduced in the Senate, such bill shall be deemed to have been read a third time and the vote on final passage of such bill shall occur without any intervening action or debate.

(E) DEBATE ON DIFFERENCES BETWEEN THE HOUSES.—Debate in the Senate on motions and amendments appropriate to resolve the differences between the Houses, at any particular stage of the proceedings, shall be limited to not more than 5 hours.

(F) DEBATE ON CONFERENCE REPORT.—Debate in the Senate on the conference report shall be limited to not more than 10 hours.

(5) FLOOR CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

(A) PROCEED TO CONSIDERATION.—On the sixth day after the implementing bill is placed on the calendar, it shall be privileged for any Member to move without debate that the House resolve itself into the Committee of the Whole House on the State of the Union, for the consideration of the bill, and the first reading of the bill shall be dispensed with.

(B) GENERAL DEBATE.—After general debate, which shall be confined to the implementing bill and which shall not exceed 4 hours, to be equally divided and controlled by the Chairman and Ranking Minority Member of the Committee or Committees to which the bill had been referred, the bill shall be considered for amendment by title under the 5-minute rule and each title shall be considered as having been read. The total time for considering all amendments shall be limited to 26 hours of which the total time for debating each amendment under the 5-minute rule shall not exceed one hour.

(C) RISE AND REPORT.—At the conclusion of the consideration of the implementing bill for amendment, the Committee of the Whole on the State of the Union shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and the amendments thereto, and the House shall proceed to vote on final passage without intervening motion except one motion to recommit.

(6) COMPUTATION OF DAYS.—For purposes of this subsection, in computing a number of days in either House, there shall be excluded—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain, or an adjournment of the Congress sine die; and

(B) any Saturday and Sunday not excluded under subparagraph (A) when either House is not in session.

INHOFE AMENDMENT NO. 5247

(Ordered to lie on the table.)

Mr. INHOFE submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

On page 60, strike lines 19 through 21.

HATFIELD AMENDMENT NO. 5248

(Ordered to lie on the table.)

Mr. HATFIELD submitted an amendment intended to be proposed by him to the bill, H.R. 3756, supra; as follows:

TITLE —LOCAL EMPOWERMENT AND FLEXIBILITY PILOT ACT OF 1996

SECTION 01. SHORT TITLE.

This Act may be cited as the ''Local Empowerment and Flexibility Pilot Act of 1996.''

SEC. 02. FINDINGS.

The Congress finds that—

(1) historically, Federal programs have addressed the Nation's problems by providing categorical financial assistance with detailed requirements relating to the use of funds;

(2) while the assistance described in paragraph (1) has been directed at critical problems, some program requirements may inadvertently impede the effective delivery of services;

(3) the Nation's State, local, and tribal governments and private, nonprofit organizations are dealing with increasingly complex problems which require the delivery of many kinds of services;

(4) our nation's communities are diverse and many have innovative planning and community involvement strategies to comprehensively meet their particular service needs for providing service, but Federal,

State, and local grant and other requirements often hamper effective implementation of such strategies.

(5) it is more important than ever to provide programs that—

(A) promote more effective and efficient delivery of services at all levels of government to meet the full range of needs of individuals, families, and society;

(B) respond flexibly to the diverse needs of the Nation's communities;

(C) reduce the barriers between programs that impede the State, local, and tribal governments' ability to effectively deliver services; and

(D) empower State, local, and tribal governments and private, nonprofit organizations to be innovative in creating programs that meet the unique needs of their communities while continuing to address national policy goals; and

SEC. 03. PURPOSES.

The purposes of this Act are to—

(1) improve the delivery of services to the public;

(2) promote State, local and tribal governments and private, non-profit organizations and consortiums to identify goals to improve their communities and the lives of their citizens;

(3) enable eligible applicants to adapt programs of Federal financial assistance to the particular needs of their communities by integrating programs and program funds across existing Federal financial assistance programs that have similar purposes;

(4) more effectively meet the goals and purposes of Federal, State and local financial assistance programs;

(5) empower eligible applicants to work together to build stronger cooperative, intergovernmental and private partnerships to address critical service problems;

(6) place less emphasis in Federal financial assistance programs on complying with procedures and more emphasis on achieving Federal, State, local and tribal policy goals;

(7) facilitate State, local, and tribal government efforts to develop regional or metropolitan solutions to shared problems;

(8) improve intergovernmental efficiency.

SEC. 04. DEFINITIONS.

For purposes of this Act:

(1) AFFECTED FEDERAL AGENCY.—The term ''affected Federal agency'' means the Federal agency with principal authority for the administration of an eligible Federal financial assistance program included in a plan.

(2) AFFECTED STATE AGENCY.—The term ''affected State agency'' means—

(A) any State agency with authority for the administration of any State program or eligible Federal financial assistance program; and

(B) with respect to education programs, the term shall include the State Education Agency as defined by the Elementary and Secondary Education Act and the Higher Education Act.

(3) APPROVED FLEXIBILITY PLAN.—The term ''approved flexibility plan'' means a flexiblility plan or the part of a flexibility plan, that is approved by the Community Empowerment Board under section 8.

(4) BOARD.—The term ''Board'' means the Community Empowerment Board established under section 5.

(5) DIRECTOR.—The term ''Director'' means the Director of the Office of Management and Budget.

(6) ELIGIBLE APPLICANT.—The term ''eligible applicant'' means a State, local, or tribal government, qualified organization, or qualified consortium that is eligible to receive financial assistance under 1 or more eligible Federal financial assistance programs.

(7) ELIGIBLE FEDERAL FINANCIAL ASSISTANCE PROGRAM.—The term ''eligible Federal financial assistance program''—

(A) except as provided in subparagraph (B), means a domestic assistance program (as defined under section 6101(4) of title 31, United States Code) under which financial assistance is available, directly or indirectly, to a State, local, or tribal government or a qualified organization to carry out activities consistent with national policy goals; and

(B) does not include—

(i) a Federal program under which direct financial assistance is provided by the Federal Government directly to an individual beneficiary of that financial assistance, or to a State to provide direct financial assistance, or to a State to provide direct financial or food voucher assistance directly to an individual beneficiary;

(ii) a program carried out with direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(8)); or

(iii) a program of assistance referred to in section 6101(4)(A)(ix) of title 31, United States Code or Section 3(10) of the Congressional Budget Act of 1974.

(8) EMPOWERMENT ZONE-ELIGIBLE AREA.—The term ''empowerment zone-eligible area'' means any area nominated for designation under subchapter U of chapter I of the Internal Revenue Code of 1986 that was ruled as meeting the technical eligibility standards established for that Federal policy.

(9) FLEXIBILITY PLAN.—The term ''flexibility plan'' means a comprehensive plan or part of such plan for the integration and administration by an eligible applicant of financial assistance provided by the Federal Government under 2 or more eligible Federal financial assistance programs that includes funds from Federal, State, local, or tribal government or private sources to address the service needs of a community.

(10) LOCAL GOVERNMENT.—The term ''local government'' means—

(A) a political subdivision of a State that is a unit of general local government (as defined under section 6501 of title 31, United States Code);

(B) any combination of political subdivisions described in subparagraph (A) that submits an application to the Board; or

(C) a local educational agency as defined under section 14101(18) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801(18)).

(11) QUALIFIED CONSORTIUM.—The term ''qualified consortium'' means a group that is composed of 2 or more qualified organizations, State, local, or tribal agencies that receive federally appropriated funds.

(12) QUALIFIED ORGANIZATION.—The term ''qualified organization'' means a private, nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. 501(a)).

(13) SMALL GOVERNMENT.—The term ''small government'' means any small governmental jurisdiction defined in section 601(5) of title 5, United States Code, and a tribal government.

(14) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, and the Virgin Islands.

(15) STATE LEGISLATIVE OFFICIAL.—The term ''State legislative official'' means—

(A) the presiding officer of a chamber of a State legislature; and

(B) the minority leader of a chamber of a State legislature.

(14) TRIBAL GOVERNMENT.—The term ''tribal government'' means the governing entity of an Indian tribe, as that term is defined in the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 05. ESTABLISHMENT OF COMMUNITY EMPOWERMENT BOARD.

(a) IN GENERAL.—There is established a Community Empowerment Board, which shall consist of—

(1) the Secretary of Housing and Urban Development;

(2) the Secretary of Health and Human Services;

(3) the Secretary of Agriculture;

(4) the Secretary of Transportation;

(5) the Secretary of Education;

(6) the Secretary of Commerce;

(7) the Secretary of Labor;

(8) the Secretary of the Treasury;

(9) the Attorney General;

(10) the Secretary of the Interior;

(11) the Secretary of Energy;

(12) the Secretary of Veterans Affairs;

(13) the Secretary of Defense;

(14) the Director of the Federal Emergency Management Agency;

(15) the Administrator of the Environment Protection Agency;

(16) the Director of the National Drug Control Policy;

(17) the Administrator of the Small Business Administration;

(18) the Director of the Office of Management and Budget;

(19) the Administator of General Services; and

(20) other officials of the Executive Branch as directed by the President.

(b) CHAIR.—The President shall designate the Chair of the Board from among its members.

(c) FUNCTIONS.—

(1) IN GENERAL.—The Board shall—

(A) no later than 180 days after implementation of this Act, select 6 states to participate in this Act;

(B) receive, review, and approve or disapprove flexibility plans in accordance with section 7;

(C) consider all requests for technical assistance from eligible applicants and, when appropriate, provide or direct that an affected Federal agency provide the head of an agency that administers an eligible Federal financial assistance program under which substantial Federal financial assistance would be provided under the plan to provide technical assistance to the eligible applicant, and to the extent permitted by law, special assistance to interested small governments to support the development and implementation of a flexibility plan, which may include expedited processing;

(D) in consultation with the Director, monitor the progress of development and implementation of flexibility plans;

(E) in consultation with the Director, coordinate and assist Federal agencies in identifying regulations of eligible Federal financial assistance programs for revision, repeal and coordination;

(F) evaluate performance standards and evaluation criteria for eligible Federal financial assistance programs, and make specific recommendations to agencies regarding how to revise such standards and criteria in order to establish specific performance and outcome measures upon which the success of such programs and the success of the plan may be compared and evaluated; and

(G) designate a Federal agency to be primarily responsible for the oversight, monitoring, and evaluation of the implementation of a plan.

(2) QUALIFICATIONS FOR STATES.—Of the 6 States selected for participation under paragraph 1 (A)—3 States shall each have a population of 3,500,000 or more as determined under the most recent decennial census; and

(B) 3 States shall each have a population of 3,500,000 or less as determined under the most recent decennial census.

(d) COORDINATION AND ASSISTANCE.—The Director, in consultation with the Board, shall coordinate and assist Federal agencies in creating—

(1) a uniform application to be used to apply for assistance from eligible Federal financial assistance programs;

(2) a release form to be used by grantees to facilitate, where appropriate and otherwise lawful, the sharing of information across eligible Federal financial assistance programs; and

(3) a system wherein an organization or consortium of organizations may use one proposal to apply for funding from multiple eligible Federal financial assistance programs.

(e) DETAILS AND ASSIGNMENTS TO BOARD.—At the request of the Board and with the approval of the appropriate Federal agency, staff of the agency may be detailed or assigned to the Board on a nonreimbursable basis.

(f) INTERAGENCY FINANCING.—Notwithstanding any other law, interagency financing is authorized to carry out the purposes of this Act.

(g) JUDICIAL REVIEW.—The actions of the Board shall not be subject to judicial review.

SEC. 06. APPLICATION FOR APPROVAL OF FLEXIBILITY PLAN.

(A) IN GENERAL.—An eligible applicant may submit to the Board in accordance with this section an application for approval of a flexibility plan.

(b) CONTENTS OF APPLICATION.—An application submitted under this section shall include—

(1) a proposed flexibility plan that complies with subsection (c);

(2) written certification by the chief executive of the applicant, and such additional assurances as may be required by the Board, that—

(A) the applicant has the ability, authority, and resources to implement the proposed plan, throughout the geographic area in which the proposed plan is intended to apply; and

(B) amounts are available from non-Federal sources to pay the non-Federal share of all eligible Federal financial assistance programs included in the proposed plan;

(C) the flexibility plan prohibits the integration or combination of program funds across existing Federal financial assistance programs which do not have similar purposes.

(3) all comments on the proposed plan submitted under subsection (d) by a Governor, affected State agency, State legislative official, or a chief executive of a local or tribal government that would be directly affected by implementation of the proposed plan, and the applicant's responses to those comments;

(4) written documentation that the eligible applicant informed the affected community of the contents of the plan and gave the public opportunity to comment upon the plan, including at least one public hearing involving agencies, qualified organizations, eligible intended beneficiaries of the plan, and others directly affected by the plan;

(5) a summary of the public comment received on the plan and the applicant's responses to the significant comments;

(6) other relevant information the Board may require to review or approve the proposed plan.

(c) CONTENTS OF PLAN.—A flexibility plan submitted by an eligible applicant under this section shall include—

(1) the geographic area and timeframe to which the plan applies and the rationale for selecting the area and timeframe;

(2) the particular groups of individuals, by service needs, economic circumstances, or other defining factors, who currently receive services and benefits under the eligible Federal financial assistance programs included in the plan and the particular groups of individuals, by service needs, economic circumstances, or other defining factors who would receive services and benefits under the plan;

(3) the specific goals and measurable performance criteria that demonstrate how the plan is expected to improve the delivery of services to the public including—

(A) a description of how performance shall be measured under the plan when compared to the current performance of the eligible Federal financial assistance programs included in the plan; and

(B) a system for the comprehensive evaluation of the impact of the plan on individuals who receive services and benefits in the community affected by the plan, that shall include—

(i) a list of goals to improve the community and the lives of its citizens in the geographic area covered by the plan;

(ii) a list of goals identified by the State in which the plan is to be implemented, if such goals have been established by the State; and

(iii) a description of how the plan will—

(I) attain the goals listed in clauses (i) and (ii);

(II) measure performance; and

(III) collect and maintain data;

(4) the eligible Federal financial assistance programs included in the plan and the specific services and benefits to be provided under the plan under such programs, including—

(A) criteria for determining eligibility for services and benefits under the plan;

(B) the services and benefits available under the plan;

(C) the amounts and form (such as cash, in-kind contributions, or financial instruments) of non-service benefits; and

(D) any other descriptive information the Board considers necessary to approve the plan;

(5) a description of the statutory goals and purposes of each Federal financial assistance program included in the plan and how the goals and purposes of such programs shall more effectively be met at the State, local and tribal level;

(6) a general description of how the plan appropriately addresses any effect that administration of each eligible Federal financial assistance program included in the plan would have on the administration of programs not included in the plan;

(7) a description of how the flexibility plan will adequately achieve the purposes of this Act;

(8) except for the requirements described under section 7(f)(3), any Federal statutory or regulatory requirement of an eligible Federal financial assistance program included in the plan, the waiver of which is necessary to implement the plan, and the detailed justification for the waiver request;

(9) any State, local, or tribal statutory, regulatory, or other requirement, the waiver of which is necessary to implement the plan, and an indication of commitment of the appropriate State, local, or tribal governments to grant such waivers;

(9) a description of the Federal fiscal control and related accountability procedures applicable under the plan;

(10) a description of the sources and amounts of all non-Federal funds that are required to carry out eligible Federal financial assistance programs included in the plan;

(11) verification that Federal funds made available under the plan will not supplant non-Federal funds for existing services and activities that promote the goals of the plan;

(12) verification that none of the Federal funds under the plan would be used to—

(A) meet maintenance of effort requirements of such an activity, or

(B) meet State, local, or tribal matching shares; and

(13) any other relevant information the Board may require to approve the plan;

(d) PROCEDURE FOR APPLYING.—

(1) SUBMISSION TO AFFECTED STATE AND LOCAL GOVERNMENTS.—An eligible applicant shall submit an application for approval of a proposed flexibility plan to each State government and each local government that the applicant deems to be directly affected by the plan, at least 60 days before submitting the application to the Board.

(2) REVIEW BY AFFECTED GOVERNMENT.—The Governor, affected State agency head, State legislative official, and the chief executive officer of a local government that receives an application submitted under paragraph (1) may each, by no later than 60 days after the date of that receipt—

(A) prepare comments on the proposed flexibility plan included in the application;

(B) describe and make commitments to waive any State or local laws or other requirements which are necessary for successful implementation of the proposed plan; and

(C) submit the comments and commitments to the eligible applicant.

(3) SUBMITTAL TO BOARD.—Applications for approval of a flexibility plan shall only be submitted to the Board between—

(A) October 1, 1997 and March 31, 1998; or

(B) October 1, 1998 and March 31, 1999.

(4) ACTION BY AFFECTED GOVERNMENT.—If the Governor, affected State agency head, State legislative official or the chief executive officer of a local government—

(A) fails to act on or otherwise endorse a plan application within 60 days after receiving an application under paragraph (1);

(B) does not make and submit to the eligible applicant the commitments described in paragraph (2) (A) and (B); or

(C) disagrees with all or part of the proposed flexibility plan;

the eligible applicant may submit the application to the Board if the application is amended as necessary for the successful implementation of the proposed plan without the commitment made under paragraph (2)(B), including by adding an updated description of the ability of the proposed flexibility plan to meet plan goals and satisfy performance criteria in the absence of statutory and regulatory waivers and financial and technical support from the State or local government.

(e) TRIBAL SOVEREIGNTY.—Nothing under this Act shall be construed to affect, or otherwise alter, the sovereign relationship between tribal governments and the Federal Government.

(f) ELIGIBILITY FOR OTHER ASSISTANCE.—Disapproval by the Board of a flexibility plan submitted by an eligible applicant under this Act shall not affect the eligibility of the applicant for assistance under any Federal program.

(g) STATE, LOCAL OR TRIBAL AUTHORITY.—Nothing in this Act shall be construed to grant the Board, Federal agency, or any eligible applicant authority to waive or otherwise preempt—

(1) any State, local, or tribal law or regulation including the legal authority under State law of any affected State agency, State entity, or public official over programs that are under the jurisdiction of the agency, entity or official; or

(2) the existing authority of a State, local, or tribal government or qualified organization or consortium with respect to an eligible Federal financial assistance program included in the plan unless such entity has consented to the terms of the plan.

SEC. 07. REVIEW AND APPROVAL OF FLEXIBILITY PLANS AND WAIVER REQUESTS.

(a) REVIEW OF APPLICATIONS.—Upon receipt of an application for approval of a proposed flexibility plan, the Board shall notify the eligible applicant as to whether or not the plan is complete. If the Board determines a plan is complete, the Board shall—

(1) establish procedures for consultation with the applicant during the review process;

(2) publish notice of the application for approval in the Federal Register and make available the contents to any interested party upon written request;

(3) if appropriate, coordinate public hearings on the plan by either the Board or the appropriate Federal agency;

(4) approve or disapprove plans submitted under—

(i) section 6(d)(3)(A) no later than July 31, 1998; or

(ii) section 6(d)(3)(B) no later than July 31, 1999;

(5) in the case of any disapproval of a plan, include written justification of the reasons for disapproval in the notice of disapproval sent to the applicant;

(6) publicly announce and forward to Congress on July 31, 1998 and July 31, 1999, the list of approved flexibility plans, including an identification of approved plans that request statutory or regulatory waivers and the identification of such requested waivers.

(b) APPROVAL—

(1) IN GENERAL.—The Board may approve a flexibility plan for which an application is submitted by an eligible applicant under this Act, if the Board determines that—

(A) the contents of the application for approval of the plan comply with the requirements of this Act; and

(B) the contents of the flexibility plan indicate that the plan will effectively achieve the purposes of this Act described in section 3 by adhering to the conditions described in sections 6 and 7;

(2) RESTRICTION.—(A) The Board may approve no more than 30 plans; and

(B) only three approved plans may be submitted by state applicants.

(3) REQUIREMENT TO DISAPPROVE PLAN.—The Board must disapprove a flexibility plan if the Board determines that—

(A) implementation of the plan would result in any increase in the total amount of obligations or outlays of discretionary appropriations or direct spending under Federal financial assistance programs, over the amounts of such obligations and outlays that would occur under those programs without implementation of the plan; or

(B) the flexibility plan fails to comply with paragraph (1).

(4) SPECIFICATION OF PERIOD OF EFFECTIVENESS.—In approving any flexibility plan, the Board shall specify the period during which the plan is effective, which is no case shall be greater than 5 years from the date of approval.

(d) MEMORANDA OF UNDERSTANDING REQUIRED.—

(1) IN GENERAL.—An approved flexibility plan may not take effect until the Board receives a signed memorandum of understanding agreed to by the eligible applicant that would receive Federal financial assistance administered under the flexibility plan and by each affected Federal agency.

(2) CONTENTS.—A memorandum of understanding under this subsection shall specify all understanding that have been reached by the affected Federal agencies and the eligible applicant. The memorandum shall include understanding with respect to—

(A) the conditions described in sections 6 and 7;

(B) the effective dates of all State; local or tribal government waivers;

(C) technical or special assistance being provided to the eligible applicant; and

(D) the effective date and timeframe of the plan and each Federal waiver approved in the plan;

(E)(i) the total amount of Federal funds that will be provided as services and benefits under or used to administer eligible Federal financial assistance programs included in the plan; or

(ii) a mechanism for determining that amount, including specification of the total amount of Federal funds that will be provided or used under each eligible Federal financial assistance program included in the plan.

(e) LIMITATION ON CONFIDENTIALITY REQUIREMENTS.—The Board may not, as a condition of approval of flexibility plan or with respect to the implementation of an approved flexibility plan, establish any confidentiality requirement that would—

(1) impede the exchange of information needed for the design or provision of services and benefits under the plans; or

(2) conflict with law.

(f) LIMITATION ON THE USE OF FUNDS.—The Board may not approve any plan that includes funds under an eligible Federal financial assistance program to—

(1) support tuition vouchers for children attending private elementary or secondary schools; or

(2) otherwise pay their cost of attending such schools.

(g) WAIVERS OF FEDERAL REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding any other law and subject to paragraphs (2) and (3), affected Federal agencies may waive, for a period of time not to exceed 5 years from the date the Board receives a signed memorandum of understanding, any statutory or regulatory requirement of an eligible Federal assistance program included in an approved flexibility plan of an eligible applicant if that waiver is—

(A) necessary for implementation of the flexibility plan;

(B) not disapproved by the Board; and

(C) necessary to effectively achieve the purposes of this Act described in section 3 by adhering to the conditions described in sections 6 and 7.

(2) EFFECTIVE PERIOD OF WAIVER.—A waiver granted under this section shall terminate on the earlier of—

(A) the expiration of a period specified by the affected Federal agency not to exceed five years from the date the Board receives the signed memorandum of understanding; or

(B) any date on which the flexibility plan for which the waiver is granted ceases to be effective.

(3) RESTRICTION ON WAIVER AUTHORITY.—Any affected Federal agency may not grant a waiver for a statutory or regulatory requirement of an eligible Federal financial assistance program requested under this section that—

(A) may be waived under another provision of law except in accordance with the requirements and limitations imposed by that other provision of law;

(B) enforces statutory or constitutional rights of individuals including the right to equal access and opportunity in housing and education, including any requirement under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq);

(C) enforces any civil rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

(D) protects public health and safety, the environment, labor standards, or worker safety;

(E) provides for a maintenance of effort, matching share or prohibition on supplanting; or

(F) grants any person a cause of action.

SEC. 08. IMPLEMENTATION, AMENDING AND TERMINATION OF APPROVED FLEXIBILITY PLANS.

(a) IMPLEMENTATION.—

(1) The Board, in consultation with the Director, shall issue guidance to implement this Act within 180 days after the date of enactment of this Act.

(2) Notwithstanding any other law, any service or benefit that is provided under an eligible Federal financial assistance program included in an approved flexibility plan shall be paid and administered in the manner specified in the approved flexibility plan.

(3) The authority provided under this Act to waive provisions of grant agreements may be exercised only as long as the funds provided for the grant program in question are available for obligation by the Federal Government.

(b) AMENDING OF FLEXIBILITY PLAN.—

(1) In the event that an eligible applicant—

(A) desires an amendment to an approved flexibility plan in order to better meet the purposes of this Act; or

(B) requires an amendment to ensure continued implementation of an approved flexibility plan, the applicant shall—

(i) submit the proposed amendment to the Board for review and approval; and

(ii) upon approval, enter into a revised memorandum of understanding with the affected Federal agency.

(2) Approval of the Board and, when appropriate, affected Federal agency, shall be based upon the same conditions required for approval of a flexibility plan.

(c) TERMINATION OF PLAN.—

(1) TERMINATION OF PLAN BY BOARD.—

(A) IN GENERAL.—The Board shall terminate an approved flexibility plan, if, after consultation with the affected Federal agencies, the Board determines that—

(i) the applicant of the approved flexibility plan is unable to meet the commitments under this Act; or

(ii) audit or oversight activities determine there has been fraud or abuse involving Federal funds under the plan.

(B) TRANSITION PERIOD.—In terminating an approved flexibility plan under this paragraph, the Board shall allow a reasonable period of time for appropriate Federal agencies and eligible applicants to resume administration of Federal programs that are eligible Federal financial assistance programs included in the plan.

(2) REVOCATION OF WAIVER.—

(A) The Board may recommend that an affected Federal agency, and an affected Federal agency may, revoke a waiver under section 7(f) if the applicant of the approved flexibility plan fails to—

(i) comply with the requirements of the plan;

(ii) make acceptable progress towards achieving the goals and performance criteria set forth in the plan; or

(iii) use funds in accordance with the plan.

(B) Affected Federal agencies shall revoke all waivers issued under section 7(f) for a flexibility plan if the Board terminates the plan.

(C) EXPLANATION REQUIRED.—In the case of termination of a plan or revocation of a waiver, as appropriate, the Board or affected Federal agencies shall provide for the former eligible applicant a written justification of the reasons for termination or revocation.

SEC. 09 EVALUATIONS AND REPORTS.

(a) APPROVED APPLICANTS.

(1) IN GENERAL.—An applicant of an approved flexibility plan, in accordance with guidance issued by the Board, shall—

(A) submit any reports on and cooperate in any audits of the implementation of its approved flexibility plan; and

(B) monitor the effect implementation of the plan has had on—

(i) individuals who receive services and benefits under the plan;

(ii) communities in which those individuals live;

(iii) costs of administering and providing assistance under eligible Federal financial assistance programs included in the plan; and

(iv) performance of the eligible Federal financial assistance programs included in the plan compared to the performance of such programs prior to implementation of the plan.

(2) INITIAL 1-YEAR REPORT.—No later than 90 days after the end of the 1-year period beginning on the date the plan takes effect, and annually thereafter, the approved applicant, respectively, shall submit to the Board a report on the principal activities, achievements, and shortcomings under the plan during the period covered by the report, comparing those achievements and shortcomings to the goals and performance criteria included in the plan under section 6(c)(3).

(3) FINAL REPORT.—No later than 120 days after the end of the effective period of an approved flexibility plan, the approved applicant shall submit to the Board a final report on implementation of the plan, including a full evaluation of the successes and shortcomings of the plan and the effects of that implementation on individuals who receive benefits under the eligible Federal financial assistance programs under the plan.

(b) BOARD.—No later than two years after the date of the enactment of this Act, and annually thereafter, the Board shall submit a report to the President and the Congress on the Federal statutory and regulatory requirements of eligible Federal financial assistance programs that are most frequently waived under section 7(f) with respect to approved flexibility plans. The President shall review the report and identify those statutory and regulatory requirements that the President determines should be amended or repealed.

(c) DIRECTOR.—Two years after this Act goes into effect, and no less than 60 days after repeal of this Act, the Director shall report on its progress in achieving the functions outlined in section 5(d).

(c) GENERAL ACCOUNTING OFFICE.—

(1) Beginning on the date of enactment of this Act, the General Accounting Office shall—

(A) evaluate the effectiveness of eligible Federal financial assistance programs included in flexibility plans approved pursuant to this Act compared with such programs not included in a flexibility plan;

(B) establish and maintain, through the effective date of this statute, a program for the ongoing collection of data and analysis of each eligible Federal financial assistance program included in an approved flexibility plan.

(2) No later than January 1, 2005, the General Accounting Office shall submit a report to Congress and the President that describes and evaluates the results of the evaluations conducted pursuant to paragraphs (1) and any recommendations on how to improve flexibility in the administration of eligible Federal Financial assistance programs.

(d) ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS.—No later than January 1, 2005, the Advisory Commission on Intergovernmental Relations shall submit a report to the Congress and President that—

(1) describes the extent to which this Act has improved the ability of State, local and tribal governments, particularly smaller units of government, to make more effective use of two or more Federal financial assistance programs included in a flexibility plan;

(2) evaluates if or how the Flexibility provided by this Act has improved the system of Federal financial assistance to State, local and tribal governments, and enabled governments and community organizations to work together more effectively; and

(3) includes recommendations with respect to flexibility for State, local and tribal governments.

SEC. 010. REPEAL.

This Act is repealed on January 1, 2005.

SEC. 011. DELIVERY DATE OF FEDERAL CONTRACT, GRANT, AND ASSISTANCE APPLICATIONS.

(a) GENERAL RULES.—

(1) DATE OF DELIVERY.—The Director of the Office of Management and Budget shall direct all Federal agencies to develop a consistent policy relating to Federal contract, grant, and other assistance applications which stipulated that if any bid, grant application, or other document required to be filled within a prescribed period or on or before a prescribed date is, after such period or such date delivered by United States mail to the agency, officer, or office with such bid, grant application, or other document is required to be made, the date of the United States postmark stamped on the cover in which such bid, grant application, or other document is mailed shall be deemed to be the date of delivery, as the case may be.

(2) MAILING REQUIREMENTS.—This subsection applies only if—

(A) the postmark date falls within the prescribed period or on or before the prescribed date for the filing (including any extension granted for such filing) of the bid, grant application, or other document; and

(B) the bid, grant application, or other document was, within the time prescribed in subparagraph (A), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office with which the bid, grant application, or other document is required to be made.

(b) POSTMARKS.—This section shall apply in the case of postmarks not made by the United States Postal Service only if and to the extent provided by the regulations prescribed by Federal agencies.

(c) REGISTERED AND CERTIFIED MAILING.—

(1) REGISTERED MAIL.—For purposes of this section, if any such bid, grant application, or other document is sent by United States registered mail—

(A) such registration shall be prima facie evidence that the bid, grant application, or other document was delivered to the agency, officer, or office to which addressed; and

(B) the date of registration shall be deemed the postmark date.

(2) CERTIFIED MAIL.—Federal agencies are authorized to provide by regulations the extent to which the provisions of paragraph (1) of this subsection with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail.

(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act and shall remain in effect notwithstanding section 10 of this Act.

STEVENS AMENDMENT NO. 5249

Mr. SHELBY (for Mr. STEVENS) proposed an amendment to the bill, H.R. 3756, supra; as follows:

SEC. . Notwithstanding the provision under the heading ''ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS'' under title IV of the Treasury, Postal Service, and General Government Appropriations Act, 1996 (Public Law 104–52; 109 Stat. 480), the Advisory Commission on Intergovernmental Relations may continue in existence during fiscal year 1997 and each fiscal year thereafter.

INOUYE AMENDMENT NO. 5250

Mr. SHELBY (for Mr. INHOFE) proposed an amendment to the bill, H.R. 3756, supra; as follows:

On page 60, line 19 strike all through line 21.

MCCAIN AMENDMENT NO. 5251

Mr. SHELBY (for Mr. MCCAIN) proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . (a) No later than 45 days after the date of the enactment of this Act, the Inspector General of each Federal department or agency that uses administratively uncontrollable overtime in the pay of any employee shall—

(1) conduct an audit on the use of administratively uncontrollable overtime by employees of such department or agency, which shall include—

(A) an examination of the policies, extent, costs, and other relevant aspects of the use of administratively uncontrollable overtime at the department or agency; and

(B) a determination of whether the eligibility criteria of the department or agency and payment of administratively uncontrollable overtime comply with Federal statutory and regulatory requirements; and

(2) submit a report of the findings and conclusions of such audit to—

(A) the Office of Personnel Management;

(B) the Government Affairs Committee of the Senate; and

(C) the Government Reform and Oversight Committee of the House of Representatives.

(b) No later than 30 days after the submission of the report under subsection (a), the Office of Personnel Management shall issue revised guidelines to all Federal departments and agencies that—

(1) limit the use of administratively uncontrollable overtime to employees meeting the statutory intent of section 5545(c)(2) of title 5, United States Code; and

(2) expressly prohibit the use of administratively uncontrollable overtime for—

(A) customary or routine work duties; and

(B) work duties that are primarily administrative in nature, or occur in noncompelling circumstances.

HOLLINGS AMENDMENT NO. 5252

Mr. SHELBY (for Mr. HOLLINGS) proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the appropriate place, insert the following:

SEC. . Notwithstanding section 8116 of title 5, United States Code, and in addition to any payment made under 5 U.S.C. 8101 et seq., beginning in fiscal year 1997 and thereafter, the head of any department or agency is authorized to pay from appropriations made available to the department or agency a death gratuity to the personal representative (as that term is defined by applicable law) of a civilian employee of that department or agency whose death resulted from an injury sustained in the line of duty on or after August 2, 1990: *Provided*, That payments made pursuant to this section, in combination with the payments made pursuant to sections 8133(f) and 8134(a) of such title 5 and section 312 of Public Law 103–332 (108 Stat. 2537), may not exceed a total of $10,000 per employee.

SHELBY (AND KERREY) AMENDMENT NO. 5253

Mr. SHELBY (for himself and Mr. KERREY) proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill insert the following new section:

SEC. . EXPLOSIVES DETECTION CANINE PROGRAM.

(a) AUTHORIZATION.—

(1) The Secretary of the Treasury is authorized to establish scientific certification standards for explosives detection canines, and shall provide, on a reimbursable basis, for the certification of explosives detection canines employed by federal agencies, or other agencies providing explosives detection services at airports in the United States.

(2) The Secretary of the Treasury shall establish an explosives detection canine training program for the training of canines for explosives detection at airports in the United States.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

SHELBY AMENDMENT NO. 5254

Mr. SHELBY proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the appropriate place in the bill, insert the following;

SEC. . DESIGNATION OF MARK O. HATFIELD UNITED STATES COURTHOUSE.

The United States Courthouse under construction at 1030 Southwest 3d Avenue in Portland, Oregon, shall be known and designated as the ''Mark O. Hatfield United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the courthouse referred to in section 1 shall be deemed to be a reference to the ''Mark O. Hatfield United States Courthouse''.

SEC. 3. EFFECTIVE DATE.

This section shall take effect on January 2, 1997.

BROWN AMENDMENT NO. 5255

Mr. SHELBY (for Mr. BROWN) proposed an amendment to the bill, H.R. 3756, supra; as follows:

At the end of the bill, add the following new title:

TITLE ___—FEDERAL FINANCIAL MANAGEMENT IMPROVEMENT

SEC. ___01. SHORT TITLE.

This title may be cited as the ''Federal Financial Management Improvement Act of 1996''.

SEC. ___02. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) Much effort has been devoted to strengthening Federal internal accounting controls in the past. Although progress has been made in recent years, Federal accounting standards have not been uniformly implemented in financial management systems for agencies.

(2) Federal financial management continues to be seriously deficient, and Federal financial management and fiscal practices have failed to—

(A) identify costs fully;

(B) reflect the total liabilities of congressional actions; and

(C) accurately report the financial condition of the Federal Government.

(3) Current Federal accounting practices do not accurately report financial results of the Federal Government or the full costs of programs and activities. The continued use of these practices undermines the Government's ability to provide credible and reliable financial data and encourages already widespread Government waste, and will not assist in achieving a balanced budget.

(4) Waste and inefficiency in the Federal Government undermine the confidence of the American people in the Government and reduce the Federal Government's ability to address vital public needs adequately.

(5) To rebuild the accountability and credibility of the Federal Government, and restore public confidence in the Federal Government, agencies must incorporate accounting standards and reporting objectives established for the Federal Government into their financial management systems so that all the assets and liabilities, revenues, and expenditures or expenses, and the full costs of programs and activities of the Federal Government can be consistently and accurately recorded, monitored, and uniformly reported throughout the Federal Government.

(6) Since its establishment in October 1990, the Federal Accounting Standards Advisory Board (hereinafter referred to as the ''FASAB'') has made substantial progress toward developing and recommending a comprehensive set of accounting concepts and standards for the Federal Government. When the accounting concepts and standards developed by FASAB are incorporated into Federal financial management systems, agencies will be able to provide cost and financial information that will assist the Congress and financial managers to evaluate the cost and performance of Federal programs and activities, and will therefore provide important information that has been lacking, but is needed for improved decisionmaking by financial managers and the Congress.

(7) The development of financial management systems with the capacity to support these standards and concepts will, over the long term, improve Federal financial management.

(b) PURPOSES.—The purposes of this title are to—

(1) provide for consistency of accounting by an agency from one fiscal year to the next, and uniform accounting standards throughout the Federal Government;

(2) require Federal financial management systems to support full disclosure of Federal financial data, including the full costs of Federal programs and activities, to the citizens, the Congress, the President, and agency management, so that programs and activities can be considered based on their full costs and merits;

(3) increase the accountability and credibility of Federal financial management;

(4) improve performance, productivity and efficiency of Federal Government financial management;

(5) establish financial management systems to support controlling the cost of Federal Government;

(6) build upon and complement the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838), the Government Performance and Results Act of 1993 (Public Law 103–62; 107 Stat. 285), and the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410); and

(7) increase the capability of agencies to monitor execution of the budget by more readily permitting reports that compare spending of resources to results of activities.

SEC. ___03. IMPLEMENTATION OF FEDERAL FINANCIAL MANAGEMENT IMPROVEMENTS.

(a) IN GENERAL.—Each agency shall implement and maintain financial management systems that comply with Federal financial management systems requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger at the transaction level.

(b) PRIORITY.—Each agency shall give priority in funding and provide sufficient resources to implement this title.

(c) AUDIT COMPLIANCE FINDING.—

(1) IN GENERAL.—Each audit required by section 3521(e) of title 31, United States Code, shall report whether the agency financial management systems comply with the requirements of subsection (a).

(2) CONTENT OF REPORTS.—When the person performing the audit required by section 3521(e) of title 31, United States Code, reports that the agency financial management systems do not comply with the requirements of subsection (a), the person performing the audit shall include in the report on the audit—

(A) the name and position of any officer or employee responsible for the financial management systems that have been found not to comply with the requirements of subsection (a);

(B) all facts pertaining to the failure to comply with the requirements of subsection (a), including—

(i) the nature and extent of the noncompliance;

(ii) the primary reason or cause of the noncompliance;

(iii) any official responsible for the noncompliance; and

(iv) any relevant comments from any responsible officer or employee; and

(C) a statement with respect to the recommended remedial actions and the timeframes to implement such actions.

(d) COMPLIANCE DETERMINATION.—

(1) IN GENERAL.—No later than the date described under paragraph (2), the Director, acting through the Controller of the Office of Federal Financial Management, shall determine whether the financial management systems of an agency comply with the requirements of subsection (a). Such determination shall be based on—

(A) a review of the report on the applicable agency-wide audited financial statement;

(B) the agency comments on such report; and

(C) any other information the Director considers relevant and appropriate.

(2) DATE OF DETERMINATION.—The determination under paragraph (1) shall be made no later than 90 days after the earlier of—

(A) the date of the receipt of an agency-wide audited financial statement; or

(B) the last day of the fiscal year following the year covered by such statement.

(e) COMPLIANCE IMPLEMENTATION.—

(1) IN GENERAL.—If the Director determines that the financial management systems of an agency do not comply with the requirements of subsection (a), the head of the agency, in consultation with the Director, shall establish a remediation plan that shall include the resources, remedies, and intermediate target dates necessary to bring the agency's financial management systems into compliance.

(2) TIME PERIOD FOR COMPLIANCE.—A remediation plan shall bring the agency's financial management systems into compliance no later than 2 years after the date on which the Director makes a determination under paragraph (1), unless the agency, with concurrence of the Director—

(A) determines that the agency's financial management systems are so deficient as to preclude compliance with the requirements of subsection (a) within 2 years;

(B) specifies the most feasible date for bringing the agency's financial management systems into compliance with the requirements of subsection (a); and

(C) designates an official of the agency who shall be responsible for bringing the agency's

financial management systems into compliance with the requirements of subsection (a) by the date specified under subparagraph (B).

(3) TRANSFER OF FUNDS FOR CERTAIN IMPROVEMENTS.—For an agency that has established a remediation plan under paragraph (2), the head of the agency, to the extent provided in an appropriation and with the concurrence of the Director, may transfer not to exceed 2 percent of available agency appropriations to be merged with and to be available for the same period of time as the appropriation or fund to which transferred, for priority financial management system improvements. Such authority shall be used only for priority financial management system improvements as identified by the head of the agency, with the concurrence of the Director, and in no case for an item for which Congress has denied funds. The head of the agency shall notify Congress 30 days before such a transfer is made pursuant to such authority.

(4) REPORT IF NONCOMPLIANCE WITHIN TIME PERIOD.—If an agency fails to bring its financial management systems into compliance within the time period specified under paragraph (2), the Director shall submit a report of such failure to the Committees on Governmental Affairs and Appropriations of the Senate and the Committees on Government Reform and Oversight and Appropriations of the House of Representatives. The report shall include—

(A) the name and position of any officer or employee responsible for the financial management systems that have been found not to comply with the requirements of subsection (a);

(B) the facts pertaining to the failure to comply with the requirements of subsection (a), including the nature and extent of the noncompliance, the primary reason or cause for the failure to comply, and any extenuating circumstances;

(C) a statement of the remedial actions needed; and

(D) a statement of any administrative action to be taken with respect to any responsible officer or employee.

(f) PERSONAL RESPONSIBILITY.—Any financial officer or program manager who knowingly and willfully commits, permits, or authorizes material deviation from the requirements of subsection (a) may be subject to administrative disciplinary action, suspension from duty, or removal from office.

SEC. ___04. APPLICATION TO CONGRESS AND THE JUDICIAL BRANCH.

(a) IN GENERAL.—The Federal financial management requirements of this title may be adopted by—

(1) the Senate by resolution as an exercise of the rulemaking power of the Senate;

(2) the House of Representatives by resolution as an exercise of the rulemaking power of the House of Representatives; or

(3) the Judicial Conference of the United States by regulation for the judicial branch.

(b) STUDY AND REPORT.—No later than October 1, 1997—

(1) the Secretary of the Senate and the Clerk of the House of Representatives shall jointly conduct a study and submit a report to Congress on how the offices and committees of the Senate and the House of Representatives, and all offices and agencies of the legislative branch may achieve compliance with financial management and accounting standards in a manner comparable to the requirements of this title; and

(2) the Chief Justice of the United States shall conduct a study and submit a report to Congress on how the judiciary may achieve compliance with financial management and accounting standards in a manner comparable to the requirements of this title.

SEC. ___05. REPORTING REQUIREMENTS.

(a) REPORTS BY DIRECTOR.—No later than March 31 of each year, the Director shall submit a report to the Congress regarding implementation of this title. The Director may include the report in the financial management status report and the 5-year financial management plan submitted under section 3512(a)(1) of title 31, United States Code.

(b) REPORTS BY THE COMPTROLLER GENERAL.—No later than October 1, 1997, and October 1, of each year thereafter, the Comptroller General of the United States shall report to the appropriate committees of the Congress concerning—

(1) compliance with the requirements of section ___03(a) of this title, including whether the financial statements of the Federal Government have been prepared in accordance with applicable accounting standards; and

(2) the adequacy of uniform accounting standards for the Federal Government.

SEC. ___06. CONFORMING AMENDMENTS.

(a) AUDITS BY AGENCIES.—Section 3521(f)(1) of title 31, United States Code, is amended in the first sentence by inserting ''and the Controller of the Office of Federal Financial Management'' before the period.

(b) FINANCIAL MANAGEMENT STATUS REPORT.—Section 3512(a)(2) of title 31, United States Code, is amended by—

(1) in subparagraph (D) by striking ''and'' after the semicolon;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

''(E) a listing of agencies whose financial management systems do not comply substantially with the requirements of the Federal Financial Management Improvement Act of 1996, the period of time that such agencies have not been in compliance, and a summary statement of the efforts underway to remedy the noncompliance; and''.

SEC. ___07. DEFINITIONS.

For purposes of this title:

(1) AGENCY.—The term ''agency'' means a department or agency of the United States Government as defined in section 901(b) of title 31, United States Code.

(2) DIRECTOR.—The term ''Director'' means the Director of the Office of Management and Budget.

(3) FEDERAL ACCOUNTING STANDARDS.—The term ''Federal accounting standards'' means applicable accounting principles, standards, and requirements consistent with section 902(a)(3)(A) of title 31, United States Code, and includes concept statements with respect to the objectives of Federal financial reporting.

(4) FINANCIAL MANAGEMENT SYSTEMS.—The term ''financial management systems'' includes the financial systems and the financial portions of mixed systems necessary to support financial management, including automated and manual processes, procedures, controls, data, hardware, software, and support personnel dedicated to the operation and maintenance of system functions.

(5) FINANCIAL SYSTEM.—The term ''financial system'' includes an information system, comprised of one or more applications, that is used for—

(A) collecting, processing, maintaining, transmitting, or reporting data about financial events;

(B) supporting financial planning or budgeting activities;

(C) accumulating and reporting costs information; or

(D) supporting the preparation of financial statements.

(6) MIXED SYSTEM.—The term ''mixed system'' means an information system that supports both financial and nonfinancial functions of the Federal Government or components thereof.

SEC. ___08. EFFECTIVE DATE.

This title shall take effect on October 1, 1996.

REID (AND OTHERS) AMENDMENT NO. 5256

Mr. REID (for himself, Mr. LEVIN, and Mr. BIDEN) proposed an amendment to the bill, H.R. 3756, supra; as follows:

On page 91, line 3, strike ''The'' and insert ''Except as provided in subsection (f), the''.

On page 92, between lines 21 and 22, add the following:

(f)(1) Any former employee of the White House Travel Office whose employment in that office was terminated on May 19, 1993, and who was subject to criminal indictment for conduct in connection with such employment, shall be reimbursed for attorney fees and costs under this section but only if the claim for such attorney fees and costs, which shall be referred to the chief judge of the United States Court of Federal Claims, is determined by the chief judge to be a legal or equitable claim, as provided in paragraph (2).

(2) The chief judge shall—

(A) proceed according to the provisions of sections 1492 and 2509 of title 28, United States Code; and

(B) report back to the Senate, at the earliest practicable date, providing—

(i) such findings of fact and conclusions that are sufficient to inform the Congress of the nature, extent, and character of the claim for compensation referred to in this section as a legal or equitable claim against the United States or a gratuity; and

(ii) the amount, if any, legally or equitably due from the United States to any individual referred to in this section.

HATCH AMENDMENT NO. 5257

Mr. HATCH proposed an amendment to amendment No. 5256 proposed by Mr. REID to the bill, H.R. 3756, supra; as follows:

Strike all after the first word and insert the following:

(2) VERIFICATION REQUIRED.—The Secretary shall pay an individual in full under paragraph (1) upon submission by the individual of documentation verifying the attorney fees and costs.

(3) NO INFERENCE OF LIABILITY.—Liability of the United States shall not be inferred from enactment of or payment under this subsection.

(b) LIMITATION ON FILING OF CLAIMS.—The Secretary of the Treasury shall not pay any claim filed under this section that is filed later than 120 days after the date of the enactment of this Act.

(c) LIMITATION.—Payments under subsection (a) shall not include attorney fees or costs incurred with respect to any Congressional hearing or investigation into the termination of employment of the former employees of the White House Travel Office.

(d) REDUCTION.—The amount paid pursuant to this section to an individual for attorney fees and costs described in subsection (a) shall be reduced by any amount received before the date of the enactment of this Act, without obligation for repayment by the individual, for payment of such attorney fees and costs (including any amount received from the funds appropriated for the individual in the matter relating to the ''Office of the General Counsel'' under the heading ''Office of the Secretary'' in title I of the Department of Transportation and Related Agencies Appropriations Act, 1994).

(c) PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.—Payment under this section, when accepted by an individual described in subsection (a), shall be in full satisfaction of all claims of, or on behalf of, the individual against the United States that arose out of the termination of the White House Travel Office employment of that individual on May 19, 1993.

SEC. 529. None of the funds made available in this Act may be used by the Executive Office of the President to request from the Federal Bureau of Investigation any official background investigation report on any individual, except when it is made known to the Federal official having authority to obligate or expend such funds that—

(1) such individual has given his or her express written consent for such request not more than 6 months prior to the date of such request and during the same presidential administration; or

(2) such request is required due to extraordinary circumstances involving national security.

SEC. 528. (a) REIMBURSEMENT OF CERTAIN ATTORNEY FEES AND COSTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall pay from amounts appropriated in title I of this Act under the heading, ''Departmental Offices, Salaries and Expenses'', up to $499,999 to reimburse former employees of the White House Travel Office whose employment in that Office was terminated on May 19, 1993, for any attorney fees and costs they incurred with respect to that termination.

NOTICE OF HEARING

SPECIAL COMMITTEE ON AGING

Mr. COHEN. Mr. President, I wish to announce that the Special Committee on Aging will hold a hearing on Thursday, September 19, 1996, at 9:30 a.m., in room 562 of the Dirksen Senate Office Building. The hearing will discuss Social Security reform.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SHELBY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, September 11, 1996, for purposes of conducting a full committee business meeting which is scheduled to begin at 9:30 a.m. The purpose of this meeting is to consider pending calendar business.

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

COMMITTEE ON THE JUDICIARY

Mr. SHELBY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, September 11, 1996, at 2 p.m. to hold a hearing on ''Mergers and Competition in the Telecommunications Industry.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. SHELBY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, September 11, 1966, at 9 a.m. to hold a closed business meeting.

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

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS

Mr. SHELBY. Mr. President, I ask unanimous consent that the Subcommittee on International Operations of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 11, at 2 p.m.

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

SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. SHELBY. Mr. President, I ask unanimous consent that the Subcommittee on Transportation and Infrastructure be granted permission to conduct a hearing Wednesday, September 11, at 9:30 a.m., Hearing Room (SD–406) on the Intermodal Surface Transportation Efficiency Act and the role of Federal, State, and local governments in surface transportation.

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

ADDITIONAL STATEMENTS

REGARDING PUERTO RICO ECONOMIC INCENTIVES

● Mr. D'AMATO. Mr. President, I have said in the past, and continue to believe, that the action taken by Congress in eliminating section 936 without a permanent replacement program that provides a major stimulus to economic development in Puerto Rico and the creation of well-paying and stable jobs was unfortunate.

We have the seeds of a replacement program in new Internal Revenue Code section 30A that provides a targeted wage credit to companies currently doing business in Puerto Rico based upon the compensation paid to their qualified employees. Although this is certainly movement in the right direction, it does not allow new business starts, and the credit will sunset in 10 years. As such, it does not provide the permanency that is needed to maintain the economic development of Puerto Rico, and will adversely impact States like New York.

Corporations headquartered in New York State that have invested in Puerto Rico employ over 39,000 persons in New York. Moreover, Puerto Rican subsidiaries of mainland companies purchase approximately $195 million per year worth of supplies and services from New York. Consequently, when the wage credit sunsets in 2006 and corporations are drawn to other regions where there are tax incentives, New York State will lose not only jobs, but a significant amount of income from goods and services.

Mr. President, Congress needs to work with the elected representatives of Puerto Rico to expand section 30A into a dynamic and effective job creation incentive that helps to bring new and high-paying jobs to Puerto Rico. By doing so, we will raise Puerto Rico's economic standards and provide efficient Federal incentives to accomplish those goals. I firmly believe that Congress, working with Governor Rossello and other elected leaders from Puerto Rico, can successfully fashion a program that achieves economic progress for Puerto Rico and efficiency in Federal expenditures.●

SHOULD WE TROT OUT THE NEW DEAL AGAIN?

● Mr. SIMON. Mr. President, one of the ablest aldermen in the city of Chicago, Burton F. Natarus, recently had a commentary in the Chicago Tribune in which he calls for a public works program along the lines of the WPA. It makes eminent good sense.

We can learn from history, but we're apparently unwilling to do it.

The welfare bill that passed is going to cause huge problems in our society if we don't come up with something better and do it quickly.

A WPA type of welfare reform would cost a little more initially, but saves huge amounts of money in the long run and be of great assistance to impoverished areas, whether rural or urban.

Right now we are trying to have welfare reform but do it without creating jobs for the unskilled and without having day care for their children.

Anything labeled ''welfare reform'' that doesn't provide the jobs and doesn't provide day care is not really welfare reform.

Mr. President, I ask that Alderman Natarus' article be printed in the RECORD.

The article follows:

[From the Chicago Tribute, Aug. 22, 1996]

SHOULD WE TROT OUT THE NEW DEAL AGAIN?

(By Burton F. Natarus)

On July 24, the Senate approved a comprehensive welfare bill, the most sweeping change since the creation of the New Deal 60 years ago. Federal guarantees of cash assistance for the nation's poorest children have evaporated and states will be given new powers to run welfare on their own. The measure also imposes a five-year lifetime limit on cash assistance payments to any family and requires the head of every family on welfare to work within two years or lose benefits.

While we laud the new thrust toward the self-sufficiency of our population, and the end of the obsolete aspects of the 60-year-old welfare system, we have serious concerns about jobs. Where are they to come from? Where is the new workforce to go? To Bainbridge Island, Wash., to work for Microsoft? To the high-tech Naperville corridor for that chemical engineering position? The welfare reform bill, which President Clinton is expected to sign, presumes there will be jobs available for the workforce. These jobs may or may not exist and we have to face the brutal fact that generations of welfare families have no saleable working skills. Recall the controversial ''workfare'' Comprehensive Employment and Training Act program from the Nixon administration in the flush, moneyed '70s, when Congress tried to create jobs accompanied by teaching and skills

training. Limited in scope and a short-term solution to unemployment, it finally ended with the Reagan era and here we are 10 years later with no significant federal jobs program as we throw the poor out on their own.

With the CETA program, the private sector created low-level and semi-skilled jobs, which concentrated in the food service, truck driving and clerical fields. There were considerable financial incentives for the private sector to participate in CETA. These incentives do not exist today and the private sector may not be willing nor is it able to create entry-level jobs in sufficient numbers.

In 1929, the Depression commenced its sad and ugly course and by 1933 12 million able-bodied Americans were out of work. No work. No money. The country was, however, fortunate enough to have Franklin Roosevelt as its 32nd president. We know of his long roster of massive relief measures and social programs to cope with the Depression and a country in crisis: farm relief, unemployment insurance, Social Security, fair bankruptcy and foreclosure procedures and numerous federal jobs measures. At the 1932 Democratic National Convention in Chicago, Roosevelt declared, ''I pledge myself to a new deal. . . . This is more than a political campaign; it is a call to arms.''

What we need is a ''new'' New Deal and a call to arms. Let us recall some of those job-creating public works bills of the Roosevelt administration.

In March 1933, his recovery plan included the Civilian Conservation Corps, which gave 250,000 young men meals, housing, wages and the necessities of life for their work in the national forests and other government properties.

There was the Works Progress Administration and in the words of Sen. Paul Simon (D–Ill.) 10 years ago, it was ''refreshingly sensible.'' The WPA put 8.5 million people to work building bridges, airports, highways and developing programs to foster cultural awareness. The Federal Art Project's works are still seen today in murals at such places as Lane Tech and the Lakeview Post Office. Hundreds of thousands of Chicagoans worked for the WPA during these years, including thousands of laborers, artists and writers who worked for $95 a month. In Illinois, from 1935–38, these new hires built 28 million square feet of sidewalks, 1,895 rural bridges, 300,000 public artworks. A recent New York Times Magazine article entitled, ''When Work Disappears'' recounts the staggering national accomplishments of the administration, from playgrounds, athletic fields, viaducts and culverts, to LaGuardia Airport and FDR Drive. This week it has been nationally reported that the cities with the most decrepit crumbling and unsafe bridges in the country are New York and Washington, D.C. In Chicago, we could also use the help of our citizens in repairing old infrastructure.

The Public Works Administration created jobs and stimulated business between 1933 and 1939. The federal government spent $6 billion on construction of the Washington, D.C. Mall, Hoover Dam, the Lincoln Tunnel and Ft. Knox. This bureau also created jobs geared toward the preservation of public works.

The creation of the Tennessee Valley Authority put the government in the electric power business, selling electricity in competition with private firms, and giving the government ownership of hydroelectric plants in large rivers. Under the program, Norris Dam was built on the Tennessee River and the Bonneville and Grand Coulee on the Columbia River. These dams employed hundreds of thousands of people who ended up not only supporting themselves and their families but constructing enduring legacies for the country. How many flood plains could use dams right here in Illinois?

World War II eventually solved the unemployment problem but you can imagine how bereft the country would have been for those 10 years without the PWA, the WPA, the CCC and the TVA. One powerful reason why it makes good economic sense to place people on the federal payroll is that the jobs are taxable and the tax monies revert to the federal government as wages are disbursed. Programs such as the WPA pay for themselves in the long run, which is so much more financially efficient than a dole or handout.

Furthermore, when the federal worker leaves his public sector job he will be ready, or at least more ready, for private sector employment, having received on-the-job training in a specific field. Incidentally, the jobs would not be ad aeternitum nor for the lifetime of an individual. They would be for a finite period after which time others would be hired and given a chance to learn replicable skills. By creating these government jobs an economic rippling effect inevitably occurs in which private industry is stimulated.

A federal public jobs program would not carry the stigma of welfare so public jobs must be made available for those who will no longer be on the dole. We owe our citizens this much. This is indeed a call to arms and in this matter we have no choice.

'The WPA was the most beneficial project in the history of the United States. Bringing it back is long overdue . . . There are plenty of projects now without having to make work. Everything is deteriorating—bridges, buildings, roads, schools, everything.'●

TRIBUTE TO OATS

● Mr. BOND. Mr. President, I rise today to pay a special tribute to Older Adults Transportation Service, Inc. [OATS]. It is a great pleasure to recognize OATS for its 25 years of loyal service to residents in the State of Missouri.

OATS was founded in November 1971, as the Cooperative Transportation Service, to provide reliable transportation to seniors, people with disabilities and rural residents of Missouri in order to increase their mobility to live independently in their own communities. Since then, the not-for-profit corporation has grown from 3 buses serving 8 mid-Missouri counties, into a fleet of over 300 vehicles serving 87 out of Missouri's 113 counties. Today, over 1,000 volunteers and 342 drivers and staff dedicate their time and energy to increasing mobility and extending a lifeline for those with special transportation needs.

As OATS celebrates its 25th anniversary on September 25, 1996, it is an honor to congratulate its members on their long lasting commitment to Missourians. I wish OATS the best of luck in all its future endeavors and continued success in its service to others.●

WHY DO WE KEEP STIFFING THE UNITED NATIONS?

● Mr. SIMON. Mr. President, the Los Angeles Times recently carried an op-ed piece by James P. Muldoon, Jr., and Rafael Moreno under the title, ''Why Do We Keep Stiffing the U.N.?''

My colleagues know of my unhappiness with our failure to pay the debt we owe.

Our provincialism is astounding. The article refers to our debt as being $1.5 billion. That may be a slight exaggeration, but it is at least $1.2 billion and probably somewhat higher than that.

What is also of interest is their paragraph on relative cost paid by different countries. They write:

It's difficult for Europeans to accept that the U.N. is a budget-buster for the U.S. The costs to Americans for the U.N. in general and U.N. peacekeeping in particular are significantly lower than they are for Europeans. The U.S. costs for the 1996 U.N. regular budget come to only $1.24 per American, while the people of San Marino owe $4.75 each. Luxembourg $2.06 each and for the Swedes $1.57 each. The U.S. per capita cost for 16 U.N. peacekeeping operations in 1994 was less than $4.

I ask my colleagues to read what Mr. Muldoon and Mr. Moreno have to say.

I ask that the op-ed piece be printed in the RECORD.

The op-ed piece follows:

WHY DO WE KEEP STIFFING THE U.N.?

(By James P. Muldoon Jr. and Rafael Moreno)

Italian President Oscar Scalfaro, in an address to the U.N. General Assembly earlier this year, diplomatically yet firmly took the United States to task about its mountain of debt to the United Nations. Sadly, Scalfaro's message is hardly new. Over the past few months, nearly all our European partners have expressed similar discontent with U.S. leadership at the U.N.

This week the Council on Foreign Relations issued a report by a bipartisan group of U.S. foreign-policy experts, who warn that Washington's hostility to the U.N. is damaging both the world organization and America's national interests. The report says that politicians have misrepresented U.N. activities in such trouble spots as Somalia and Bosnia in order to cover up their own policy failures.

America's U.N. debt now tops $1.5 billion. French President Jacque Chirac chided members of Congress, in a joint session, saying their shortsightedness was weakening America's position of global leadership. Behind the scenes, similar messages of concern are being registered across Europe. America's allies are confounded by the intense anti-U.N. rhetoric that has emerged during the U.N.'s 50th anniversary year, intensifying as the presidential election nears.

Since the end of the Cold War, the major powers have recognized that the U.S. could not (and would not) be the world's policeman. For that reason, many countries, including the U.S. attempted to make the U.N.'s ''collective security'' machinery function in response to a range of conflicts over the past five years that were not imagined by the drafters of the U.N. Charter. Yet when the peacekeeping missions in Somalia, the former Yugoslavia and Haiti lost their way, the ''great powers'' who approved and mandated these missions conveniently shifted most of the blame onto the secretary-general and the U.N. secretariat, distancing themselves from their decisions and mandates in the Security Council. When the bills came due, the greatest power—the United States—said it was unable to pay.

It's difficult for Europeans to accept that the U.N. is a budget-buster for the U.S. The costs to Americans for the U.N. in general and U.N. peacekeeping in particular are significantly lower than they are for Europeans. The U.S. costs for the 1996 U.N. regular budget come to only $1.24 per American, while the people of San Marino owe $4.75

each. Luxembourg $2.06 each and for the Swedes $1.57 each. The U.S. per capita cost for 16 U.N. peacekeeping operations in 1994 was less than $4.

Making matters worse is the U.S. arrogance when discussing problems of U.N. peacekeeping, especially regarding the U.N. troops in the former Yugoslavia, and the disavowal of Washington, particularly Congress, for America's part in the ''failure'' of the U.N. in the Balkans. The real facts regarding the limitations of U.N. peacekeeping in the post-Cold War period is a shameful record of ''great power'' mismanagement and unrealistic mandates. The vast majority of U.N. Troops in peacekeeping missions are from such member states as Fiji, Pakistan, Malaysia, Italy and Spain. The permanent members of the Security Council—the U.S., Britain, France, Russia and China—have extraordinary power and can stop the expansion or addition of U.N. missions simply by voting no. The fact that they hold such power is the primary reason that they are expected to pay more for these missions and to deploy larger troop contingents.

European concerns go well beyond the matter of America's $1.5-billion U.N. debt. One thing that most bothers our allies is the cynical American tendency to take advantage of the organization when it serves our national interest—as it did with Haiti—or to use it as an excuse to hide behind when it doesn't—Bosnia, for example.

This is not a debate about the $4.40 that each American owes the U.N. but about the kind of world we want in the 21st century. Will it be one with the U.S. as the haughty and lonely superpower or one with nations and peoples following America's moral leadership and working out differences through dialogue, cooperation and common will, something very similar to what the U.N. is all about?●

THE 50TH ANNIVERSARY OF UNIROYAL GOODRICH PLANT IN TUSCALOOSA, AL

● Mr. SHELBY. Mr. President, I rise today in honor of the Uniroyal Goodrich Tire Manufacturing facility in Tuscaloosa, AL, which is celebrating its 50th year of successful production and community service. For half a century, the Uniroyal Goodrich plant has been an important part of Tuscaloosa's economic and social fabric as well as a source of great pride within the community.

For the last 50 years, the history of the Uniroyal Goodrich plant has reflected that of our Nation. In 1946, as our Nation was moving from wartime to a peacetime economy, BF Goodrich was leading the way, purchasing an unfinished tire plant from the Federal Government, and on October 23, 1946, rolling the first tire off the assembly line. Since then, a long series of ambitious modernizations and expansions have enabled the Tuscaloosa facility to keep pace with the constant business and technological innovations which have been the hallmark of American industry. Although Tuscaloosa's tire manufacturing plant began by producing belted bias tires in an 860,000-square-foot structure, today the facility is double its original size, 40 acres under one roof, and produces high performance radial tires 24 hours a day, 7 days a week.

America's post-war success, like the success of the Tuscaloosa facility, has been a product of teamwork. In 1986, BF Goodrich joined forces with the Uniroyal Co. to produce high-quality tires. In 1990, the Uniroyal Goodrich Tire Co. became part of Michelin North America. This new team promises to be a leader in American industry for many years to come.

The important role the Uniroyal Goodrich plant has played in the development of Tuscaloosa as a growing and prosperous community cannot be overstated. It is a rare Tuscaloosa family who does not have a father, son, brother, sister, or cousin who is a current or previous employee of the plant. The plant's first weekly payroll, back in 1946, was $542.23 for 12 employees. This payroll has grown to over $1.3 million for 2,000 hard-working local men and women. This income rolls over many times in the local economy, benefiting all of Tuscaloosa's businesses and individuals.

I am immensely grateful for, and proud of, the Uniroyal Goodrich Tire Manufacturing plant and the men and women who work hard there every day. On behalf of all Tuscaloosans, I would therefore like to congratulate the Uniroyal Goodrich Tire Manufacturing plant for 50 years of outstanding production and community service. I wish them another 50 years of success and prosperity.●

IF WE WERE SERIOUS

● Mr. SIMON. Mr. President, when Richard Darman served as The Office of Management and Budget Director, I sometimes disagreed with him; but I always had great respect for him.

He had an op-ed piece in The New York Times on September 1 that contains a great deal of common sense; and as we know, common sense is all too often the last thing that gets discussed during a political campaign.

He says correctly that we have to look at the entitlement picture. To pretend that we can balance the budget without looking at entitlements is living in a dream world, even if both political parties were not asking for tax cuts. The request for tax cuts simply compounds this problem.

Second, he suggests that we have to look at urban problems. If I can expand that to say we ought to be looking at the question of poverty, which is what he is really suggesting. That means looking at education and some other basics.

I have long favored having a WPA type of jobs program where we would pay people the minimum wage for 4-days a week. The fifth day they would have to be out trying to find a job in the private sector. When people cannot read and write, we would get them into a program. If their literacy and educational background was woefully inadequate, we would get them into a program to get their GED. If they have no marketable skill, we would get them to a community college or technical school.

The reality is there is no way of achieving the kind of society we should have on the cheap, as Darman points out.

The third reality that he mentions in his article is that we are growing older and obviously that has a huge impact on the entitlement scene.

There is one other reality that he does not mention that ought to be put on the table and that is in terms of taxation. Contrary to the general myth, the percentage of our taxes that goes for government support is lower than any of the countries of western Europe or Japan, Australia, and New Zealand, if the Japanese industrial compact is considered. The lone exception to that is Turkey.

We ought to be looking at a value-added tax; we ought to be looking at a more realistic gasoline tax; we ought to be raising cigarette taxes, both for our economic health and our physical health.

In any event, the Darman discussion should move us a little more toward reality.

Mr. President, I ask that this article from The New York Times be printed in the RECORD.

The article follows:

[From the New York Times, Sept. 1, 1996]

IF WE WERE SERIOUS

(By Richard Darman)

The prime-time convention shows have come to their balloon-drop endings. The mini-movies, zingers and dramatic speeches are over. What follows now, we are told, is the ''serious campaign.''

That is a notion which many would dismiss as oxymoronic. But it has the virtue of suggesting an interesting question: What important issues might the candidates address if the campaign actually were serious?

The question is not put to dismiss what has been presented so far. Bill Clinton and Bob Dole have both recognized that a governing majority requires far broader appeal than either party's traditional base provides. They have both broadened their reach.

Bob Dole has distanced himself from the dour anti-government focus of the House Republicans by selecting Jack Kemp—signaling an interest in growth, while underlining his commitment to equal opportunity, inclusiveness and tolerance. Bill Clinton has adopted a Reaganesque command of symbols and ceremony, declaring ''hope is back.'' And he has again reversed himself on welfare and taxes, asserting ''the era of big government is over.''

How much of this is to be taken seriously, others may judge. Choices have been framed: whether to continue on the current path or pursue a bolder reach for growth; to rely on government or ''trust the people''; to ''bridge'' forward or back to the future. The problem is that such formulations, though important, are abstract. As presented by the major candidates, they barely touch fundamental issues America must face.

One such issue, growing middle-class entitlements, was mentioned in a convention speech, but not by any of the candidates. Colin Powell warned of ''condemning our children and grandchildren with a crushing burden of debt that will deny them the American Dream.'' He noted, ''We all need to understand it is the entitlement state that

must be reformed, and not just the welfare state.'' Virtually all serious analysts agree: if entitlements are not reformed before the baby-boom generation reaches age 60, the feel-good talk about recent progress on the deficit will be replaced by a sense of crisis.

The sensible course is to avoid a baby-boomer retirement shock by addressing the problem well in advance. But the major candidates either pretend the problem does not exist, propose to hand it to a commission, or wish it away with heroic assumptions about economic growth. Indeed, while sidestepping the problem, the candidates actually act as if government were going to be long, not short, on revenue. Without providing credible proposals for spending reduction, both candidates offer the voters attractive tax cuts—what Ross Perot has termed ''free candy just before elections.''

The facts are these, however: There are good reasons public policy should seek to increase growth. These range from interests in reducing the deficit and financing Social Security to increasing opportunity for the poor and improving the quality of life for all. But growth is limited by labor-force participation and the rate of increase in productivity. These can and should be improved by cutting marginal tax rates and the tax on capital gains. But significant improvements in productivity also require radical improvements in education and training, and major breakthroughs in research and development. These, in turn, require the expenditure of political and financial capital. Even with these, the likely increase in growth would not suffice to offset too much free candy.

In any case, major improvements in long-term productivity growth take time to achieve. Meanwhile, the deficit cannot be eliminated by focusing on non-entitlements and using the new line-item veto. The ''anti-government'' public and politicians care too much about expenditures for law enforcement, immigration control, drug abuse prevention, air safety, environmental protection, biomedical research, and so on. So if the baby-boomers are to avoid a shock, if the deficit is to be kept under control, and if a tax increase is to be avoided, entitlement reform will have to be faced promptly.

This issue is at the heart of the budget problem. Yet if it were merely budgetary, it would long since have been solved. The dilemma is that entitlements principally involve the broad American middle that is key to electoral success. That is why entitlements are the ''third rail'' of American politics and lend themselves to demagoguery. They are treated simplistically though they involve complex questions: Who in the middle class should be protected against exactly what risks? What should be the relative responsibility of government and individuals in assuring risk protection? What are the obligations of working generations to generations too young or too old to work? Leadership is needed to help frame responsible answers to just such difficult questions. Yet no candidate has trusted the people enough to risk a serious discussion.

A second fundamental problem is as obvious as the first and as unattended: America's deposing inner cities. Clearly, talk of hope, history and the American Dream is hollow if it does not address the large population trapped in ghettos. Urban ghettos represent a moral failure and a substantial economic cost. Indeed, if left unattended, the decivilizing effects of urban neglect may pose a more widespread threat to the American Dream. Yet this problem, too, has difficulty attracting a serious word.

Jack Kemp deserves credit for being among the few major politicians to put the urban problem on the national agenda. But, unfortunately, putting this problem on the agenda and offering viable solutions are not necessarily the same. Jobs must be created near blighted areas, and tax incentives could help. but they cannot possibly suffice. A zero capital gains rate will not counter the fear of random violence or organized mayhem. Low marginal rates alone will not produce healthy role models or families, effective education, a reduction in drug abuse, or the basics of a civilized infrastructure. Given the scale of the urban problem, very large amounts of public and private investment are required. And while the investment may pay for itself over generations, in the near term it means that in addition to tax incentives there must be significant spending. Yet these days, no major politician seems willing to admit publicly that great dreams cannot be achieved on the cheap.

A third fundamental problem is not quite as obvious as the first two. It is the flip side of a good thing: Americans can expect to live longer. The Census Bureau estimates that, in 2010, there will be more than 40 million Americans aged 65 and over. Six million will be 85 and over—and that is before the baby-boomers reach 85. with breakthroughs in biomedical research, these numbers will be even more compelling. There is not only a very large generation headed toward retirement. But in the move from the 20th to the 21st century, something close to an additional generation is being added to expected life.

This will necessitate a minor cultural and economic revolution. It is not merely an issue of entitlement finance. Retirement ages will have to increase. Job and retraining opportunities will have to be developed. New community-living arrangements will have to be expanded. Profound issues of morality will have to be confronted.

Bob Dole has spoken eloquently of the ''gracious compensations of age.'' At 73, he is healthy and active—a symbol of the enormous potential represented by the growing numbers of healthy older Americans. He is perfectly positioned to raise national consciousness about the risks and opportunities presented by the aging of America.

As the campaign moves into its ''serious'' phase, however, it may be naive to imagine that candidates might actually treat us as if we could face serious problems seriously. Bill Clinton has had four years to address these problems and has not yet done so. And while elections elicit new proposals, they rarely produce serious discussion. The politicians are, naturally enough, trying to get elected. To get them to be serious, we ourselves would have to be serious. And if balloons, simple nostrums and promises of free candy are all we demand, that is probably about all we will get.●

TRIBUTE TO THE TOWN OF HOLLIS, NH, ON THE OCCASION OF THEIR 250TH ANNIVERSARY

● Mr. SMITH. Mr. President, I rise today to pay tribute to the people of Hollis, NH, on their town's 250th anniversary. Since April, the residents of Hollis have been celebrating their town's anniversary with numerous festivities including the strawberry festival, a museum opening, a civic profile, a firemen's muster, an apple festival, a marathon road race and many other enjoyable events. The town's celebration on September 14th will mark their official 250th anniversary and is certain to bring the whole town together for this historic event.

The history of Hollis dates back to the year 1746 when the area of West Dunstable was divided into four different parts—Dunstable, Monson, Merrimack, and Hollis. Later on April 3, 1746, then-Governor Benning Wentworth signed the town's first charter officially naming the town Holles. It was on this date that the people from a loose settlement of families gathered under one wing of a church in the Hollis area to join together to unite their town.

Originally, Hollis was granted the name of Holles after Governor Wentworth's friend, the Duke of Newcastle. Eventually, the town residents changed the spelling of Holles to Hollis in honor of an English merchant they admired for his high level of intellect and his generosity to Harvard College. Many descendants of the town's first settlers still live in Hollis today. Before the signing of the charter, there were 75 families that resided in the geographical location of Hollis. When the charter was signed, 20 families were forced to reside in the Dunstable area. These 20 families fought for 30 years to be reunited with their fellow neighbors and their home, Hollis. To this day, the residents of Hollis use this example as an illustration of their town's commitment of unity.

The passage of 250 years of history has changed the way of life for the people of Hollis. Some of the minor changes include the tithing men and fence viewers who have disappeared from election ballots and the decay of the whipping post in the town common. Nevertheless, these few minor changes have not changed the bond the families feel for Hollis, nor the civic responsibilities they have held in the town since 1746. Joan Tinklepaugh, who wrote a history for the town, states it best when she says, ''we are all joined together by the stitches of the quilt of humanity that makes up the town called Hollis.''

I congratulate the many residents of Hollis on this festive occasion, and for their sense of unity and dedication. Enjoy the celebration and may the years to come be as prosperous as your last 250 years. Happy birthday Hollis.●

ORDERS FOR THURSDAY, SEPTEMBER 12, 1996

Mr. SHELBY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9:30 a.m. on Thursday, September 12; further, that immediately following the prayer, the Journal of proceedings be deemed approved to date, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day, the Senate immediately resume consideration of the Treasury-postal appropriations bill, and further there be 15 minutes of debate equally divided in the usual form in regard to the pending amendments offered by Senators HATCH and REID. I further ask that prior to the second vote there be 2 minutes of debate equally divided.

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

PROGRAM

Mr. SHELBY. Under a previous order, there will be two consecutive rollcall votes beginning at 9:45 tomorrow morning. The first will be on the Hatch amendment regarding the White House Travel Office, to be followed by a vote on or in relation to the Reid amendment. Following those votes, the Senate will remain on the Treasury-postal appropriations bill, and it is hoped we will complete action on that matter as early as possible so that the Senate may begin consideration of the Chemical Weapons Convention Treaty during Thursday's session. The majority leader has announced that rollcall votes will occur throughout the day on Thursday and Senators should plan their schedules accordingly.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

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

There being no objection, the Senate, at 10:21 p.m., adjourned until Thursday, September 12, 1996, at 9:30 a.m.